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# Presidential Documents

**Title 3—**

## The President

**Proclamation 7547 of April 26, 2002**

## National Day of Prayer, 2002

**By the President of the United States of America**

**A Proclamation**

Since our Nation's founding, Americans have turned to prayer for inspiration, strength, and guidance. In times of trial, we ask God for wisdom, courage, direction, and comfort. We offer thanks for the countless blessings God has provided. And we thank God for sanctifying every human life by creating each of us in His image. As we observe this National Day of Prayer, we call upon the Almighty to continue to bless America and her people.

Especially since September 11, millions of Americans have been led to prayer. They have prayed for comfort in a time of grief, for understanding in a time of anger, and for protection in a time of uncertainty. We have all seen God's great faithfulness to our country. America's enemies sought to weaken and destroy us through acts of terror. None of us would ever wish on anyone what happened on September 11th. Yet tragedy and sorrow none of us would choose have brought forth wisdom, courage, and generosity. In the face of terrorist attacks, prayer provided Americans with hope and strength for the journey ahead.

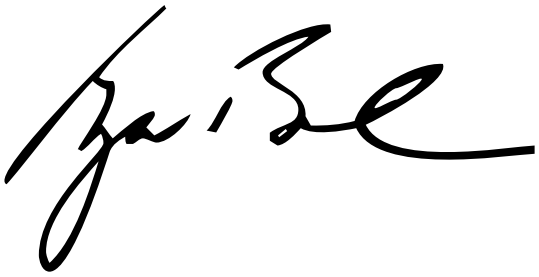
God has blessed our Nation beyond measure. We give thanks for our families and loved ones, for the abundance of our land and the fruits of labor, for our inalienable rights and liberties, and for a great Nation that leads the world in efforts to preserve those rights and liberties. We give thanks for all those across the world who have joined with America in the fight against terrorism. We give thanks for the men and women of our military, who are fighting to defend our Nation and the future of civilization.

We continue to remember those who are suffering and face hardships. We pray for peace throughout the world.

On this National Day of Prayer, I encourage Americans to remember the words of St. Paul: ''Do not be anxious about anything, but in everything, by prayer and petition, with thanksgiving, present your requests to God.'' The Congress, by Public Law 100–307, as amended, has called on our citizens to reaffirm the role of prayer in our society and to honor the religious diversity our freedom permits by recognizing annually a ''National Day of Prayer.''

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 2, 2002, as a National Day of Prayer. I ask Americans to pray for God's protection, to express gratitude for our blessings, and to seek moral and spiritual renewal. I urge all our citizens to join in observing this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of April, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-sixth.



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# Rules and Regulations

Federal Register
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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Part 301

**[Docket No. 01–112–1]**

**RIN 0579–AB45**

## Karnal Bunt Compensation

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

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

**SUMMARY:** We are amending the Karnal bunt regulations to provide compensation for certain growers and handlers of grain and seed affected by Karnal bunt who are not currently eligible for compensation, and for certain wheat grown outside the regulated area that was commingled with wheat grown in regulated areas in Texas. The payment of compensation is necessary in order to encourage the participation of, and obtain cooperation from, affected individuals in our efforts to contain and reduce the prevalence of Karnal bunt.

**DATES:** This interim rule is effective May 1, 2002. We will consider all comments we receive that are postmarked, delivered, or e-mailed by July 1, 2002.

**ADDRESSES:** You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01–112–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–112–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 01–112–1'' on the subject line.

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

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

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert G. Spaide, Director for Surveillance and Emergency Programs Planning and Coordination, PPQ, APHIS, 4700 River Road Unit 98, Riverdale, MD 20737–1231; (301) 734–7819.

**SUPPLEMENTARY INFORMATION:**

### Background

Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*), a hybrid of wheat and rye. Karnal bunt is caused by the smut fungus *Tilletia indica* (Mitra) Mundkur and is spread by spores, primarily through the movement of infected seed. In the absence of measures taken by the U.S. Department of Agriculture (USDA) to prevent its spread, the establishment of Karnal bunt in the United States could have significant consequences with regard to the export of wheat to international markets. The regulations regarding Karnal bunt are set forth in 7 CFR 301.89–1 through 301.89–16 (referred to below as the regulations). Among other things, the regulations define areas regulated for Karnal bunt and restrict the movement of certain regulated articles, including wheat seed and grain, from the regulated areas. The regulations also provide for the payment of compensation for certain growers, handlers, seed companies, owners of grain storage facilities, flour millers, and participants in the National Karnal Bunt Survey who incurred losses and expenses because of Karnal bunt during certain years. These provisions are in § 301.89–15, ''Compensation for growers, handlers, and seed companies in the 1999–2000 and subsequent crop seasons,'' and § 301.89–16, ''Compensation for grain storage facilities, flour millers, and National Survey participants for the 1999–2000 and subsequent crop seasons.''

On August 6, 2001, the Animal and Plant Health Inspection Service (APHIS) published in the **Federal Register** a final rule (66 FR 40839–40843, Docket No. 96–016–37) that established the compensation levels for the 1999–2000 growing season and subsequent years and made several other changes to the compensation regulations. One of these changes was that, after the 2000–2001 growing season, compensation would no longer be made available to persons growing or handling crops that were knowingly planted in previously regulated areas.

We have recently identified and analyzed five situations where certain wheat growers, handlers, and other parties covered by the compensation regulations appear to be ineligible to receive compensation for grain or seed affected by Karnal bunt due to restrictive language used in the regulations that did not anticipate certain complications in the harvest and storage of grain that arose following discovery of Karnal bunt in four counties in northern Texas. The situations we are addressing primarily affect growers and handlers in Texas, and certain handlers who moved grain from other States to Texas for storage. In particular, four counties in northern Texas became regulated areas during the latter part of the 2000–2001 growing season, and due to the need to quicky declare these counties as regulated areas, we were unable to modify the compensation regulations at that time to address certain relevant aspects of the way seed and grain are moved, stored, and used in the newly regulated areas. We are now revising the compensation regulations to address five particular situations in Texas regulated areas. These cases represent unanticipated circumstances applicable only to the 2000–2001 growing season where we believe the parties affected should, in fairness, be eligible for compensation.

We are revising the compensation regulations to allow persons included in

these five situations to apply for compensation. The situations covered by these regulatory changes are described below.

*Compensation for Certain Karnal Bunt Negative Wheat*

In 2001, we have added four counties in Texas (Archer, Baylor, Throckmorton, and Young Counties) to the list of Karnal bunt regulated areas (66 FR 32209–32210, Docket No. 01–058–1, June 14, 2001, and 66 FR 37575–37576, Docket No. 01–063–1, July 19, 2001). Approximately 7.4 million bushels of negative-tested wheat from the four counties added in 2001 are currently stored in grain elevators.

Even though this wheat is Karnal bunt negative, it cannot be exported to major markets as it normally would be, because it was tested after harvest at the elevator, not in the field. Major foreign importers will accept U.S. wheat only if it can be certified as coming from an area where Karnal bunt is not known to exist. Such certification is currently based on testing at the field level.

For this reason, when a producer near an area affected by Karnal bunt knows his wheat is destined for export, he generally arranges to have his fields tested for Karnal bunt. However, in northern Texas this past crop season, most wheat had already been harvested when Karnal bunt was discovered in the four counties subsequently added as regulated areas, so that wheat could only be tested in bins. The result is that approximately 7.4 million bushels of this wheat are still in storage, cannot be exported, must move under limited permit, and are currently ineligible for compensation under the regulations.

We are making this wheat eligible for compensation payments by adding a new paragraph (d) to § 301.89–15, ''Compensation for growers, handlers, and seed companies in the 1999–2000 and subsequent crop seasons.'' This new paragraph reads as follows: ''(d) *Special allowance for negative wheat grown in Archer, Baylor, Throckmorton, and Young Counties, TX, in the 2000–2001 growing season.* Notwithstanding any other provision of this section, wheat that was harvested from fields in Archer, Baylor, Throckmorton, or Young Counties, TX, in the 2000-2001 growing season, and that tested negative for Karnal bunt after harvest, is eligible for compensation in accordance with paragraph (a) of this section.''

*Compensation for the Cost of Replacing Uncertified Seed*

With regard to seed, the regulations in effect prior to this rule limit compensation payments to certified seed and seed being grown as certified seed. This provision does not address compensation in situations where a producer holds back grain from sale in order to use it as seed the next season. This practice of holding back grain for use as seed is common in regulated areas of Texas but is rare in other regulated States. The regulations do not address losses associated with the inability of producers to use held-back grain as seed for planting the next year's crop if Karnal bunt spores are detected in that grain. Because they cannot use spore-positive held-back grain as seed for planting, growers must purchase replacement seed to plant next year's crop.

Growers who hold back wheat in order to use it as seed only to find that it contains Karnal bunt spores may be able to sell that wheat as grain, but the cost of replacement seed will exceed the income generated from the sale of the seed as grain. Approximately 176 growers, and 483,000 bushels of uncertified seed, are affected by this situation. The growers involved will incur losses between $2 and $3 per bushel. As an incentive for program participation, we intend to partially mitigate this loss by changing the regulations to make producers in this situation eligible for compensation for held-back grain intended for use as seed that is determined to be Karnal bunt spore-positive. The current compensation cap on both grain and seed is $1.80 per bushel in an area under the first regulated crop season and $0.60 per bushel in previously regulated areas, regardless of the actual loss.

To accomplish this change, we are changing the last sentence of the introductory text of § 301.89–15(a) to read ''The compensation provided in this section is for wheat grain, certified wheat seed, wheat held back from harvest by a grower in the 2000–2001 growing season for use as seed in the next growing season, and wheat grown with the intention of producing certified wheat seed.''

*Compensation for the Cost of Disposing of Uncertified Treated Seed*

Another case where the regulations in effect prior to this rule did not provide compensation applies to the owners of uncertified Karnal bunt spore-positive seed that has been treated with fungicides or other chemicals, and thus cannot be sold as grain. The regulations did not allow compensation for uncertified seed, or provide any reimbursement for disposal costs. An estimated 56,000 bushels of uncertified treated seed tested positive for spores in the 2000-2001 growing season. This treated seed cannot be used for consumption by humans or animals; it must be disposed of in an approved manner, such as burying in a landfill or on-farm disposal.

We are adding a paragraph to provide compensation for the disposal costs for treated uncertified wheat seed. This compensation for disposal costs is in addition to the payments discussed in the previous section regarding compensation for replacing uncertified seed. The cost to bury wheat seed, whether on the producer's premises or at a landfill, is about $1.00 per bushel. In addition, there are transportation costs involved in moving seed to a landfill, which average about $0.20 per bushel. Therefore, we are adding new paragraph § 301.89–15(e) to read as follows: ''(e) *Special allowance for disposal costs for treated uncertified wheat seed in Archer, Baylor, Throckmorton, and Young Counties, TX, in the 2000–2001 growing season.* Notwithstanding any other provision of this section, growers in Archer, Baylor, Throckmorton, or Young Counties, TX, who own treated uncertified wheat seed that tested positive for Karnal bunt spores during the 2000–2001 growing season are eligible for compensation in accordance with this paragraph. The grower is eligible for compensation for the costs of disposing of such wheat seed, by burial on the grower's premises, by burial at a landfill, or through another means approved by APHIS. The compensation for disposing of wheat seed by burial on the grower's premises is $1.00 per bushel. The compensation for disposing of wheat seed by burial at a landfill, or through another means approved by APHIS, is the actual cost of disposal, up to $1.20 per bushel, as verified by receipts for disposal costs. To apply for this compensation, the grower must submit a Karnal Bunt Compensation Claim form, provided by the Farm Service Agency, and must also submit a copy of the Karnal bunt certificate issued by APHIS that shows the Karnal bunt test results, and verification as to the actual (not estimated) weight of the uncertified wheat seed that tested positive for spores (such as a copy of a facility weigh ticket, or other verification). For seed disposed of by burial at a landfill, the grower must also submit one or more receipts for the disposal costs of the uncertified wheat seed, showing the total bushels destroyed and the total disposal costs (landfill fees, transportation costs, etc.).''

*Compensation for Affected Wheat Grown Outside of Regulated Areas*

Approximately 2.8 million bushels of wheat stored in bins in Texas is considered Karnal bunt positive; some of this wheat was grown in regulated areas and an unknown amount was grown by Texas producers located outside the regulated area and by producers located in Oklahoma. Because of commingling, all 2.8 million bushels—including that wheat grown outside of the regulated area—is considered positive. The regulations provide that to be eligible for compensation, the wheat must be grown in a State where the Secretary has declared an extraordinary emergency and must meet certain other criteria. Therefore, prior to this rule, compensation could be paid for that portion of the 2.8 million bushels that was grown in Texas, but the wheat grown in Oklahoma was not eligible for compensation, because the Secretary has not declared an extraordinary emergency in that State.

To address this, we are adding a new sentence to § 301.89–15(a), the paragraph that describes eligibility for compensation of growers and handlers. The new sentence reads ''Growers and handlers of wheat grown in Oklahoma during the 2000–2001 growing season are eligible to receive compensation if the wheat was commingled in storage with wheat that meets the above requirements of this paragraph.'' This change allows compensation to be paid to Oklahoma growers and handlers whose wheat has been commingled in Texas with Texas-grown Karnal bunt positive wheat during storage. The Oklahoma growers and handlers will receive the same compensation as the Texas growers; i.e., payments of up to $1.80 per bushel.

*Eligibility for Compensation in the 2001–2002 Crop Season*

The regulations state that, beginning with the 2001–2002 crop season, growers who knowingly plant wheat in previously regulated areas are not eligible for compensation. We included this requirement based on our belief that the regulations should not provide ''insurance'' for growers who knowingly take the risk of planting in an area where their wheat crop faces an increased risk of testing positive for Karnal bunt. Growers who are aware that previously regulated areas present a greater risk of contaminating their crop with Karnal bunt can choose to alter their planting or contracting decisions to avoid experiencing losses due to Karnal bunt. However, when this policy was announced in the August 6, 2001, final rule, growers in northern Texas were faced with a situation where they had incomplete knowledge upon which to base their business decisions for the next growing season. Karnal bunt was discovered in northern Texas well into the 2000–2001 growing season, reducing the time growers had to plan for the next season. While APHIS had declared four entire counties as regulated areas, there had been only limited testing of certain fields in those counties (about 150 fields were tested before the final rule), and growers knew that the regulated area might be either reduced to less than the entire counties, or conversely expanded to include fields in adjacent counties, depending on future test results. Therefore, growers could not make fully informed business decisions on whether it was prudent to plant wheat in the four regulated counties, or adjacent areas, in the 2001–2002 growing season. The discovery of Karnal bunt in these counties also came at the same time growers were making commitments for field usage, seed, and equipment for the next growing season, and some growers had already committed to growing wheat the following year in what became a regulated area. Finally, the weather and moisture conditions in this part of northern Texas make it unlikely that growers could successfully substitute another crop for wheat in the regulated areas.

For these reasons, growers in the four northern Texas counties have sought 1-year deferral of the regulatory requirement that growers who knowingly plant wheat in previously regulated areas are not eligible for compensation. We agree that to enforce the requirement in this case would represent an unanticipated and unintended hardship on growers in the Texas counties of Archer, Baylor, Throckmorton, and Young, and are changing the regulations to make this provision take effect, with regard only to only those counties, beginning with the 2002–2003 crop season instead of the 2001–2002 crop season. This deferral does not apply to the 27 fields in northern Texas that were discovered to be infected (i.e., to contain one or more bunted kernels) in the course of Karnal bunt surveys in 2001, as owners of these fields had timely notice of the survey results and had a reasonable opportunity to change their planting plans for the next season.

To accomplish this change, we are adding an exception to the second-to-last sentence of the introductory text of § 301.89–15(b), ''Growers, handlers, and seed companies in previously regulated areas.'' As amended, that sentence reads: ''Growers, handlers, and seed companies in previously regulated areas will not be eligible for compensation for wheat from the 2001–2002 and subsequent crop seasons; except that, for growers or handlers of wheat harvested in any field in the Texas counties of Archer, Baylor, Throckmorton, and Young during the 2000–2001 crop season that has not been found to contain a bunted wheat kernel, this requirement applies to compensation for wheat from the 2002–2003 and subsequent crop seasons.''

*Deadline for Submission of Claims*

As discussed previously, this rule extends existing compensation provisions to cover certain additional growers, handlers, and owners of grain storage facilities to mitigate losses and expenses incurred in the 2000–2001 crop season because of the Karnal bunt quarantine and emergency actions. The regulations in § 301.89–15(c) provide that compensation payments to growers, handlers, and seed companies will be issued by the Farm Service Agency (FSA), and that claims for compensation must be received by FSA on or before March 1 of the year following the crop season during which the losses occurred. Thus, claims for compensation for the 2000–2001 crop season were due on March 1, 2002. The regulations in § 301.89–15(c) also provide that the Administrator may extend the deadline, upon request in specific cases, when unusual and unforeseen circumstances occur that prevent or hinder a claimant from requesting compensation on or before these dates. Given that the effective date of this rule falls after the March 1, 2002, deadline cited above, we are extending, for a period of 90 days from the effective date of this rule, the 2000–2001 crop season claims deadline to provide for the submission of claims for the compensation provided for by this interim rule. Such claims must be received by FSA on or before July 30, 2002.

**Emergency Action**

This rulemaking is necessary on an emergency basis to eliminate the risk presented by maintaining large stores of Karnal bunt-positive wheat, which cannot be destroyed until its eligibility for indemnity is clarified. The indemnity payments authorized by this rule are also necessary in order to reduce the economic effect of the Karnal bunt regulations on affected wheat growers and other individuals and to help obtain cooperation from affected individuals in our efforts to contain and

reduce the prevalence of Karnal bunt. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see DATES above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

**Executive Order 12866 and Regulatory Flexibility Act**

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

This rule extends existing compensation provisions to cover certain additional growers, handlers, and owners of grain storage facilities to mitigate losses and expenses incurred in the 2000–2001 crop season because of the Karnal bunt quarantine and emergency actions. The affected parties are primarily growers and handlers in four northern Texas.

Below is an economic analysis for this interim rule. The economic analysis provides a cost-benefit analysis as required by Executive Order 12866 and an analysis of the potential economic effects on small entities as required by the Regulatory Flexibility Act.

The following economic analysis indicates that the cost of the rule would be about $4.8 million. It would be necessary to obtain these funds from the Commodity Credit Corporation. Benefits cannot be monetized with accuracy, but would include averting future wheat crop losses that would occur without the improved producer participation this rule is expected to achieve.

Benefits would also include greater likelihood of grower cooperation in Karnal bunt testing requirements and participation in the National Karnal Bunt Survey.

*Compensation for Certain Karnal Bunt-Negative Wheat*

Prior to this rule, the regulations did not allow for compensation for any Karnal bunt-negative wheat. [1] This rule allows compensation for losses associated with certain negative wheat, i.e., elevator-tested-negative wheat harvested in the 2000–2001 crop season in northern Texas. The level of compensation offered is the same as that currently being offered for positive-testing grain and certified seed in first regulated areas, i.e., up to $1.80/bushel. The four-county regulated area in northern Texas became a regulated area in the 2000–2001 crop season.

Approximately 7.4 million bushels of negative-tested wheat from the four-county regulated area in northern Texas is currently stored in grain elevators. Even though it is Karnal bunt-negative, this wheat cannot be exported to major markets as it normally would be because it was tested after harvest at the elevator, not in the field. (Major foreign importers will accept U.S. wheat only if it can be certified as coming from an area where Karnal bunt is not known to exist. Such certification is currently based on testing at the field level.) In northern Texas this past crop season, most wheat had already been harvested when Karnal bunt was discovered, so it could only be tested in bins. The glut on the local domestic market created by the absence of an export outlet, and the reluctance of some mills to accept ''tainted'' wheat that may move only under a limited permit, have severely limited the market for this negative wheat, resulting in a loss in its value.

The loss in value of the negative grain is estimated at about $0.35/bushel. Based on this per bushel loss estimate, compensation will total about $2.6 million for all 7.4 million bushels of grain.

It is estimated that approximately 20 to 30 handlers will be affected by this rule, including two handlers who, together, account for 70 percent of the 7.4 million affected bushels.

*Compensation for the Cost of Replacing Certain Uncertified Seed*

Prior to this rule, the regulations limited compensation payments to certified seed and seed being grown as certified seed, and did not address losses associated with the inability of growers to use held-back grain that is found to be spore-positive for planting the next year's crop. This rule makes compensation available for such losses on a one crop season-only basis, i.e., for grain grown in the 2000–2001 crop season intended for use in planting the 2001–2002 season's crop. The level of compensation offered is the same as that currently being offered for positive-testing grain and certified seed in the 2000–2001 crop season, i.e., up to $1.80/bushel in first regulated areas and $0.60/bushel in previously regulated areas.

Growers in Texas normally hold back a quantity of grain for use as seed in the next planting season. During the 2000–2001 crop season, approximately 483,000 bushels of this seed (457,000 bushels in the four northern Texas counties and 26,000 bushels in San Saba County, Texas) tested negative for bunted kernels but positive for spores, which means that it can be used for grain but not seed. Growers, therefore, will have to purchase replacement seed. However, the cost of replacement seed will exceed the income generated from the sale of the seed as grain, meaning that growers involved will incur losses. Grower losses, before any compensation from USDA, are estimated to range between $2 and $3/bushel.

Total compensation is estimated at $838,200; i.e., $822,600 for the 457,000 bushels in the four newly regulated northern Texas counties (457,000 × $1.80), and $15,600 for the 26,000 bushels in previously regulated San Saba County (26,000 × $0.60). Since grower losses are expected to range between $2 and $3/bushel, growers and handlers qualify for compensation at the maximum levels offered. Approximately 176 growers will be affected by this aspect of the rule.

*Compensation for the Cost of Disposing of Certain Uncertified Treated Seed*

Prior to this rule, there was no compensation for the cost of disposing of uncertified treated seed that tests positive for spores or bunted kernels. This rule allows for such compensation on a one crop season-only basis, i.e., for seed grown in the 2000–2001 crop season. This compensation for disposal costs is in addition to the payments discussed in the previous paragraphs regarding compensation for replacing uncertified seed. The level of compensation offered for the cost of disposing of uncertified treated seed that tests positive for spores or bunted kernels is $1.00/bushel, or up to $1.20/bushel, depending on whether the seed is disposed of in a landfill or on-farm. The former is for on-farm disposal, the

[1] This is because there are no regulatory restrictions on the movement of negative wheat, and thus generally no costs or losses imposed on its owners. However, there is precedent for paying compensation for negative wheat when its value is affected by movement restrictions applied to positive wheat. In the 1995–1996 crop season, when Karnal bunt was first discovered in Arizona, compensation was paid for the loss in value of negative-testing wheat, due to regulatory restrictions that existed at that time, which included a requirement that the negative-testing wheat could be moved only under a limited permit.

latter for landfill disposal.[2] The landfill disposal cost of $1.00/bushel is based on a telephone survey of regional landfills conducted by the APHIS Texas area office.

As indicated above, approximately 457,000 bushels of uncertified seed grown in the four northern Texas counties in the 2000–2001 crop season tested positive for spores. Of that total, about 38,000 bushels were treated with fungicides prior to testing, which means that it cannot be used for consumption by humans or animals; it must be disposed of in an approved manner, e.g., burying it in a landfill or disposing of it on-farm. Such disposal requirements impose additional costs on growers.

In addition, about 18,000 bushels of uncertified seed grown in the four northern Texas counties in the 2000–2001 crop season tested positive for bunted kernels. These 18,000 bushels, because they were treated with fungicides prior to testing, must also be disposed of in an approved manner.

For all 56,000 bushels, compensation is estimated to total $66,080. This compensation estimate assumes that 50,400 bushels, or 90 percent of the total affected bushels, will be disposed of in a landfill at a cost of $1.20/bushel, and that the remainder (5,600 bushels) will be disposed of on-farm at a cost of $1.00/bushel.[3] Approximately 15 to 20 growers will be affected by this change.

*Compensation for Handlers With Positive Wheat Grown Outside the Regulated Area*

Prior to this rule, handlers in Texas were not eligible for compensation for losses associated with any wheat grown outside the regulated area that was declared positive because it was commingled in storage with positive wheat grown in the regulated areas. This rule offers such compensation. The level of compensation offered will be the same as that currently being offered for positive-testing grain and certified seed in first regulated areas, i.e., up to $1.80/bushel.

Approximately 2.8 million bushels of Karnal bunt-positive wheat is stored in bins in Texas, including a relatively small amount (no more than 25,000 bushels) of wheat grown by producers located in Oklahoma. (Because of commingling, all of the grain—including that grown outside the regulated area is considered positive.) The one handler who owns all of the Oklahoma-grown wheat has incurred losses, because it was purchased from the Oklahoma producers at the price for Karnal bunt-negative wheat but can now be sold only at the much lower price for positive wheat. Prior to this rule, the regulations provided that, for handlers and others to be eligible for compensation, the wheat must have been grown in a State where the Secretary has declared an extraordinary emergency and meet certain other criteria. Thus, compensation was available for that portion of the 2.8 million bushels that was grown in Texas, but the wheat grown in Oklahoma, because the Secretary has not declared an extraordinary emergency in that State, was not eligible for compensation.

Compensation is estimated to total no more than $45,000 (25,000 bushels x $1.80). One handler will be affected by this aspect of the rule.

*Eligibility for Compensation in 2001–2002 Crop Season*

The regulations in effect prior to this interim rule stated that, effective with the 2001–2002 crop season, growers who knowingly plant wheat in previously regulated areas are not eligible for compensation. This rule defers, for 1 year, the effective date of that ineligibility provision with regard to the four-county regulated area in northern Texas (excluding areas in or near one of the 27 known infected fields).

Growers in northern Texas have argued that, because of limited testing, they and USDA have limited knowledge about the status of fields in the regulated area and the risk of infection next year. The growers requested the 1-year deferral to allow for the completion of next year's delimiting survey.

The estimated amount of compensation that will result from the 1-year deferral for growers in the four-county regulated area in northern Texas is unknown, because future infection rates are unknown. However, based on operational experience conducting the Karnal bunt program in other areas, there is no reason to believe that next year's compensation costs will be higher than this year's total. If 43 percent of the 5 million bushels expected to be produced in the four-county regulated area during 2000–2001 turn up positive, the compensation would total $1,290,000 (2,150,00 bushels × $0.60). The infection rate of 43 percent is an average of last year's infection rate in Arizona's largest production area and in San Saba County, TX. This aspect of the rule will affect approximately 400 to 450 growers in northern Texas.

The Regulatory Flexibility Act requires that agencies consider the economic impact of rules on small businesses, organizations, and governmental jurisdictions. Growers and handlers of wheat grain and seed are those most affected by this rule. It is estimated that there are a total of 420 to 480 wheat growers and handlers potentially affected by this rule, most of whom are located in the four northern Texas counties of Archer, Baylor, Throckmorton, and Young. Most of these entities have total annual sales of less than $750,000, the Small Business Administration's threshold for classifying wheat producers as small entities. Accordingly, most economic impacts of this rule will be on small entities.

This rule is expected to have a positive economic impact on all affected entities, large and small. Although most of the affected entities are small in size, the bulk of this rule's benefits, in dollar terms, are likely to accrue to two large handlers. Compensation for Karnal bunt-related losses and expenses serves to encourage compliance with testing requirements within the regulated areas, thereby aiding in the preservation of an important wheat growing region in the United States. It also serves to encourage participation in the National Karnal Bunt Survey program.

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

*Executive Order 12372*

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

*Executive Order 12988*

This rule has been reviewed under Executive Order 12988, Civil Justice

[2] For landfill disposal, the maximum level of compensation (i.e., $1.20/bushel) is derived based on the estimated cost to buy wheat seed at a landfill ($1.00/bushel) and the estimated cost to transport the seed to the landfill ($0.20/bushel). Although on-farm disposal eliminates the need to transport the seed to the landfill, that disposal method still involves additional costs for growers. For these purposes, it is assumed that the cost of on-farm disposal and the estimated cost of landfill disposal (excluding transportation costs) are the same. If on-farm disposal costs do exceed $1.00/bushel, growers always have the option of landfill disposal. The transportation cost of $0.20/bushel is the approximate cost to transport one bushel of wheat from the four county regulated area in northern Texas to the landfill site, near Wichita Falls, Texas. In January 2002, the Texas Department of Natural Resources began accepting applications for permits to dispose of the seed at the landfill site.

[3] For several reasons, including the fact that many growers lease rather than own their land, on-farm disposals are assumed to be much fewer in number than landfill disposals.

Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

*Paperwork Reduction Act*

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

**List of Subjects in 7 CFR Part 301**

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

## PART 301—DOMESTIC QUARANTINE NOTICES

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

**Authority:** 7 U.S.C. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

2. Section 301.89–15 is amended as follows:

a. In the introductory text of paragraph (a), by removing the last two sentences and by adding three sentences in their place to read as follows.

b. In the introductory text of paragraph (b), by removing the last two sentences and by adding two sentences in their place to read as follows.

c. By adding new paragraphs (d) and (e) to read as follows.

**§ 301.89–15 Compensation for growers, handlers, and seed companies in the 1999–2000 and subsequent crop seasons.**

* * * * *

(a) * * * Growers and handlers of wheat grown in Oklahoma during the 2000–2001 growing season are eligible to receive compensation if the wheat was commingled in storage with wheat that meets the above requirements of this paragraph. Growers, handlers, and seed companies in areas under the first regulated crop season are eligible for compensation for 1999–2000 or subsequent crop season wheat and for wheat inventories in their possession that were unsold at the time the area became regulated. The compensation provided in this paragraph is for wheat grain, certified wheat seed, wheat held back from harvest by a grower in the 2000–2001 growing season for use as seed in the next growing season, and wheat grown with the intention of producing certified wheat seed.

* * * * *

(b) * * * Growers, handlers, and seed companies in previously regulated areas will not be eligible for compensation for wheat from the 2001–2002 and subsequent crop seasons; except that, for growers or handlers of wheat harvested in any field in the Texas counties of Archer, Baylor, Throckmorton, and Young during the 2000–2001 crop season that has not been found to contain a bunted wheat kernel, this requirement applies to compensation for wheat from the 2002–2003 and subsequent crop seasons. The compensation provided in this paragraph is for wheat grain, certified wheat seed, and wheat grown with the intention of producing certified wheat seed.

* * * * *

(d) *Special allowance for negative wheat grown in Archer, Baylor, Throckmorton, and Young Counties, TX, in the 2000–2001 growing season.* Notwithstanding any other provision of this section, wheat that was harvested from fields in Archer, Baylor, Throckmorton, or Young Counties, TX, in the 2000–2001 growing season, and that tested negative for Karnal bunt after harvest, is eligible for compensation in accordance with paragraph (a) of this section.

(e) *Special allowance for disposal costs for treated uncertified wheat seed in Archer, Baylor, Throckmorton, and Young Counties, TX, in the 2000–2001 growing season.* Notwithstanding any other provision of this section, growers in Archer, Baylor, Throckmorton, or Young Counties, TX, who own treated uncertified wheat seed that tested positive for Karnal bunt spores during the 2000–2001 growing season are eligible for compensation in accordance with this paragraph. The grower is eligible for compensation for the costs of disposing of such wheat seed, by burial on the grower's premises, by burial at a landfill, or through another means approved by APHIS. The compensation for disposing of wheat seed by burial on the grower's premises is $1.00 per bushel. The compensation for disposing of wheat seed by burial at a landfill, or through another means approved by APHIS, is the actual cost of disposal, up to $1.20 per bushel, as verified by receipts for disposal costs. To apply for this compensation, the grower must submit a Karnal Bunt Compensation Claim form, provided by FSA, and must also submit a copy of the Karnal bunt certificate issued by APHIS that shows the Karnal bunt test results, and verification as to the actual (not estimated) weight of the uncertified wheat seed that tested positive for spores (such as a copy of a facility weigh ticket, or other verification). For seed disposed of by burial at a landfill the grower must also submit one or more receipts for the disposal costs of the uncertified wheat seed, showing the total bushels destroyed and the total disposal costs (landfill fees, transportation costs, etc.).

(Approved by the Office of Management and Budget under control number 0579–0182)

Dated: Done in Washington, DC, this 26th day of April 2002.

**Bill Hawks,**

*Under Secretary for Marketing and Regulatory Programs.*

[FR Doc. 02–10723 Filed 4–30–02; 8:45 am]

BILLING CODE 3410–34–U

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

### 10 CFR Part 430

**[Docket Number EE–RM/TP–99–500]**

**RIN 1904–AB04**

## Energy Conservation Program for Consumer Products: Test Procedure for Dishwashers; Correction

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

**ACTION:** Final rule; correction.

**SUMMARY:** The Department of Energy (DOE) published a final rulemaking amending its test procedure for dishwashers on December 18, 2001. This document corrects the test procedure in the amendatory language of that rulemaking and makes revisions to a reference to an appendix section and to the equations for determining the water energy consumption per cycle using gas-heated or oil-heated water.

**EFFECTIVE DATE:** June 17, 2002.

**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 Francine Pinto, Esq., U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202)

586–7432, email: *francine.pinto@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:** This document corrects the test procedure in a final rule published in the **Federal Register** on December 18, 2001 (66 FR 65091), regarding Energy Conservation Program for Consumer Products: Test Procedure for Dishwashers. This correction revises a reference to an appendix section and revises the equations for determining the water energy consumption per cycle using gas-heated or oil-heated water.

In rule document FR Doc. 01–18429, appearing on page 65091, in the issue of Tuesday, December 18, 2001, the following corrections are made:

## PART 430—[CORRECTED]

### § 430.23 [Corrected]

1. On page 65096 in the first column, § 430.23(c)(1)(ii)(B) is corrected to read as follows:

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

$EAOC = N \times D_e \times E_n$

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, in kilowatt-hours and determined according to section 5.4 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 5.4 of appendix C to this subpart.''

2. On page 65097 in the second column, in Appendix C to Subpart B of Part 430, Sections 5.3, 5.3.1, and 5.3.2 are corrected to read as follows:

''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. 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 btu's per cycle and defined as:

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

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,

C = specific heat of water in btu's per gallon per degree Fahrenheit = 8.2,

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 btu's per cycle and defined as:

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

where,

V = reported water consumption in gallons per cycle, as measured in section 4.3 of this Appendix,

T = nominal water heater temperature rise = 70° F,

C = specific heat of water in btu's per gallon per degree Fahrenheit = 8.2,

e = nominal gas or oil water heater recovery efficiency = 0.75. ''

Issued in Washington, DC, on April 26, 2002.

**David K. Garman,**

*Assistant Secretary for Energy Efficiency and Renewable Energy.*

[FR Doc. 02–10695 Filed 4–30–02; 8:45 am]

BILLING CODE 6450–01–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2002–NM–68–AD; Amendment 39–12730; AD 2002–08–18]**

**RIN 2120–AA64**

## Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–135 and –145 series airplanes. This action requires repetitive inspections (tests) of the actuator clutches of the primary and backup pitch trim systems of the horizontal stabilizer for proper pitch trim indications, and replacement of the actuator, if necessary. This action is necessary to prevent loss of pitch trim command during the takeoff and climb phase of flight due to improper set point of the actuator clutches, which could result in high pitch control forces and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Effective May 16, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 16, 2002.

Comments for inclusion in the Rules Docket must be received on or before May 31, 2002.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–68–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9–anm–iarcomment@faa.gov. Comments sent via the Internet must contain ''Docket No. 2002–NM–68–AD'' in the subject line and need not be submitted in triplicate. Comments sent via fax or the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Robert Capezzuto, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6071; fax (770) 703–6097.

**SUPPLEMENTARY INFORMATION:** The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, recently notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–135 and –145 series airplanes. The DAC advises that reports have been received indicating loss of the set point of the actuator clutches of the primary and backup systems of the horizontal stabilizer. This condition, if not corrected, could result

in loss of pitch trim command during the takeoff and climb phase of flight, which could result in high pitch control forces and consequent reduced controllability of the airplane.

**Explanation of Relevant Service Information**

EMBRAER has issued Service Bulletin 145–27–0082, dated September 18, 2001, which describes procedures for inspections (tests) of the actuator clutches of the primary and backup pitch trim systems of the horizontal stabilizer for proper pitch trim indications, and replacement of the actuator, if necessary. The service bulletin describes the test for proper pitch trim indications of the primary pitch trim system as applying sequential nose-up trim commands (maximum of four attempts) of 3 seconds each from the pilot or co-pilot yoke trim switch, until a PIT TRIM 1 INOP or PIT TRIM 2 INOP message appears, which indicates that the clutch is acceptable. The test for proper pitch trim indications of the backup pitch trim system is the same, but is done using either the main or backup trim switches. If there is no message and the measured voltage during the trimming attempts is greater than 1 volt, the clutch is slipping and the actuator must be replaced with an improved actuator.

The DAC classified this service bulletin as mandatory and issued Brazilian airworthiness directive 2001–10–02R1, dated February 4, 2002, in order to assure the continued airworthiness of these airplanes in Brazil.

**FAA's Conclusions**

These airplane models are manufactured in Brazil and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

**Explanation of Requirements of Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires accomplishment of the actions specified in the service bulletin described previously.

**Applicability**

Brazilian airworthiness directive 2001–10–02, dated November 15, 2001, was superseded by airworthiness directive 2001–10–02R1, dated February 4, 2002, to remove airplane serial number 145499 from the serial numbers listed in the applicability. That serial number has not yet been removed from the effectivity specified in the referenced service bulletin. Therefore, the applicability specified in this AD is identical to that in airworthiness directive 2001–10–02R1.

**Determination of Rule's Effective Date**

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.

**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 shall 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.

Submit comments using the following format:

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report 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 comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–68–AD.'' The postcard will be date stamped and returned to the commenter.

**Regulatory Impact**

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

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, Incorporation by reference, Safety.

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2002–08–18 Empresa Brasileira de Aeronautica S.A. (EMBRAER):** Amendment 39–12730. Docket 2002–NM–68–AD.

*Applicability:* Model EMB–135 and –145 series airplanes; certificated in any category; serial numbers 145004 through 145189 inclusive; 145191 through 145362 inclusive; 145364 through 145373 inclusive; 145375 through 145411 inclusive; 145413 through 145461 inclusive; 145463 through 145468 inclusive; 145470; 145472 through 145482 inclusive; 145485, 145486, and 145488; 145490 through 145494 inclusive; 145496 through 145498 inclusive; 145500 through 145502 inclusive; 145504 and 145507; 145508 through 145512 inclusive; 145514, 145515, 145517, and 145518.

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

*Compliance:* Required as indicated, unless accomplished previously.

To prevent loss of pitch trim command during the takeoff and climb phase of flight due to improper set point of the actuator clutches of the horizontal stabilizer, which could result in high pitch control forces and consequent reduced controllability of the airplane, accomplish the following:

**Repetitive Inspections (Tests)/Replacement**

(a) Within 800 flight hours after the effective date of this AD: Do an inspection (test) of the actuator clutches of both the primary and backup pitch trim systems of the horizontal stabilizer for proper pitch trim indications per EMBRAER Service Bulletin 145–27–0082, dated September 18, 2001. Repeat the test after that every 2,000 flight hours.

(1) If either test indicates that the clutch is slipping (no PIT TRIM 1 INOP or PIT TRIM 2 INOP message appears, and the measured voltage during trim attempts is greater than 1 volt), before further flight, replace the applicable actuator with an improved actuator and before further flight, repeat the test.

(2) If both tests indicate that the clutch is acceptable (PIT TRIM 1 INOP or PIT TRIM 2 INOP message appears), repeat the test at the time specified in paragraph (a) of this AD.

**Spares**

(b) As of the effective date of this AD, no person shall install an actuator having part number 362200–1007, –1009, –1011, or –1013 on any airplane, unless the actuator clutch has been inspected as required by paragraph (a) of this AD.

**Alternative Methods of Compliance**

(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, Atlanta Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

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

**Special Flight Permits**

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

**Incorporation by Reference**

(e) The actions shall be done in accordance with EMBRAER Service Bulletin 145–27–0082, dated September 18, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 3:** The subject of this AD is addressed in Brazilian airworthiness directive 2001–10–02R1, dated February 4, 2002.

**Effective Date**

(f) This amendment becomes effective on May 16, 2002.

Issued in Renton, Washington, on April 19, 2002.

**Lirio Liu-Nelson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 02–10246 Filed 4–30–02; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2002–NM–107–AD; Amendment 39–12728; AD 2002–08–51]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A300 B2 and B4 Series Airplanes Equipped With General Electric CF6–50 Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This document publishes in the **Federal Register** an amendment adopting airworthiness directive (AD) 2002–08–51 that was sent previously to all known U.S. owners and operators of Airbus Model A300 B2 and B4 series airplanes equipped with General Electric CF6–50 engines by individual notices. This AD requires deactivating both thrust reversers and revising the airplane flight manual (AFM) to require performance penalties during certain takeoff conditions to ensure that safe and appropriate performance is achieved for airplanes on which both thrust reversers have been deactivated. This action is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent uncommanded in-flight deployment of a thrust reverser, which could result in reduced controllability of the airplane.

**DATES:** Effective May 6, 2002, to all persons except those persons to whom it was made immediately effective by emergency AD 2002–08–51, issued April 8, 2002, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 6, 2002.

Comments for inclusion in the Rules Docket must be received on or before May 31, 2002.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–107–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal

holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–107–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The applicable service information may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** On April 8, 2002, the FAA issued emergency AD 2002–08–51, which is applicable to Airbus Model A300 B2 and B4 series airplanes equipped with General Electric CF6–50 engines.

The FAA has received a report that, on February 16, 2002, uncommanded deployment of a thrust reverser occurred on the number 1 engine of a McDonnell Douglas Model DC–10–30 airplane equipped with General Electric CF6–50 engines. The uncommanded deployment occurred following climb and level-out at 17,000 feet. The flightcrew reported severe buffeting of the airplane with yaw to the left and pitch down of about five degrees. The ''REV UNLOCK'' light was illuminated prior to onset of the buffeting. The flightcrew shut down the engine, dumped fuel, turned back to the departure airport, and landed the airplane. No injuries were reported among passengers or crew.

Uncommanded deployment of a thrust reverser with a dual translating cowl requires a minimum of two failures: (1) The over pressure shut-off valve (OPSOV) must let pressure enter into the thrust reverser actuation system; and (2) the directional pilot valve (DPV) must command this pressure in the deploy direction. The cause of the presence of pressure in the thrust reverser system has not been determined.

Results of a subsequent investigation by the engine manufacturer revealed that the DPV was misassembled during overhaul by the DPV manufacturer in 1997. The DPV was installed on the incident airplane in 1999. The misassembly involved incorrect installation of a washer and bushing in the DPV piston/poppet assembly. Results of vibration-table testing showed that a DPV misassembled in this way could change positions from ''stow command'' to ''deploy command'' on its own. When a DPV is in the ''deploy command'' position, a single failure of the OPSOV could result in an uncommanded deployment of the thrust reverser during flight. This condition, if not corrected, could result in reduced controllability of the airplane.

Model A300 B2 and B4 series airplanes equipped with General Electric CF6–50 engines have the same nacelle and thrust reverser system as the airplane on which the event described previously occurred. Since a misassembled DPV may be installed on Model A300 B2 and B4 series airplanes, those airplanes may be subject to the unsafe condition identified in this AD.

## Explanation of Relevant Service Information

Airbus has issued All Operators Telex (AOT) A300/78A0023, dated April 5, 2002, which describes procedures for deactivating both thrust reversers on Model A300 B2 and B4 series airplanes. The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, classified this AOT as mandatory and issued French telegraphic airworthiness directive 2002–189(B), dated April 5, 2002, to ensure the continued airworthiness of these airplanes in France.

## Explanation of Change to Emergency AD

The ''Explanation of Relevant Service Information'' section of the emergency AD states, ''The DGAC * * * issued French telegraphic airworthiness directive 2001–523(B), dated April 5, 2002, to ensure the continued airworthiness of these airplanes in France.'' The number of the French telegraphic airworthiness directive as cited in the emergency AD is incorrect. The correct number is 2002–189(B). The correct number has been cited in the section above as well as in NOTE 4 of this amendment. The date for the French telegraphic airworthiness directive, April 5, 2002, is correct as cited.

## FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above as it pertains to Airbus Model A300 B2 and B4 series airplanes. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

## Explanation of the Requirements of the Rule

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the FAA issued emergency AD 2002–08–51 to prevent uncommanded in-flight deployment of a thrust reverser, which could result in reduced controllability of the airplane. The AD requires deactivating both thrust reversers in accordance with the AOT described previously. Additionally, this airworthiness directive requires revising the FAA-approved airplane flight manual (AFM) to require performance penalties during certain takeoff conditions to ensure that safe and appropriate performance is achieved for airplanes on which both thrust reversers have been deactivated. On an interim basis, this AD includes a penalty of five percent of the acceleration-stop distance for takeoffs on wet or contaminated runways. This penalty is an estimate that is necessary to provide an acceptable level of safety until we receive more information and a more precise performance penalty can be established.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual notices issued on April 8, 2002, to all known U.S. owners and operators of Airbus Model A300 B2 and B4 series airplanes equipped with General Electric CF6–50 engines. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

### Similar AD Action on Other Airplanes

As stated above, the incident described previously occurred on a McDonnell Douglas Model DC–10–30 airplane equipped with General Electric CF6–50 engines. The FAA is planning to issue an airworthiness directive similar to this one, to require revising the AFM and deactivating the thrust reversers under certain conditions on those airplanes. Because the identified unsafe condition may be especially critical for Airbus Model A300 B2 and B4 series airplanes, the FAA finds it appropriate to proceed with this action applying to those airplanes now.

### Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

### 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 shall 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, both before and after the closing date for comments, 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 comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–107–AD.'' The postcard will be date-stamped and returned to the commenter.

### Regulatory Impact

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

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, Incorporation by reference, Safety.

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2002–08–51 Airbus:** Amendment 39–12728. Docket 2002–NM–107–AD.

*Applicability:* Model A300 B2 and B4 series airplanes equipped with General Electric CF6–50 engines, certificated in any category.

**Note 1:** Airbus Model A300 B4–600 series airplanes (commonly referred to as ''A300–600 series airplanes'') are not affected by this AD.

**Note 2:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent uncommanded in-flight deployment of a thrust reverser, accomplish the following:

**Thrust Reverser Deactivation and AFM Revision**

(a) Within 72 clock hours after the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2) of this AD.

(1) Deactivate both thrust reversers according to Airbus All Operators Telex A300/78A0023, dated April 5, 2002.

(2) Revise the Limitations Section of the Airplane Flight Manual (AFM) to include the following (this may be accomplished by inserting a copy of this AD into the AFM):

''When the runway is wet or contaminated, reduce by five percent the corrected acceleration-stop distance resulting from the airplane flight manual takeoff performance analysis.

(**Note:** This supersedes any relief provided by the Master Minimum Equipment List (MMEL).)''

**Alternative Methods of Compliance**

(b) 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, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance or Operations Inspector, as applicable, who may add comments and then send it to the Manager, International Branch, ANM–116.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

**Special Flight Permits**

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

**Incorporation by Reference**

(d) The deactivation of thrust reversers shall be done in accordance with Airbus All Operators Telex A300/78A0023, dated April 5, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice

Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 4:** The subject of this AD is addressed in French telegraphic airworthiness directive 2002–189(B), dated April 5, 2002.

**Effective Date**

(e) This amendment becomes effective on May 6, 2002, to all persons except those persons to whom it was made immediately effective by emergency AD 2002–08–51, issued April 8, 2002, which contained the requirements of this amendment.

Issued in Renton, Washington, on April 19, 2002.

**Lirio Liu-Nelson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 02–10245 Filed 4–30–02; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2002–NM–111–AD; Amendment 39–12733; AD 2002–08–21]**

**RIN 2120–AA64**

## Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to certain EMBRAER Model EMB–135ER and ''135LR series airplanes, and Model EMB–145, –145ER, –145MR, and –145LR series airplanes, that currently requires a one-time inspection to determine if the bonding jumpers that connect the horizontal stabilizer to the vertical stabilizer are properly installed, a one-time inspection to determine if the supports that connect the bonding jumpers to the horizontal stabilizer are deformed, and corrective actions if necessary. This amendment requires new repetitive inspections to detect discrepancies of both vertical-to-horizontal stabilizer bonding jumpers and the connecting support structure; and corrective action, if necessary. This amendment also revises the applicability to include additional airplanes. The actions specified in this AD are intended to prevent damaged or severed bonding jumpers, which, in the event of a lightning strike, could result in severed elevator control cables and consequent reduced elevator control capability and reduced controllability of the airplane. This AD is intended to address the identified unsafe condition.

**DATES:** Effective May 16, 2002.

The incorporation by reference of EMBRAER Alert Service Bulletin 145–55–A028, dated April 10, 2002, as listed in the regulations, is approved by the Director of the Federal Register as of May 16, 2002.

The incorporation by reference of EMBRAER Alert Service Bulletin 145–55–A025, dated June 5, 2001, as listed in the regulations, was approved previously by the Director of the Federal Register as of September 5, 2001 (66 FR 43768, August 21, 2001).

Comments for inclusion in the Rules Docket must be received on or before May 31, 2002.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–111–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–111–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), PO Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Rob Capezutto, Senior Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6071; fax (770) 703–6097.

**SUPPLEMENTARY INFORMATION:** On August 13, 2001, the FAA issued AD 2001–17–04, amendment 39–12395 (66 FR 43768, August 21, 2001), applicable to certain EMBRAER Model EMB–135ER and –135LR series airplanes, and Model EMB–145, –145ER, –145MR, and –145LR series airplanes. That AD requires a one-time visual inspection to determine if the two bonding jumpers that connect the horizontal stabilizer to the vertical stabilizer are properly installed, and replacement of the jumper with a new jumper, if necessary. That AD also requires a one-time visual inspection to determine if the supports that connect the bonding jumpers to the horizontal stabilizer are deformed, and corrective actions, if necessary. That AD was prompted by a report indicating that a post-lightning strike inspection of a Model EMB–145 series airplane revealed that the bonding jumpers that electrically bond the vertical and horizontal stabilizers were severed, the elevator cables were damaged, one elevator cable was severed, and the other elevator cable had arcing damage. The actions required by that AD are intended to prevent reduced elevator control capability, and consequent reduced controllability of the airplane, due to severed bonding jumpers.

### Actions Since Issuance of Previous Rule

Since the issuance of that AD, the Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, has advised that a recent lightning strike event occurred on a Model EMB–145 series airplane. Subsequent inspection revealed that both bonding jumpers of the horizontal-to-vertical stabilizer were severed; the control cables of the left lower and right upper elevators near the rear sectors on the horizontal-to-vertical stabilizer were also severed. The results of the inspection indicated that one of the bonding jumpers may have been damaged or severed prior to the lightning strike, which could have resulted in the lightning current path traveling through the elevator control cables. The airplane involved in the lightning strike event had been inspected at the factory using the procedures specified in EMBRAER Alert Service Bulletin 145–55–A025, dated June 5, 2001, which is required by AD 2001–17–04. Because certain airplanes had already been inspected per EMBRAER Alert Service Bulletin 145–55–A025 at the factory, they were therefore not subject to the requirements of that AD. In light of this information,

the FAA finds that all EMBRAER Model EMB–145 and –135 series airplanes are subject to the identified unsafe condition. The applicability of this AD has been revised accordingly.

**Explanation of Relevant Service Information**

• The manufacturer has issued EMBRAER Alert Service Bulletin 145–55–A028, dated April 10, 2002, which describes the following procedures:

• Repetitive visual inspections of both bonding jumpers of the horizontal-to-vertical stabilizer to detect overstretching, fraying, or other damage; and misalignment or other incorrect installation;

• Repetitive visual inspections of the two supports that connect the bonding jumpers to the horizontal stabilizer to detect deformation and signs of cracks or ruptures; and

• Inspection of any discrepant support to assess the general condition of its paint.

The alert service bulletin also describes procedures for corrective actions, which include replacing any discrepant part with a new one and restoring the support paint. The DAC classified this alert service bulletin as mandatory and issued Brazilian emergency airworthiness directive 2001–06–03 R1, dated April 11, 2002, to ensure the continued airworthiness of these airplanes in Brazil.

Alert Service Bulletin 145–55–A028 refines the procedures specified in EMBRAER Alert Service Bulletin 145–55–A025 (which is cited in AD 2001–17–04 as the appropriate source of service information for the one-time inspection and associated follow-on actions). In addition, Alert Service Bulletin 145–55–A028 recommends that the inspection be repeated at regular intervals. In other respects, the procedures specified in the two alert service bulletins are similar.

**FAA's Conclusions**

These airplane models are manufactured in Brazil and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

**Explanation of Requirements of Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD supersedes AD 2001–17–04 to continue to require a one-time inspection to assess the installation of the bonding jumpers that connect the horizontal stabilizer to the vertical stabilizer, a one-time inspection to determine if the supports that connect the bonding jumpers to the horizontal stabilizer are deformed, and corrective actions if necessary. This AD also requires accomplishment of the repetitive inspections and corrective actions if necessary, per EMBRAER Alert Service Bulletin 145–55–A028, as described previously, except as discussed below. This AD also requires that operators report the results of each new repetitive inspection to the DAC.

**Differences Between AD and Alert Service Bulletin**

This AD requires accomplishment of the initial inspection within 100 flight hours, although EMBRAER Alert Service Bulletin 145–55–A028 specifies an initial compliance time of 200 flight hours. The FAA and the DAC have determined that a 200-flight-hour compliance time will not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered the recommendations of both the DAC and the manufacturer, the degree of urgency associated with addressing the identified unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the inspection (about 2 hours). In light of all of these factors, the FAA finds a 100-flight-hour initial compliance time warranted because it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

In addition, this AD requires that the inspection required by this AD be performed immediately following a lightning strike or the removal of the horizontal stabilizer, the horizontal stabilizer actuator, or either seal fairing. The Brazilian emergency airworthiness directive does not specifically mandate an immediate inspection under those circumstances. This AD includes these requirements to ensure that the inspections are performed and reports are submitted following any of these maintenance procedures or any lightning strike event.

**Interim Action**

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

**Determination of Rule's Effective Date**

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.

**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 shall 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.

Submit comments using the following format:

• Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.

• For each issue, state what specific change to the AD is being requested.

• Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report 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 comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following

statement is made: ''Comments to Docket 2002–NM–111–AD.'' The postcard will be date stamped and returned to the commenter.

## Regulatory Impact

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

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, Incorporation by reference, Safety.

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12395 (66 FR 43768, August 21, 2001), and by adding a new airworthiness directive (AD), amendment 39–12733, to read as follows:

**2002–08–21 Empresa Brasileira De Aeronautica S.A. (Embraer):** Amendment 39–12733. Docket 2002–NM–111–AD. Supersedes AD 2001–17–04, Amendment 39–12395.

*Applicability:* All Model EMB–135 and–145 series airplanes, certificated in any category.

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

*Compliance:* Required as indicated, unless accomplished previously.

To prevent damaged or severed bonding jumpers, which, in the event of a lightning strike, could result in severed elevator control cables and consequent reduced elevator control capability and reduced controllability of the airplane, accomplish the following:

**Restatement of Requirements of AD 2001–17–04**

**Inspection of the Bonding Jumpers**

(a) For airplanes subject to the requirements of AD 2001–17–04, amendment 39–12395: Except as provided by paragraph (f) of this AD, within the next 100 flight hours after September 5, 2001 (the effective date of AD 2001–17–04), perform a detailed visual inspection to determine if the two bonding jumpers that connect the horizontal to the vertical stabilizers are properly installed, per EMBRAER Alert Service Bulletin 145–55–A025, dated June 5, 2001.

**Note 2:** For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

**Follow-On Action**

(b) For airplanes subject to the requirements of paragraph (a) of this AD: If both bonding jumpers are installed properly, before further flight, determine if the jumpers are mechanically tensioned to a slack distance of 5 millimeters (mm) or less between the reference line and the jumper as specified in View E of EMBRAER Alert Service Bulletin 145–55–A025, dated June 5, 2001.

(1) If any slack distance is 5 mm or less, before further flight, replace the bonding jumper with a new jumper having part number (P/N) LN926416X165, per the alert service bulletin.

(2) If any slack distance is 6 mm or more, at the time specified in paragraph (d) of this AD, accomplish those actions specified in paragraph (d) of this AD.

**Corrective Actions**

(c) For airplanes subject to the requirements of paragraph (a) of this AD: If either bonding jumper is not installed properly (e.g., misaligned, signs of previous elongation, or damage), before further flight, replace the bonding jumper with a new jumper having P/N LN926416X165, per EMBRAER Alert Service Bulletin 145–55–A025, dated June 5, 2001.

**Inspection of the Connecting Supports**

(d) For airplanes subject to the requirements of AD 2001–17–04: Within the next 100 flight hours after September 5, 2001, perform a detailed visual inspection to determine if the supports that connect the bonding jumpers to the horizontal stabilizers are deformed, cracked, or ruptured; per EMBRAER Alert Service Bulletin 145–55–A025, dated June 5, 2001.

(1) If no deformation is detected, no further action is required by this paragraph.

(2) If any connecting support having deformation of 30 degrees or less has any sign of a painting discrepancy, before further flight, repaint the support per the alert service bulletin. The support must remain in the position it was found, as specified in the alert service bulletin.

(3) If any connecting support is deformed above 30 degrees or any signs of cracking or ruptures are detected, before further flight, replace the connecting support with a new support per the alert service bulletin.

**New Requirements of This AD**

(e) For airplanes subject to the requirements of AD 2001–17–04: If the inspection required by paragraph (f) of this AD is performed before the inspections specified in paragraphs (a) and (d) of this AD, it is not necessary to perform the inspections specified in paragraphs (a) and (d) of this AD.

**Repetitive Inspections**

(f) For all airplanes: Except as required by paragraphs (g) and (h) of this AD, within 100 flight hours after the effective date of this AD, perform a detailed visual inspection as specified in paragraphs (f)(1) and (f)(2) of this AD, per EMBRAER Alert Service Bulletin 145–55–A028, dated April 10, 2002. If any discrepancy is found during any inspection required by this paragraph: Before further flight, perform applicable corrective actions (including replacing any discrepant part with a new part and restoring the support painting) per the alert service bulletin. Repeat the inspection at least every 800 flight hours, except as provided by paragraphs (g) and (h) of this AD. Submit a report after each inspection per paragraph (i) of this AD.

(1) Inspect both bonding jumpers of the vertical-to-horizontal stabilizer to detect discrepancies (including overstretching, fraying, or other damage; and misaligned or otherwise incorrectly installed bonding jumper terminals).

(2) Inspect the connecting support structure to detect deformation or signs of cracks or ruptures, and, before further flight, inspect the general conditions of the paint of any discrepant support.

**Conditional Requirements for Immediate Inspection**

(g) Notwithstanding the requirements of paragraph (f) of this AD: Before further flight following removal of any parts identified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD, perform the inspection specified in paragraph (f) of this AD. The task numbers below are identified in EMBRAER Aircraft Maintenance Manuals AMM–145/1124 and AMM–145/1230.

(1) The horizontal stabilizer (as specified in EMBRAER Airplane Maintenance Manual (AMM) task number 55–10–00–000–801–A).

(2) The horizontal stabilizer actuator (as specified in AMM task number 27–40–02–000–801–A).

(3) The left-hand or right-hand seal fairings (as specified in AMM task number 55–36–00–020–002–A00).

(h) Before further flight following a lightning strike, perform a ''Lightning Strike—Inspection Check'' and applicable corrective actions, per AMM task number 05–50–01–06.

**Note 3:** Following accomplishment of an inspection per paragraph (g) or (h) of this AD, the repetitive interval of the next inspection may be extended to 800 flight hours after accomplishment of the inspection required by paragraph (g) or (h) of this AD, as applicable.

**Reporting Requirement**

(i) At the applicable time specified in paragraph (i)(1) or (i)(2) of this AD: Submit a report of the results (both positive and negative findings) of each inspection required by paragraphs (f), (g), and (h) of this AD to CTA–IFI–FDH, PO Box 6001, 12231–970—São José dos Campos-SP, Brazil; fax 55 (12) 3941–4766. Each report must include the inspection results, a description of any discrepancy found, the airplane serial number, and the number of total flight cycles and flight hours on the airplane. Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the initial inspection required by paragraph (f), (g), or (h) of this AD is accomplished AFTER the effective date of this AD: Submit the report for that inspection within 30 days after the initial inspection, and submit a report thereafter within 30 days after each subsequent inspection.

(2) For airplanes on which the initial inspection required by paragraph (f), (g), or (h) of this AD was accomplished BEFORE the effective date of this AD: Submit the report within 30 days after the effective date of this AD, and submit a report thereafter within 30 days after each subsequent inspection.

**Alternative Methods of Compliance**

(j) 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, Atlanta Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

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

**Special Flight Permits**

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

**Incorporation by Reference**

(l) Except as required by paragraphs (g) and (h) of this AD: The actions must be done per EMBRAER Alert Service Bulletin 145–55–A025, dated June 5, 2001; and EMBRAER Alert Service Bulletin 145–55–A028, dated April 10, 2002; as applicable.

(1) The incorporation by reference of EMBRAER Alert Service Bulletin 145–55–A028, dated April 10, 2002, is approved by the Director of the Federal Register, per 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of EMBRAER Alert Service Bulletin 145–55–A025, dated June 5, 2001, was approved previously by the Director of the Federal Register as of September 5, 2001 (66 FR 43768, August 21, 2001).

(3) Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), PO Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 5:** The subject of this AD is addressed in Brazilian emergency airworthiness directive 2001–06–03 R1, dated April 11, 2002.

**Effective Date**

(m) This amendment becomes effective on May 16, 2002.

Issued in Renton, Washington, on April 19, 2002.

**Lirio Liu-Nelson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 02–10275 Filed 4–30–02; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 02–ASO–4]**

## Establishment of Class D Airspace; Greenville Donaldson Center, SC, Amendment of Class E2 Airspace; Greer, Greenville-Spartanburg Airport, SC, and Amendment of Class E5 Airspace; Greenville, SC

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

**ACTION:** Final rule.

**SUMMARY:** This action establishes Class D airspace at Greenville Donaldson Center, SC, and amends Class E5 airspace at Greenville, SC. A federal contract tower with a weather reporting system is being constructed at the Donaldson Center Airport. Therefore, the airport meets the criteria for establishment of Class D airspace. Class D surface area airspace is required when the control tower is open to contain existing Standard Instrument Approach Procedures (SIAPs) and other Instrument Flight Rules (IFR) operations at the airport. This action establishes Class D airspace extending upward from the surface to and including 3,500 feet MSL within a 4.2–mile radius of the Donaldson Center Airport. A regional evaluation has determined the existing Class E5 airspace area should be amended to contain the Nondirectional Radio Beacon (NDB) or Global Positioning System (GPS) Runway (RWY) 5 SIAP. As a result, additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) southwest of Donaldson Center Airport is needed to contain the SIAP. This action also makes a technical amendment to Class E2 airspace at Greer, Greenville-Spartanburg Airport, SC, and the Class E5 airspace description at Greenville, SC, by changing the name of the Greenville-Spartanburg Airport to the Greenville-Spartanburg International Airport.

**EFFECTIVE DATE:** 0901 UTC, November 28, 2002.

**FOR FURTHER INFORMATION CONTACT:** Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

**SUPPLEMENTARY INFORMATION:**

### History

On March 12, 2002, the FAA proposed to amend part 71 of the

Federal Aviation Regulations (14 CFR part 71) by establishing Class D airspace at Greenville Donaldson Center, SC, amending Class E2 airspace at Greer, Greenville-Spartanburg Airport, SC, and amending the Class E5 airspace at Greenville, SC (67 FR 11068). Class D airspace designations for airspace areas extending upward from the surface of the earth and Class E airspace designations for airspace areas designated as surface areas and airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraphs 5000, 6002, and 6005 respectively, of FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

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

## The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class D airspace at Greenville Donaldson Center, SC, amends Class E2 Airspace at Greer, Greenville-Spartanburg, SC, and amends Class E5 airspace at Greenville, SC.

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

## List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

## Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

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

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

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

### § 71.1 [Amended]

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

*Paragraph 5000 Class D Airspace.*

* * * * *

**ASO SC D Greenville Donaldson Center Airport, SC [NEW]**

Greenville, Donaldson Center Airport, SC
(Lat. 34°45′30, long. 82°22′35″W)
Greenville Downtown Airport
(Lat. 34°50′52, long. 82°21′00″W)
Greenville-Spartanburg International Airport
(Lat. 34°53′44, long. 82°13′08″W)

That airspace extending upward from the surface to and including 3,500 feet MSL within a 4.2—mile radius of Donaldson Center Airport, excluding that airspace within the Greenville Downtown Airport Class D airspace area, and excluding that airspace within the Greenville-Spartanburg International Airport Class C airspace area. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

*Paragraph 6002 Class E Airspace Designated as Surface Areas*

* * * * *

**ASO SC E2 Greer, Greenville-Spartanburg International Airport, SC [REVISED]**

Greenville-Spartanburg International Airport, SC
(Lat. 34°53′44, long. 82°13′08″W)

Within a 5-mile radius of the Greenville-Spartanburg International Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Director.

* * * * *

*Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth*

* * * * *

**ASO SC E5 Greenville, SC [REVISED]**

Greenville Downtown Airport, SC
(Lat. 34°50′52, long. 82°21′00″W)
Greenville-Spartanburg International Airport
(Lat. 34°53′44, long. 82°13′08″W)
Donaldson Center Airport
(Lat. 34°45′30, long. 82°22′35″W)
DYANA NDB
(Lat. 34°41′28, long. 82°26′37″W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Greenville Downtown Airport and within a 10-mile radius of Greenville-Spartanburg International Airport and within a 6.7-mile radius of Donaldson Center Airport and within 4 miles northwest and 8 miles southeast of the 224° bearing from the DYANA NDB extending from the 6.7-mile radius to 16 miles southwest of the Donaldson Center Airport.

* * * * *

Dated: Issued in College Park, Georgia, on April 19, 2002.

**Wade T. Carpenter,**

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

[FR Doc. 02–10646 Filed 4–30–02; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 165

**[COTP Houston–Galveston–02–006]**

**RIN 2115–AA97**

## Security Zones; Ports of Houston and Galveston, TX

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing temporary moving security zones around cruise ships entering and departing the ports of Houston and Galveston, Texas. These security zones are needed for the safety and security of these vessels. Entry into these zones is prohibited, unless authorized by the Captain of the Port, Houston—Galveston or his designated representative.

**DATES:** This rule is effective from 12 a.m. (noon) on April 8, 2002 through 6 a.m. on June 15, 2002.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket [COTP Houston—Galveston–02–006] and are available for inspection or copying at Marine Safety Office Houston—Galveston, 9640 Clinton Drive, Galena Park, TX, 77547 between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Junior Grade (LTJG) George Tobey, Marine Safety Office Houston—Galveston, Texas, Port Waterways Management, at (713) 671–5100.

**SUPPLEMENTARY INFORMATION:**

## Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553 (b) (B), the Coast Guard finds that good cause exists for not publishing a NPRM and under 5 U.S.C. 553 (d) (3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing a NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to the security concerns which are associated with the transit of cruise ships.

## Background and Purpose

On September 11, 2001, both towers of the World Trade Center and the Pentagon were attacked by terrorists. National security and intelligence officials have warned that future terrorist attacks against civilian targets may be anticipated.

In response to these terrorist acts and warnings, heightened awareness for the security and safety of all vessels, ports, and harbors is necessary. Due to the increased safety and security concerns surrounding the transit of cruise ships, the Captain of the Port, Houston—Galveston is establishing temporary security zones around these vessels.

For the purpose of this rule the term ''cruise ship'' is defined as a passenger vessel over 100 gross tons, carrying more than 12 passengers for hire, making a voyage lasting more than 24 hours any part of which is on the high seas, and for which passengers are embarked or disembarked in the United States or its territories. This definition covers passenger vessels that must comply with 33 CFR parts 120 and 128.

The moving security zones will commence when a cruise ship passes the Galveston Bay Approach Lighted Buoy ''GB'' inbound and continues through its transit, mooring, and return transit until it passes the sea buoy outbound. The establishment of moving security zones described in this rule will be announced to mariners via Marine Safety Information Broadcast. In the Ports of Houston or Galveston, all vessels within 500 yards of a cruise ship must operate at the minimum safe speed required to maintain a safe course. Except as described in this rule, no vessel is permitted to enter within 100 yards of a cruise ship unless expressly authorized by the Captain of the Port Houston—Galveston.

The Houston Ship Channel narrows to 400 feet or less near Houston Ship Channel Entrance Lighted Bell Buoy ''18'' and continues at this width through Barbours Cut. Between these points vessels that must transit the navigable channel may seek to gain permission to pass within 100 yards of cruise ships from the Captain of the Port Houston—Galveston or his designated representative. Mariners that anticipate encountering a cruise ship in this section of the channel are encouraged to contact ''Houston Traffic'' prior to getting underway.

## Regulatory Evaluation

This 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 rule to be so minimal that a full regulatory evaluation is unnecessary under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. The impacts on routine navigation are expected to be minimal as the zones will only impact navigation for a short period of time and the size of the zones allows for the transit of most vessels with minimal delay.

## 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.

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 a narrow portion of the Houston-Galveston Ship Channel during a transit of a cruise ship in the same narrow location. These security zones will not have a significant economic impact on a substantial number of small entities for the following reasons:

1. Between the Houston-Galveston Sea buoy and Houston Ship Channel Entrance Lighted Bell Buoy ''18'' the size of the security zones allow for vessels to safely transit around or through the zones with minimal interference.

2. Between Houston Ship Channel Entrance Lighted Bell Bouy ''18'' and Barbours Cut the channel narrows to 400 feet. In this section the Captain of the Port Houston-Galveston through Vessel Traffic Service (VTS) Houston-Galveston, ''Houston Traffic,'' and designated on scene personnel, may grant permission to pass within 100 yards of a vessel described by this rule to vessels which must transit the navigable channel.

If you are a small business entity and are significantly affected by this regulation please contact, LTJG George Tobey, Marine Safety Office Houston-Galveston, Texas, Port Waterways Management, at (713) 671–5100.

## Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so they could better evaluate its effects on them and participate in the rulemaking process. 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 affect the taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

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

**Environment**

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

**List of Subjects in 33 CFR Part 165**

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

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

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

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

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

2. A new temporary § 165.T08–035 is added to read as follows:

### § 165.T08–035 Security zones; Ports of Houston and Galveston, Texas.

(a) *Location.* Within the Ports of Houston and Galveston, Texas, temporary moving security zones are established encompassing all waters within 500 yards of a cruise ship between Galveston Bay Approach Lighted Buoy ''GB'', at approximate position 29°21′18″ N, 94°37′36″ W [NAD 83] and up to, and including, Barbours Cut. These zones remain in effect during the entire transit of the vessel and continues while the cruise ship is moored or anchored.

(b) *Effective period.* This section is effective from 12 a.m. (noon) on April 8, 2002 through 6 a.m. on June 15, 2002.

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

(d) *Regulations.* (1) Entry of vessels into these zones is prohibited unless authorized as follows.

(i) Vessels may enter within 500 yards but not closer than 100 yards of a cruise ship provided they operate at the minimum speed necessary to maintain a safe course.

(ii) No vessel may enter within 100 yards of a cruise ship unless expressly authorized by the Coast Guard Captain of the Port Houston-Galveston. This includes the waters between Houston Ship Channel Entrance Lighted Bell Buoy ''18'', light list no. 34385 at approximately 29°21′06″ N, 94°47′00″ W [NAD 83] and Barbours Cut where the Houston Ship Channel narrows to 400 feet or less. When conditions permit, the Captain of the Port Houston-Galveston may permit vessels that must transit the navigable channel between these points to enter within 100 yards of a cruise ship.

(iii) Moored vessels or vessels anchored in a designated anchorage area are permitted to remain within 100 yards of a cruise ship while it is in transit.

(2) Persons or vessels requiring entry within 500 yards of a cruise ship who cannot slow to the minimum speed necessary to maintain a safe course must request express permission to proceed from the Captain of the Port Houston-Galveston, or his designated representative.

(3) For the purpose of this section the term ''cruise ship'' is defined as a passenger vessel over 100 gross tons, carrying more than 12 passengers for hire, making a voyage lasting more than 24 hours, any part of which is on the high seas, and for which passengers are embarked or disembarked in the United States or its territories.

(4) The Captain of the Port Houston-Galveston will inform the public of the moving security zones around cruise ships via Marine Safety Information Broadcasts.

(5) To request permission as required by these regulations contact ''Houston Traffic'' via VHF Channels 11/12 or via phone at (713) 671–5103.

(6) All persons and vessels within the moving security zones shall comply with the instructions of the Captain of the Port Houston-Galveston and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: April 8, 2002.

**K.S. Cook,**

*Captain, U.S. Coast Guard,*

*Captain of the Port Houston-Galveston.*

[FR Doc. 02–10645 Filed 4–30–02; 8:45 am]

BILLING CODE 4910–15–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

**[AD–FRL–7204–5]**

**RIN 2060–AJ34**

### National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Withdrawal of direct final rule.

**SUMMARY:** Because EPA received adverse comment, we are withdrawing the direct final rule published on March 22, 2001 (67 FR 13508) to extend the compliance date of the national emission standards for hazardous air pollutants (NESHAP) for Pesticide Active Ingredient (PAI) Production. Under the promulgated rule, the compliance date is August 22, 2002 (67 FR 13514, March 22, 2002). The direct final rule would have extended the compliance date to December 23, 2003. We stated in that direct final rule that if we received adverse comment by April 22, 2002, we would publish a timely withdrawal in the **Federal Register**. We received adverse comment on that direct final rule. We will address that comment in a subsequent final action based on the parallel proposal also published on March 22, 2002 (67 FR 13504). As stated in the parallel proposal, we will not institute a second comment period on this action.

**DATES:** As of May 1, 2002, EPA withdraws the direct final rule published at 67 FR 13508 on March 22, 2002.

**ADDRESSES:** Docket No. A–95–20 contains supporting information used in developing the PAI Production NESHAP. The docket is located at the U.S. EPA, 401 M Street, SW., Washington, DC 20460 in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Randy McDonald, Organic Chemicals Group, Emission Standards Division (Mail Code C504–04), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5402, electronic mail address *mcdonald.randy@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Why Are We Withdrawing the Direct Final Rule?

The direct final rule would have extended the compliance date for existing sources to December 23, 2003. We believe this extension was reasonable to allow sources time to assess the compliance impacts of the proposed Settlement Agreement between EPA and the American Crop Protection Association and BASF Corporation and the agreed-upon rule amendments that were proposed on April 10, 2002 (67 FR 17492). We stated in the direct final rule that if adverse comments were received by April 22, 2002, we would publish a timely withdrawal of the direct final rule, which would have had an effective date of May 21, 2002. We received an adverse comment and, therefore, are withdrawing the direct final rule. We will address this comment in the subsequent final action on the parallel proposal.

Dated: April 25, 2002.

**Robert Brenner,**

*Acting Assistant Administrator, Office of Air and Radiation.*

[FR Doc. 02–10731 Filed 4–30–02; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Office of Inspector General

### 42 CFR Part 1001

**RIN 0991–AB09**

### Medicare and Federal Health Care Programs; Fraud and Abuse; Revisions and Technical Corrections; Correction

**AGENCY:** Office of Inspector General (OIG), HHS.

**ACTION:** Final rule; correction amendment.

**SUMMARY:** This document contains a correction to the final regulations which were published in the **Federal Register** on March 18, 2002 (67 FR 11928). These regulations set forth several revisions and technical corrections to the OIG regulations pertaining to fraud and abuse in Federal health care programs. A typographical error appeared in the text of the regulations in § 1001.201(b) concerning the amount of financial loss considered as a mitigating factor when excluding an individual or entity convicted under Federal or State law of program or health care fraud. Accordingly, we are correcting § 1001.201(b)(3)(i) to assure the technical correctness of these regulations.

**EFFECTIVE DATE:** May 1, 2002.

**FOR FURTHER INFORMATION CONTACT:** Joel Schaer, OIG Regulations Officer, (202) 619–0089.

**SUPPLEMENTARY INFORMATION:** The HHS Office of Inspector General (OIG) issued final regulations on March 18, 2002 (67 FR 11928) setting forth several revisions and technical corrections to the OIG regulations pertaining to fraud and abuse in Federal health care programs. Among other revisions, to more accurately reflect threshold amounts with respect to exclusion actions, we clarified § 1001.201(b) to reflect as an aggravating and mitigating factor both the actual and intended loss to programs associated with the conduct of the sanctioned individual or entity. In the final regulations, a typographical error appeared in § 1001.201(b)(3)(i), with regard to one of the mitigating factors. Specifically, with respect to the amount of financial loss to a Government program or to other individuals or entities due to the acts that resulted in the conviction and similar acts, the amount appearing on page 11933 of the March 18, 2002 final regulations incorrectly indicated this amount as ''**$1,5000**.'' This is now being corrected to read as ''$1,500.''

#### List of Subjects 42 CFR Part 1001

Administrative practice and procedure, Fraud, Health facilities, Health professions, Medicaid, Medicare.

Accordingly, 42 CFR 1001 is corrected by making the following correcting amendment.

## PART 1001—HEALTHCARE INTEGRITY AND PROTECTION DATA BANK FOR FINAL ADVERSE INFORMATION ON HEALTH CARE PROVIDERS, SUPPLIERS AND PRACTITIONERS

1. The authority citation for part 1001 continues to read as follows:

**Authority:** 42 U.S.C. 1302, 1320a–7, 1320a–7b, 1395u(h), 1395u(j), 1395u(k), 1395y(d), 1395y(e), 1395cc(b)(2)(D), (E) and (F), and 1395hh; and sec. 2455, Pub.L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note).

2. Section 1001.201 is amended by republishing the introductory text for paragraph (b)(3) and revising paragraph (b)(3)(i) to read as follows:

**§ 1001.201 Conviction relating to program or health care fraud.**

* * * * *

(b) *Length of exclusion.* * * *

(3) Only the following factors may be considered as mitigating and a basis for reducing the period of exclusion—

(i) The individual or entity was convicted of 3 or fewer offenses, and the

entire amount of financial loss (both actual loss and reasonably expected loss) to a Government program or to other individuals or entities due to the acts that resulted in the conviction and similar acts is less than $1,500;

* * * * *

Dated: April 25, 2002.

**Ann C. Agnew**

*Executive Secretary to the Department.*

[FR Doc. 02–10789 Filed 4–30–02; 8:45 am]

**BILLING CODE 4152–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 02–858; MM Docket No. 01–13, RM–10038; MM Docket No. 01–20, RM–10049; MM Docket No. 01–80, RM–10089; MM Docket No. 01–81, RM–10090; MM Docket No. 01–102; RM–10100; MM Docket No. 01–103, RM–10102; MM Docket No. 01–114, RM–10128; MM Docket No. 01–136, RM–10155; MM Docket No. 01–201, RM–10216]**

## Radio Broadcasting Services; Woodbury, GA; Reliance, WY; Eagle Lake, TX; Montana City, MT; Plainville, GA; Rosholt, WI; Morgantown, KY, Boswell, OK and Frederic, MI

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document grants nine proposals that allot new channels to Woodbury, Georgia, Reliance, Wyoming, Eagle Lake, Texas, Montana City, Montana, Plainville, Georgia, Rosholt, Wisconsin, Morgantown, Kentucky, Boswell, Oklahoma, and Frederic, Michigan. *See* **SUPPLEMENTARY INFORMATION,** *infra.*

**DATES:** Effective May 28, 2002. The window period for filing applications for these allotments will not be opened at this time. Instead, the issue of opening these allotments for auction will be addressed by the Commission in a subsequent order.

**FOR FURTHER INFORMATION CONTACT:** Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 01–13, MM Docket No. 01–20 , MM Docket No. 01–80, MM Docket No. 01–81; MM Docket No. 01–102, MM Docket No. 01–103, MM Docket No. 01–114, MM Docket No. 01–136, and MM Docket No. 01–201 adopted April 3, 2002, and released April 12, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, S.W., Room CY–B402, Washington, DC 20554.

The Commission, at the request of Bernice P. Hedrick, allots Channel 233A at Woodbury, Georgia, as the community's first local aural transmission service. *See* 66 FR 8560, February 1, 2001. Channel 233A can be allotted at Woodbury in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.4 kilometers (10.2 miles) west to avoid short-spacings to the licensed sites of Station KVIC(FM), Channel 236C3, Victoria, Texas, and Station KIKK–FM, Channel 239C, Houston, Texas. The coordinates for Channel 233A at Woodbury are 32–54–40 North Latitude and 84–28–34 West Longitude.

The Commission, at the request of Reliance Broadcasting, allots Channel 265C3 at Reliance, Wyoming, as the community's first local aural transmission service. *See* 66 FR 10659, February 16, 2001. Channel 265C3 can be allotted to Reliance in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 265C3 at Reliance are 41–40–09 North Latitude and 109–11–47 West Longitude.

The Commission, at the request of Stargazer Broadcasting, Inc., allots Channel 237C3 at Eagle Lake, Texas, as the community's first local aural transmission service. *See* 66 FR 20223, April 20, 2001. Channel 237C3 can be allotted at Eagle Lake in compliance with the Commission's minimum distance separation requirements with a site restriction of 16.4 kilometers (10.2 miles) west to avoid short-spacings to the licensed sites of Station KVIC(FM), Channel 236C3, Victoria, Texas, and Station KIKK–FM, Channel 239C, Houston, Texas. The coordinates for Channel 237C3 at Eagle Lake are 29–35–15 North Latitude and 96–30–03 West Longitude.

The Commission, at the request of Montana Magic Investments, Inc., allots Channel 293A at Montana City, Montana, as the community's first local aural transmissions service. *See* 66 FR 20223, April 20, 2001. Channel 293A can be allotted at Montana City in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.8 kilometers (2.4 miles) north to avoid a short-spacing to the license site of Station KWYS–FM, Channel 293C, Island Park, Idaho. The coordinates for Channel 293A at Montana City are 46–33–43 North Latitude 111–57–39 West Longitude. Since Montana City is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government was requested but has not been received. If a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Canadian government, the construction permit will include the following condition: ''Operation with the facilities specified herein is subject to modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the USA-Canadian FM Broadcast Agreement.''

The Commission, at the request of Plainville Communications, Channel 285A at Plainville, Georgia, as the community's first local aural transmission service. *See* 66 FR 26826, May 15, 2001. Channel 285A can be allotted at Plainville in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.5 kilometers (4.0 miles) northwest to avoid a short-spacing to the licensed site of Station WFSH–FM, Channel 284C1, Athens, Georgia. The coordinates for Channel 285A at Plainville are 34–25–58 North Latitude and 85–05–48 West Longitude.

The Commission, as the request of Craig Norlin, allots Channel 263A at Rosholt, Wisconsin, as the community's first local aural transmission service. *See* 66 FR 26826, May 15, 2001. Channel 263A can be allotted to Rosholt in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.6 kilometers (6.3 miles) northwest to avoid a short-spacing to the license site of Station WIZD(FM), Channel 260C3, Rudolph, Wisconsin, and Station WNCY–FM, Channel 262C2, Neenah-Menasha, Wisconsin. The coordinates for Channel. 263A at Rosholt are 44–40–12 North Latitude and 89–23–45 West Longitude.

The Commission, at the request of Green River Radio Company, allots Channel 256A at Morgantown, Kentucky, as the community's first local aural transmission service. *See* 66 FR 31597, June 12, 2001. Channel 256A can be allotted at Morgantown in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.9 kilometers (7.4 miles) west to avoid short-spacings to the licensed sites of

Station WKNK(FM), Channel 256A, Edmonton, Kentucky, and Station WKDQ(FM), Channel 258C, Henderson, Kentucky. The coordinates for Channel 256A at Morgantown are 37–15–34 North Latitude and 86–48–40 West Longitude.

The Commission, at the request of Boswell Broadcasting Company, allots Channel 282C3 at Boswell, Oklahoma, the community's first local aural transmission service. *See* 66 FR 35768, July 9, 2001. Channel 282C3 can be allotted at Boswell in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 282C3 at Boswell are 34–01–38 North Latitude and 95–52–08 West Longitude.

The Commission, at the request of Jeraldine Anderson, allots Channel 237A at Frederic, Michigan, as the community's first local aural transmission service. *See* 66 FR 46427, September 5, 2001. Channel 237A can be allotted at Frederic in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.6 kilometers (4.7 miles) east to avoid short-spacings to the licensed sites of Station WCFX(FM), Channel 237A, Clare, Michigan, and Station WJZJ(FM), Channel 238C2, Glen Arbor, Michigan. The coordinates for Channel 237A at Frederic are 44–46–29 North Latitude and 84–39–29 West Longitude. Since Frederic is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been obtained.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

## PART 73—RADIO BROADCAST SERVICES

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

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

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by adding Woodbury, Channel 233A and Plainville, Channel 285A.

3. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by adding Morgantown, Channel 256A.

4. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by adding Frederic, Channel 237A.

5. Section 73.202(b), the Table of FM Allotments under Montana, is amended by adding Montana City, Channel 293A.

6. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Boswell, Channel 282C3.

7. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Eagle Lake, Channel 237C3.

8. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by adding Rosholt, Channel 263A.

9. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by adding Reliance, Channel 265C3.

**Federal Communications Commission.**

**John A. Karousos,**

*Assistant Chief, Audio Division, Office of Broadcast License Policy, Media Bureau.*

[FR Doc. 02–10698 Filed 4–30–02; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 02–907; MM Docket No. 99–58; RM–9461, RM–9611]**

### Radio Broadcasting Services; Strattanville and Farmington Township, Pennsylvania

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This *Memorandum Opinion and Order* affirms action in a *Report and Order*, 65 FR 77318 (December 11, 2000), that allotted FM broadcast Channel 267A to Strattanville, Pennsylvania, and FM broadcast Channel 291A to Farmington Township, Pennsylvania, as first local aural transmission services for those communities. This document denies a petition for reconsideration of that *Report and Order* filed by Strattan Broadcasting, Inc., licensee of Station WMKX(FM), Brookville, Pennsylvania.

**DATES:** Effective upon May 1, 2002.

**FOR FURTHER INFORMATION CONTACT:** R. Barthen Gorman, Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Memorandum Opinion and Order, MM Docket No. 99–58, adopted April 10, 2002, and released April 19, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW, Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Office of Broadcast License Policy, Media Bureau.*

[FR Doc. 02–10785 Filed 4–30–02; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 02–915; MM Docket No. 01–345; RM–10344]**

### Radio Broadcasting Services; Wickenburg and Salome, AZ

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In response to a proposal filed on behalf of Circle S Broadcasting, Inc. (''Circle S''), licensee of Station KSWG(FM), Wickenburg, Arizona, the Audio Division substitutes Channel 242C for Channel 242C3 at Wickenburg and modifies the authorization for Station KSWG(FM) accordingly. Additionally, this document substitutes Channel 270A for vacant Channel 241A at Salome, Arizona, to accommodate the Wickenburg modification as requested by Circle S. *See* 67 FR 851, January 8, 2002. A counterproposal filed jointly on behalf of Circle S and Wickenburg Associates, LLC was withdrawn. Coordinates used for Channel 242C at Wickenburg, Arizona, are those of the petitioner's specified transmitter site located 24.6 kilometers (15.3 miles) west of the community at coordinates 33–54–15 NL and 112–59–02 WL. Coordinates used for Channel 270A at Salome are 33–46–54 NL and 113–36–42 WL, representing a site restriction 0.1 kilometer (0.04 mile) north of the community. As Wickenburg and Salome are each located within 320 kilometers of the U.S.-Mexico border, concurrence of the Mexican government to the specified allotments was requested, but has not been received. Therefore, the allotment of Channel 242C at Wickenburg and Channel 270A at Salome are conditioned on concurrence of the Mexican government in accordance with the 1992 USA-Mexico FM Broadcast Agreement. With this

action, this docketed proceeding is terminated.

**DATES:** Effective June 3, 2002. A filing window for Channel 270A at Salome, Arizona, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent Order.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 01–345, adopted April 10, 2002, and released April 19, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (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, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

## PART 73—RADIO BROADCAST SERVICES

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

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

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 241A at Salome, and adding Channel 270A at Salome; and removing Channel 242C3 at Wickenburg and adding Channel 242C at Wickenburg.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Office of Broadcast License Policy, Media Bureau.*

[FR Doc. 02–10787 Filed 4–30–02; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 73

**[DA 02–920; MM Docket Nos. 01–156, 01–158; RM–10177, RM–10179]**

## Radio Broadcasting Services; Paducah, Texas and Paulden, AZ

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document the Commission considers proposals in two separate docketed proceedings: Dismisses a proposal filed by Charles Crawford requesting the allotment of Channel 296C3 at Paducah, Texas because petitioner withdrew its expression of interest. At the request of Paulden Broadcasting, Channel 263C3 is allotted at Paulden, Arizona without a site restriction. Coordinates for Channel 263C3 at Paulden are: 34–53–00 NL and 112–28–00 WL. Jeraldine Anderson and Southwest FM Broadcasting Co., Inc. filed comments in support of the allotment. *See* 66 FR 39128 (July 27, 2001).

**DATES:** Effective June 6, 2002.

**FOR FURTHER INFORMATION CONTACT:** Victoria M. McCauley, Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket Nos. 01–156, 01–158, adopted April 10, 2002, and released April 22, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail qualexint@aol.com.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

## PART 73—RADIO BROADCAST SERVICES

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

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

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding Paulden, Channel 263C3.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Office of Broadcast License Policy, Media Bureau.*

[FR Doc. 02–10788 Filed 4–30–02; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF TRANSPORTATION

## Transportation Security Administration

## 49 CFR Part 1511

**[Docket No. TSA–2002–11334]**

**RIN 2110–AA02**

## Aviation Security Infrastructure Fees

**AGENCY:** Transportation Security Administration, DOT.

**ACTION:** Guidance for the Aviation Security Infrastructure Fee: Completing and submitting Appendix A on costs related to passenger and property screening for calendar year 2000

**SUMMARY:** The Transportation Security Administration issues this additional guidance for completing Appendix A of the Interim Final Rule regarding the Aviation Security Infrastructure Fee. That rule requires carriers to provide information on their costs related to passenger and property screening for 2000. This guidance does not impose any additional requirements.

**DATES:** This guidance does not alter the due date for Appendix A, which remains on or before May 18, 2002.

**FOR FURTHER INFORMATION CONTACT:** For further guidance involving technical matters you may contact Randall Fiertz, Department of Transportation, Office of the Assistant Secretary for Budget and Programs, 400 Seventh St., SW., Room 10101, Washington, DC 20590; telephone (202) 366–9192. For further guidance on other matters you may contact Steven Cohen, Department of Transportation, Transportation Security Administration, Office of the Chief Counsel (TSA–5), 400 Seventh Street, SW., Washington, DC, 20590; telephone (202) 493–1231. Office hours are from 9 a.m. to 5:30 p.m., e.t. Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

### Availability of the Guidance

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's

Electronic Bulletin Boards Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov.*

Internet users can access this document and all comments received by DOT through the Department's docket management system web site, *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

**Guidance for the Aviation Security Infrastructure Fee: Completing and Submitting Appendix A on Costs Related to Passenger and Property Screening for Calendar Year 2000**

The following guidance material is intended to assist air carriers and foreign air carriers (carriers) in submitting the information required by Appendix A of the Interim Final Rule on the Aviation Security Infrastructure Fee (IFR), as published on February 20, 2002 on page 7926 of volume 67 of the **Federal Register**. The information provided here is only intended as guidance. Carriers should not infer that it represents the only acceptable means of completing Appendix A. Please note that any comments related to the IFR that were received by the Transportation Security Administration (TSA) will be addressed separately and are not specifically addressed in this guidance. If TSA determines, either based on comments received or on its own analysis of the Appendix A forms received from carriers, that the applicable regulations or the guidance provided herein have been misunderstood or misapplied, TSA will contact the affected carriers individually and, if necessary, will issue further clarification in the future.

*1. What To Do if a Cost Category Identified in Appendix A Is Intermixed With Costs Not Related to Passenger and Property Screening in Your Accounting System*

The instructions in Appendix A of the IFR address this issue. The instructions state: ''Where actual costs of screening passengers and property cannot be directly identified through an air carrier's accounting system, the air carrier shall use appropriate alternate cost assignment methodology.'' This broad flexibility is qualified by the requirement that ''[a]ll costs reported in Appendix A must be consistent with the air carrier's financial accounting information reported in accordance with generally accepted accounting principles.'' Further, carriers must provide to TSA, upon request, ''[d]ocumentation that explains and supports the assignment methodology used, the applicable pool, and the allocation basis.''

In other words, where the costs of goods, services, etc., related to passenger and property screening were accounted for in calendar year 2000 (CY 2000) in a manner that commingled them with costs not related to passenger and property screening, then the carrier completing Appendix A may allocate a percentage of those total costs to passenger and property screening, as long as the allocation method is based on reasonable business practices. When assigning costs related to passenger and property screening, a carrier should use the best available information and must document, explain, and support its basis for using and applying that cost assignment methodology.

*Example for assigning labor costs:* One possible method is to apply the ratio of total time (hours) that an employee spent on responsibilities related to passenger and property screening versus the time spent on all responsibilities (screening time/total time) to the annual cost of the employee (salary, benefits, etc.). For example, if an employee spent 30 hours on screening related activities out of a 40-hour work week, then 75 percent of the cost of that employee would be allocated to the labor costs reported in Appendix A. If an employee had responsibilities solely related to screening passengers or property during CY 2000, then 100 percent of the annual cost of that employee must be included in Appendix A.

*Example for assigning equipment costs (expensed or depreciated):* One possible method is to apply the ratio of the total time (hours) the equipment was used for functions related to passenger and property screening versus the time spent on all functions (screening time/total time) to the total cost of the equipment. For example, if a computer was used for 6 hours for screening related functions and for 2 hours on other functions in an 8-hour workday, 75 percent of the cost of the equipment would be allocated in Appendix A. However, under this allocations system, if a computer was used solely for screening related functions, then 100 percent of the cost of the equipment would be allocated in Appendix A, even if it was used for less than a whole work day.

*Example for assigning property and facility costs:* One possible method is to apply the ratio of square footage used for functions related to passenger and property screening versus the total square footage of the property or facility (screening space/total space) to the annual costs of the property of facility. For example, if 4,000 square feet of a 16,000 square-foot building is used for screening, then 25 percent of the annual costs of that building should be captured in Appendix A. Such a cost allocation could only be made if the building was also being used for other activities. If the building was used solely for functions related to screening passenger or property during CY 2000, 100 percent of the costs must be included in Appendix A.

*2. What To Do if Two or More Cost Categories From Appendix A Are Combined in Your Accounting System*

TSA recognizes that carrier accounting systems are likely to record two or more cost categories from Appendix A in a single category. For instance, the labor costs for ''Checkpoint Screening Personnel'' and ''Exit Lane Monitors'' may be recorded in a single account. Similarly, carriers that engaged in security partnerships or entered into security contracts with other carriers, airports, or private screening companies may have a single accounting category that encompasses two or more of the cost categories set forth in Appendix A.

The instructions for Appendix A address this issue. The instructions state that ''[t]o the extent necessary, the reporting air carrier may aggregate those specific costs that have been incurred but cannot be stated in the detailed cost categories requested by the form. However, all of the costs identified by this form must be included in the total calculations. In addition, explanations regarding costs that have been aggregated need to be provided.''

The option to aggregate is only available ''to the extent necessary,'' and where ''specific costs * * * cannot be stated.'' Therefore, carriers should consult with appropriate parties, such as partner carriers, airports, and contractors to get information regarding individual costs before aggregating any cost categories in Appendix A. If the carrier is still unable to separate out individual costs, as set forth by Appendix A, the carrier may report those costs to TSA in an aggregated form. However, the carrier must specify in supporting documentation which costs have been aggregated and where the costs appear in the submitted Appendix A. For each cost category that is included in an aggregated amount, carriers should indicate where it is accounted for in the submitted Appendix A. In such a case, carriers should not leave the category blank or indicate that there were no costs.

*3. What To Do if Your Screening Costs for CY 2000 Involve Contracting With a Partner Carrier, an Airport, or a Private Screening Company*

It is not sufficient to submit an Appendix A that includes only the cost paid by a carrier to partner carriers, airports, or private screening companies under a screening services contract or other agreement. Even if a carrier outsourced all of its screening functions, its Appendix A submission must still identify, for example, the administrative costs and other related costs incurred by the carrier in entering into and maintaining such contracts and agreements, including any amendments, modifications, claims settlements, and costs incurred for overseeing the contracts or agreements. It must also identify costs related to screening passengers and property incurred by the carrier but not covered by the terms of the contract or agreement.

The fact that a carrier outsourced its screening functions does not relieve it of the duty to assign costs to specific categories in Appendix A before aggregating these costs. This can be done by examining the relevant contracts and agreements and by seeking input from contractors and partners. In the case of contracts and partnerships involving multiple carriers, be careful to ensure that all screening costs are reported to TSA, but that each dollar of the cost is only reported to TSA once.

*4. What To Do if You Did Not Incur any Costs for a Cost Category in Appendix A*

The instructions to Appendix A in the IFR specify that carriers must indicate those cost categories in which the carrier did not have any costs for CY 2000. This is to be indicated on Appendix A by the use of an appropriately placed zero. Cost categories that are rolled into an aggregated total should be so identified, not listed as zero. For instance, for Item 34 in Appendix A, ''Management Fees for Oversight of Consortium Contracts'' is defined as ''[a]ny costs incurred for fees charged by other organizations for the management of contracts for the screening of persons and property.'' If a carrier paid any other entity a fee for the management of security contracts, the amount paid should be included on this cost line. If an air carrier did not incur such costs, then the reporting carrier should so indicate with a zero in the appropriate cost category. If a carrier paid such a contract, but management fees were not segregated out, then this cost category may be aggregated in Appendix A, as described in Item 2.

*5. What To Do if the Fiscal Year Recorded in Your Accounting System Is Not the Same as the Calendar Year*

All cost information in Appendix A must be submitted to reflect calendar year 2000, not a carrier's fiscal year 2000. Therefore, if a carrier used a fiscal year different from the calendar year for 2000, it may be necessary to allocate costs over time and among functions.

*6. What To Do if You Are, or if You Represent, a Carrier That no Longer Provides Air Transportation or Intrastate Air Transportation Service, but Did do so in CY 2000*

Carriers no longer providing air transportation or intrastate air transportation in or from the United States do not need to remit the Aviation Security Infrastructure Fee. However, under the IFR, they are still required to complete and submit an Appendix A. TSA needs to know the costs related to screening passengers and property incurred by all carriers in CY 2000, not just by those carriers still providing air transportation or intrastate air transportation today. Beginning in fiscal year 2005, TSA is authorized to re-determine the per-carrier limit for the Aviation Security Infrastructure Fee, so long as the aggregate amount collected from carriers operating at that point does not exceed the aggregate screening costs of all carriers providing air transportation or intrastate air transportation in or from the United States in CY 2000.

*7. How To Treat Acquired, Merged or Reorganized Carriers*

The IFR states that the successor entity must submit only one Appendix A with all amounts combined, but must specify the names of all carriers whose CY 2000 passenger and property screening costs are included in Appendix A. However, for ease of auditing, carriers may keep separate the internal working papers pertaining to predecessor carriers.

*8. How Payments Are Determined*

For fiscal years 2002–2004, the IFR requires each carrier to pay 8.333% of the total listed in its Appendix A on a monthly basis, except for the period of February 18 through April 30, 2002, for which payment of 19.939% is due by May 31, 2002.

Payments for each month following April 2002 are due by the last calendar day of the following month. If, at any time, the Under Secretary determines, on his own or upon petition by a carrier, that it is necessary to adjust the total amount of the Aviation Security Infrastructure Fee that a carrier must pay and/or should have been paying, TSA will contact the carrier. In addition, after September 2004, the Under Secretary may determine a different fee or schedule. However, unless the Under Secretary makes such a determination, carriers should continue paying 8.333% monthly.

*9. When Payments Are Due*

If the last calendar day of the month falls on a day on which the carrier cannot make payments, such as a holiday or weekend, then the payment must be received by TSA in advance of the last day of the month. TSA will provide payment instructions for the Aviation Security Infrastructure Fee on its web site, *www.tsa.dot.gov.* TSA will not be sending bills to carriers for this fee.

*10. When To Submit Appendix A*

As stated in the IFR, the deadline for submitting a completed Appendix A to TSA is by May 18, 2002. This means that TSA must receive the submission on or before that date.

*11. How To Submit Appendix A*

Appendix A is available electronically at *www.tsa.dot.gov.* It must be sent by certified mail to: Chief Financial Officer, Transportation Security Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. For electronic submissions, use a format readable by current versions of Microsoft Word and mail a computer disk to the above address or e-mail it to *TSA-Fees@ost.dot.gov.*

*12. What the Audit Must Cover*

Each air carrier must provide for an audit of Appendix A performed by an independent certified public accountant. The auditor must plan and perform an audit to obtain reasonable assurance as to whether the costs reported in Appendix A are ''consistent with the air carrier's financial accounting information reported in accordance with generally accepted accounting principles.'' The auditor must provide a written letter of opinion on the accuracy of the costs and other information reported in Appendix A, based on the company's pre-existing financial statements and supporting documents, and in accordance with generally accepted auditing standards. This opinion should include a statement as to whether the audited Appendix A is free of material misstatements. However, carriers need not provide for

an audit of the process of remitting the fee.

TSA or other Federal entities may also audit Appendix A and the supporting information to ensure that the information provided in Appendix A is true and correct, as well as to ensure that the Appendix A submitted and fees paid are consistent with the requirements of the IFR. The decision to conduct a Federal audit does not relieve a carrier of its own audit burden.

*13. When the Audit Is Due*

As provided for in the IFR, the audit is due to be received by TSA no later than July 1, 2002. TSA will not enforce this deadline against a carrier that submits a timely and proper Appendix A, makes timely and proper fee payments, and submits the audit to TSA no later than August 1, 2002.

*14. How To Submit the Audit*

As with Appendix A, submit the audit to: Chief Financial Officer, Transportation Security Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

*15. What To Do With the CPA's Working Papers for the Audit*

The IFR indicates that the ''accountant's working papers with respect to the audit must be included with this submission.'' This requirement may be satisfied by including in the audit submission the availability (location and time) of the accountant's working papers, so long as the working papers are retained and provided to TSA upon request.

Issued in Washington, DC, on April 29, 2002.

**Stephen J. McHale,**

*Deputy Under Secretary of Transportation for Security.*

[FR Doc. 02–10930 Filed 4–29–02; 2:36 pm]

**BILLING CODE 4910–62–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Parts 222 and 223

**[Docket No. 020426096–2096–01; I.D. 042402D]**

**RIN 0648–AP99**

### Sea Turtle Conservation; Restrictions Applicable to Shrimp Trawl Activities; Leatherback Conservation Zone

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

**ACTION:** Temporary area gear restriction.

**SUMMARY:** NMFS is closing, for a 2–week period, all inshore waters and offshore waters 10 nautical miles (nm) (18.5 km) seaward of the COLREGS demarcation line, bounded by 32° N. lat. (approximately Tybee Island, GA) and 34° N. lat. (approximately Wilmington Beach, NC) within the Leatherback Conservation Zone, to fishing by shrimp trawlers required to have a turtle excluder device (TED) installed in each net that is rigged for fishing, unless the TED has an escape opening large enough to exclude leatherback turtles, as specified in the regulations. This action is necessary to reduce mortality of endangered leatherback sea turtles incidentally captured in shrimp trawls.

**DATES:** This action is effective from April 26, 2002 through 11:59 p.m. (local time) on May 10, 2002.

**ADDRESSES:** Comments on this action should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via fax to 301–713–0376. Comments will not be accepted if submitted via e-mail or the Internet.

**FOR FURTHER INFORMATION CONTACT:** David Bernhart (ph. 727–570–5312, fax 727–570–5517, e-mail *David.Bernhart@noaa.gov*); or Barbara Schroeder (ph. 301-713-1401, fax 301–713–0376, e-mail *Barbara.Schroeder@noaa.gov*).

For assistance in modifying TED escape openings to exclude leatherback sea turtles, fishermen may contact gear specialists at the NMFS, Pascagoula, MS laboratory by phone 228–762–4591 or fax 228–769–8699.

**SUPPLEMENTARY INFORMATION:** Prohibitions on taking sea turtles are governed by regulations implementing the Endangered Species Act at 50 CFR parts 222 and 223. The incidental take of turtles during shrimp fishing in the Atlantic Ocean off the coast of the southeastern United States and in the Gulf of Mexico is excepted from the taking prohibition pursuant to sea turtle conservation regulations at 50 CFR 223.206, which include a requirement that shrimp trawlers have a NMFS-approved TED installed in each net rigged for fishing. The use of TEDs significantly reduces mortality of loggerhead, green, Kemp's ridley, and hawksbill sea turtles. Because leatherback turtles are larger than the escape openings of most NMFS-approved TEDs, use of these TEDs is not an effective means of protecting leatherback turtles.

Through a final rule (60 FR 47713, September 14, 1995), NMFS established regulations to provide protection for leatherback turtles when they occur in locally high densities during their annual, spring northward migration along the Atlantic seaboard. Within the Leatherback Conservation Zone, NMFS may close an area for 2 weeks when leatherback sightings exceed 10 animals per 50 nm (92.6 km) during repeated aerial surveys pursuant to § 223.206(d)(2)(iv)(A) through (C).

An initial aerial survey conducted on April 19, 2002, along the South Carolina coast documented 15 leatherback turtles between Bull's Bay and South Island (across both zones 32 and 33) and 11 leatherback turtles between Pritchard Island and Edisto Island in zone 32, with each area of leatherback concentration being less than 50 nm (92.6 km) in length. A replicate survey was flown along the South Carolina coast on April 23, 2002. During the replicate survey 11 leatherbacks were seen in a 13–nm stretch near Edisto Island in zone 32, 14 leatherbacks were seen in the zone 32 to 33 trackline overlap area (from Folly Beach to Cape Island, approximately a 42–mile stretch), and 15 leatherbacks were seen in a 27–mile stretch in zone 33 near the Windy Hill area. The sighting frequencies in the original and replicate surveys all met or exceeded the regulatory standard of at least 10 animals within a 50–nm (92.6–km) length of survey trackline.

The Assistant Administrator for Fisheries, NOAA (AA), is closing all inshore waters and offshore waters 10 nm (18.5 km) seaward of the COLREGS demarcation line, bounded by 32 N. lat. and 34° N. lat., within the Leatherback Conservation Zone to fishing by shrimp trawlers required to have a TED installed in each net that is rigged for fishing, unless the TED installed has an escape opening large enough to exclude leatherback turtles, meeting the specifications at 50 CFR 223.207(a)(7)(ii)(B)(1) or (2) or 223.207(c)(1)(iv)(B). These regulations specify modifications that can be made to either single-grid hard TEDs or Parker soft TEDs to allow leatherbacks to escape.

The regulations at 50 CFR 223.206(d)(2)(iv) also state that fishermen operating in the closed area with TEDs modified to exclude leatherback turtles must notify the NMFS Southeast Regional Administrator of their intention to fish in the closed area. This aspect of the regulations does not have a current

Office of Management and Budget control number, issued pursuant to the Paperwork Reduction Act. Consequently, fishermen are not required to notify the Regional Administrator prior to fishing in the closed area, but they must still meet the gear requirements.

**Classification**

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

The AA is taking this action in accordance with the requirements of 50 CFR 223.206(d)(2)(iv) to provide protection for endangered leatherback sea turtles from incidental capture and drowning in shrimp trawls. Leatherback sea turtles are occurring in high concentrations in coastal waters in shrimp fishery statistical zones 32 and 33. This action allows shrimp fishing to continue in the affected area so long as fishermen make the required gear modifications.

Pursuant to 5 U.S.C. 553(b)(B), the AA finds that there is good cause to waive prior notice and opportunity to comment on this action. As a sizeable concentration of leatherback turtles has been observed in an area fished by shrimp trawlers, it is extremely likely that interactions will occur. It would be impracticable to provide prior notice and opportunity for comment because providing notice and comment would prevent the agency from implementing the necessary action in a timely manner to protect the endangered leatherback.

Pursuant to 5 U.S.C. 553(d)(3), the AA finds that there is good cause not to delay the effective date of this rule for 30 days. Such delay would prevent the agency from implementing the necessary action in a timely manner to protect the endangered leatherback. Accordingly, the AA is making this temporary rule effective April 26, 2002 through May 10, 2002. This closure has been announced on the NOAA weather channel, in newspapers, and other media. Shrimp trawlers may also call (727)570–5312 for updated area closure information.

As prior notice and an opportunity for public comment are not required to be provided for this notification by 5 U.S.C. 553, or by any other law, the analytical requirements of 5 U.S.C. 601 *et seq.*, are inapplicable.

The AA prepared an Environmental Assessment (EA) for the final rule requiring TED use in shrimp trawls and the regulatory framework for the Leatherback Conservation Zone (60 FR 47713, September 14, 1995). Copies of the EA are available (see **ADDRESSES**).

Dated: April 26, 2002.

**William T. Hogarth**

*Assistant Administrator for Fisheries, National Marine Fisheries.*

[FR Doc. 02–10758 Filed 4–26–02; 4:30 pm]

**BILLING CODE 3510–22–S**

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 224

**[Docket No. 001025296-2079-02; I.D. 072600A]**

**RIN 0648-AO05**

## Endangered and Threatened Species: Range Extension for Endangered Steelhead in Southern California

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

**ACTION:** Final rule.

**SUMMARY:** NMFS has received new evidence of steelhead (*anadromous Oncorhynchus mykiss*) presence in two locations and spawning in one location south of the current range of the listed southern California steelhead Evolutionarily Significant Unit (ESU) which is currently Malibu Creek. Based upon this new information, and the possibility that anadromous *O. mykiss* may occur in other streams south of Malibu Creek if hydrologic and other habitat conditions are favorable, NMFS is now issuing a final rule under the Endangered Species Act (ESA) that redefines the geographic range of the listed anadromous *O. mykiss* population to include all steelhead and their progeny that occur in coastal river basins from the Santa Maria River (inclusive) to the U.S. - Mexico Border. NMFS has reassessed the status of anadromous *O. mykiss* throughout its redefined range in Southern California and concludes that the listed population continues to be endangered.

Within the redefined geographic range of *O. mykiss*, only anadromous, naturally spawned populations, and their progeny, which reside below naturally occurring and man-made impassable barriers (e.g., impassable waterfalls and dams) are listed.

**DATES:** Effective July 1, 2002.

**ADDRESSES:** Assistant Regional Administrator, Protected Resources Division, NMFS, Southwest Region, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

**FOR FURTHER INFORMATION CONTACT:** Craig Wingert, 562–980–4021, or Chris Mobley, 301–713–1401.

**SUPPLEMENTARY INFORMATION:**

### Previous Federal ESA Actions Related to the Southern California Steelhead ESU

In 1994, NMFS received a petition from the Oregon Natural Resources Council and numerous co-petitioners to list west coast steelhead (*Oncorhynchus mykiss*) populations under the ESA. In response to the petition, NMFS conducted a status review of west coast steelhead (Busby *et al.*, 1996) which identified 15 Evolutionarily Significant Units (ESUs) of steelhead in Washington, Oregon, Idaho, and California, and assessed their risk of extinction. One of these 15 ESUs was the Southern California steelhead ESU which was found to be at a high risk of extinction.

Based on this status review and a consideration of the listing factors in section 4(a)(1) of the ESA, NMFS proposed to list the Southern California steelhead as an endangered species in August 1996 (61 FR 41541). In August 1997, NMFS published a final rule listing this ESU as an endangered species (62 FR 43937). In the final rule, NMFS listed only the anadromous life form of *O. mykiss*, and, therefore, defined the listed Southern California steelhead population to include all naturally spawned populations of steelhead (and their progeny) in streams from the Santa Maria River in San Luis Obispo County (inclusive) to and including Malibu Creek in Los Angeles County. At the time of listing, NMFS believed Malibu Creek represented the southernmost extent of the range of anadromous *O. mykiss* in southern California.

On February 5, 1999, NMFS published a proposed critical habitat designation for 19 ESUs of threatened and endangered salmon and steelhead distributed throughout Washington, Oregon, Idaho, and California, including the endangered Southern California steelhead ESU (64 FR 5740). A final rule designating critical habitat for these 19 ESUs, including the Southern California steelhead ESU, was published on February 16, 2000 (65 FR 7764).

Although the critical habitat designation for Southern California steelhead is presently in effect, NMFS has recently sought approval from the U.S. District Court in the District of Columbia for a consent decree that would vacate critical habitat designations for Southern California steelhead and 18 other salmon/steelhead ESUs as a result of litigation

filed against the agency by the National Association of Homebuilders. In conjunction with this action, NMFS also intends to undertake a new and more thorough analysis of critical habitat for these ESUs, including the economic impacts of any designation, that is consistent with the ESA and other recent Court decisions. Following completion of this analysis, NMFS intends to proceed with re-proposing critical habitat designations for these ESUs including the Southern California steelhead.

**New Information on Steelhead Distribution South of Malibu Creek in Southern California**

In 1999 and 2000, new information became available which indicated that the anadromous life form of *O. mykiss* (i.e. steelhead) or their progeny occurred in at least two coastal streams south of Malibu Creek (Topanga Creek and San Mateo Creek). This new information included observations of juvenile *O. mykiss* in Topanga Creek by a NMFS biologist and field and laboratory investigations conducted by the California Department of Fish and Game (CDFG) which demonstrated the presence and spawning of anadromous *O. mykiss* in San Mateo Creek (DFG, 2000). Based on this new information, NMFS published a **Federal Register** notice in December 2000 proposing to formally recognize that anadromous *O. mykiss* (or steelhead) ranged further southward in Southern California than was previously believed to be the case by extending the range of the listed population to San Mateo Creek (65 FR 79328). A detailed discussion of the new information upon which the range extension proposal was based is contained in the December 2000 **Federal Register** notice.

Since the range extension was proposed in December 2000, NMFS has obtained some additional new information on *O. mykiss* in San Mateo Creek which was considered in this final determination. Additional microsatellite and mitochondrial DNA (mtDNA) analyses were conducted by Jennifer Nielsen (U.S. Geological Service, Alaska Science Center in Anchorage, AK.) on tissue samples taken from 16 *O. mykiss* collected in San Mateo Creek in 1999 and 2000 (Nielson and Sage, 2002). All 16 fish that were analyzed shared the MYS5 haplotype that is found throughout the range of *O. mykiss* in California, but which is most commonly found in Southern California populations (Nielsen *et al.* 1994). This finding is consistent with previous genetic analysis reported for *O. mykiss* in San Mateo Creek (DFG, 2000) and cited in NMFS' proposed range extension (65 FR 79328). According to Nielsen and Sage (2002), this haplotype has not been found in their previous survey of hatchery *O. mykiss* strains in California, and, therefore, suggests an endemic population structure in San Mateo Creek. Secondly, the DFG has undertaken periodic field surveys in upper San Mateo Creek and Devil's Canyon since May 2000 which have documented the continued presence of *O. mykiss* in the watershed. In many instances, these surveys were carried out in conjunction with efforts to remove exotic species that might prey upon or compete with *O. mykiss*. Although these surveys were limited in scope and methodology, they documented the presence of *O. mykiss* through at least August 2001 in Devil's Canyon. Summaries of the DFG field surveys for *O. mykiss* and exotic species removal are contained in a series of file memoranda prepared by DFG staff.

NMFS has completed its review and analysis of all available information, including public comments that were received on the proposal. This final rule formally extends the range of the Southern California steelhead ESU and reaffirms that it continues to be an endangered species.

**Summary of Comments Received in Response to the Proposed Range Extension Notice**

The proposed range extension was published on December 19, 2000, with a 60-day comment period that closed on February 20, 2001. During this period, NMFS received numerous requests for a public hearing, as well as requests for additional time to comment on the proposal. As a result, NMFS re-opened the public comment period for 30 days on February 21, 2001, and held a public hearing in San Clemente, CA, on March 12, 2001. The re-opened public comment period closed on March 22, 2001.

Excluding hearing requests, a total of 63 written comments were received on the proposal from a broad range of agencies, non-governmental organizations, other groups, and private citizens. A total of 37 individuals provided oral comments at the public hearing. The vast majority of comments supported the proposal, although many urged NMFS to expand or modify its proposal. A limited number of comments were opposed to or neutral about the proposal. A summary of the comments on the proposal and NMFS' responses to those comments are presented below by specific issue.

**Comments and Responses**

*Issue: Southern Boundary of Southern California Steelhead ESU*

*Comment 1*: Many commenters argued that the southern boundary of the listed Southern California steelhead population (i.e. anadromous *O. mykiss*) should be extended to the southernmost extent of the species historical range rather than to just San Mateo Creek. Most argued this boundary should be the U.S.- Mexico border.

*Response:* NMFS has previously recognized that steelhead historically occurred naturally at least as far south as northern Baja California (NMFS, 1996; and 62 FR 43937). However, at the time the Southern California steelhead ESU was listed as an endangered species in 1997 the best available information indicated that persistent populations of anadromous *O. mykiss* did not occur in rivers or streams further south than Malibu Creek. As described in NMFS' proposed range extension (65 FR 79328) new information became available in 1999 and 2000 indicating that anadromous *O. mykiss* were occupying San Mateo Creek which is in northern San Diego County. Limited observational information also suggested that *O. mykiss* occurred in Topanga Creek.

NMFS' main objectives in proposing the range extension for Southern California steelhead were three-fold: First, to seek public comment on new information showing that the freshwater geographic range of anadromous *O. mykiss* extended south of Malibu Creek to at least San Mateo Creek; second, to seek public comment on NMFS proposal to consider the *O. mykiss* found south of Malibu Creek to be part of the listed Southern California steelhead ESU; and third, to ensure that anadromous *O. mykiss* occurring south of Malibu Creek, either as isolated individuals (e.g. Topanga Creek) or as populations (i.e. San Mateo Creek) would be protected under the ESA.

NMFS recognizes that habitat suitable for anadromous *O. mykiss* may occur in watersheds south of San Mateo Creek (e.g. San Onofre Creek and perhaps elsewhere) and that anadromous *O. mykiss* historically occurred further south than San Mateo Creek. For these reasons, and because anadromous *O. mykiss* may stray to streams south of San Mateo Creek just as they did to San Mateo Creek in 1997, NMFS intends to consider any anadromous *O. mykiss* that are found to occur in coastal streams and estuaries between the Santa Maria River and the U.S.- Mexico border to be part of the listed Southern California steelhead population unless there is

evidence indicating they are unlisted resident forms or derived from hatchery rainbow trout populations.

As discussed elsewhere in this document, NMFS believes that anadromous *O. mykiss* do not presently occur further south than San Mateo Creek, and in only two locations between Malibu Creek and San Mateo Creek. However, the southern boundary of anadromous *O. mykiss* in Southern California is likely to vary over time as a result of variable and unpredictable rainfall patterns and freshwater habitat conditions, and the ability of the anadromous form to stray or colonize new habitats. As information becomes available in the future that a persistent population of anadromous *O. mykiss* occurs in any other streams south of Malibu Creek, NMFS will promptly inform the public by means of notification in the **Federal Register**.

*Comment 2:* A few commenters asserted that the proposed range extension was not justified and or was inappropriate because there is no information indicating that steelhead occur in those streams located between Malibu Creek and San Mateo Creek.

*Response:* NMFS disagrees. NMFS believes the best available information indicates that the *O. mykiss* in San Mateo Creek are the progeny of steelhead that originated from some other stream located within the geographic range of the Southern California steelhead ESU and spawned in that watershed in 1997. As noted elsewhere in this final notice, the best available information NMFS possessed at the time of listing in 1997 suggested that anadromous *O. mykiss* did not occur further south than Malibu Creek. Therefore, the new evidence indicating that anadromous *O. mykiss* now occupy San Mateo Creek constitutes a southern extension of the range for this listed life history form. The fact that anadromous *O. mykiss* do not generally occur in streams between Malibu Creek and San Mateo Creek has no bearing on whether or not the fish in San Mateo Creek are part of the listed Southern California steelhead ESU. As NMFS emphasized in the proposed range extension, the habitat conditions in virtually all of the streams located between Malibu Creek and San Mateo Creek (e.g. Los Angeles River, San Gabriel River, Santa Ana River, San Juan Creek, etc.) are highly modified, and, therefore, are not presently suitable for utilization by steelhead. Absent significant habitat restoration efforts, NMFS does not expect these rivers or streams to support steelhead in the future.

*Issue: Critical Habitat*

*Comment 3:* One commenter argued that unoccupied or highly modified habitat (specifically the Los Angeles, San Gabriel, and Santa Ana Rivers) would be very costly to restore, and, therefore, should be excluded from any future modification of the existing critical habitat designation for this ESU.

*Response:* The ESA requires NMFS to designate critical habitat or make revisions to critical habitat on the basis of the best scientific data available, but only after taking into consideration the economic impacts of specifying any particular area as critical habitat. Therefore, in making any future revisions to the existing critical habitat designation for the Southern California steelhead ESU, NMFS will consider the economic impacts of designating any additional habitat whether it is occupied by steelhead or not.

Unless NMFS' failure to designate specific areas as critical habitat will result in the extinction of a listed species, the ESA allows the agency to exclude areas from critical habitat if it is determined that the benefits of such an exclusion outweigh the benefits of specifying such an area as part of the critical habitat. Because virtually all of the freshwater habitat available to steelhead south of Malibu Creek (the current southern extent of critical habitat for this ESU) to at least San Mateo Creek is highly modified, and, therefore, unlikely to support steelhead without substantial habitat restoration, NMFS intends to carefully evaluate and weigh the benefits of designating these habitats as critical habitat or excluding them from any revised designation.

*Comment 4:* Many commenters argued that in conjunction with the range extension for this ESU, NMFS should be designating critical habitat for steelhead in all watersheds south of Malibu Creek, including San Mateo Creek, that are within the historic range of steelhead whether the habitat is occupied or not.

*Response:* In making its critical habitat designation for the endangered Southern California steelhead ESU in February 2000 (65 FR 7764), the agency concluded that all occupied and accessible river reaches and estuarine areas in coastal river basins ranging from the Santa Maria River southward to and including Malibu Creek were essential for the recovery of the ESU. This determination was made, in part, because these basins were thought to provide essential habitat features such as spawning, rearing, and migration habitat, food resources, sufficient water quality and quantity, and riparian vegetation. Also contributing to NMFS' determination was the fact that the coastal river basins in this geographic area were historically important for the ESU (e.g. Santa Ynez, Ventura, and Santa Clara Rivers), and many of the river basins, both large and small and in relatively close proximity to one another, continued to support anadromous *O. mykiss* though at low levels of abundance on the scale of both individual river basins and the entire ESU.

In contrast, the situation that currently exists for coastal river basins south of Malibu Creek is quite different. Recent information, as discussed elsewhere in this document, does demonstrate that anadromous *O. mykiss* occur in at least two coastal river basins south of Malibu Creek (i.e. San Mateo Creek and Topanga Creek). The population in San Mateo Creek was only re-established recently as a result of adults that strayed into the watershed and spawned in 1997, and the presence of *O. mykiss* in Topanga Creek may be transitory. There is no evidence that anadromous *O. mykiss* occupy any of the other coastal river basins between Malibu Creek and San Mateo Creek, and many of these basins are so highly modified that they can not support anadromous *O. mykiss*. Further, there is no evidence that any other coastal river basins south of San Mateo Creek, within the historic range of steelhead, currently support the anadromous life form of *O. mykiss*. Because only two coastal watersheds south of Malibu Creek support anadromous *O. mykiss*, including San Mateo Creek which is well separated from the remainder of the populations in the listed ESU, and virtually all other coastal watersheds south of Malibu Creek do not support this anadromous life history form, NMFS believes there is insufficient information at present to determine if all or some of the freshwater habitat south of Malibu Creek, whether occupied or unoccupied, is essential for the conservation of this ESU.

NMFS believes that a determination of how much habitat south of Malibu Creek is essential for the conservation of this ESU is best left to NMFS' technical recovery planning process because it will be closely linked to the development of biological recovery goals for this ESU. The development of biological recovery goals will be the first task of the NMFS' appointed technical recovery team that will be responsible for addressing the Southern California steelhead ESU, and this task will require an assessment of the population structure of the ESU, as well as an evaluation of how many populations of

*O. mykiss*, including both their geographic distribution and size, are necessary to achieve recovery of the entire ESU. If NMFS' recovery team concludes through this assessment process that recovery of this ESU will require anadromous *O. mykiss* populations and the habitat to support them in coastal river basins south of Malibu Creek, then NMFS will conduct the requisite economic analysis to determine if these areas should be incorporated into the existing critical habitat designation for this ESU.

*Comment 5:* Many commenters argued that NMFS should designate critical habitat above manmade barriers throughout the current and historic range of steelhead in this ESU in conjunction with the range extension.

*Response:* In February 2000, NMFS designated critical habitat for the Southern California steelhead ESU, which included all occupied and accessible freshwater habitat in watersheds ranging from the Santa Maria River southward to Malibu Creek, which was considered to be the current range of listed anadromous *O. mykiss* at that time. River reaches that were inaccessible to anadromous *O. mykiss* above specific manmade barriers (e.g. dams), however, were not included in the critical habitat designation. This approach was consistent with NMFS' previous determination to list only the anadromous life form of *O. mykiss* below manmade barriers.

While substantial amounts of habitat historically occupied by anadromous *O. mykiss* may occur above manmade barriers in some watersheds in the Southern California steelhead ESU (e.g. the Santa Ynez River, Ventura River, Santa Clara River), NMFS has not conducted an assessment to determine if all or some of these blocked habitat areas are currently essential for the recovery of this steelhead ESU. In addition, the agency has not performed the requisite economic analyses needed to designate blocked habitat areas that are unoccupied as critical habitat.

*Comment 6:* Several commenters argued that critical habitat should be designated for steelhead on Camp Pendleton Marine Corps Base and that NMFS should not exclude this habitat from any designation because of concerns about impacts to the military mission of the Base.

*Response:* As discussed previously, NMFS believes that any assessment of whether or not freshwater and estuarine habitat south of Malibu Creek is essential for recovery of this ESU, including San Mateo Creek which occurs in large part on Camp Pendleton, needs to be made in conjunction with the development of biological recovery goals for this ESU. If NMFS' recovery planning process concludes that specific freshwater and estuarine habitats south of Malibu Creek, including San Mateo Creek, are essential for recovery of the ESU, then NMFS will do the requisite economic analyses necessary to revise the existing critical habitat designation.

As specified in Section 4(b)(2) of the ESA, however, NMFS may exclude an area from a critical habitat designation if the benefits of such an exclusion outweigh the benefits of specifying the area as part of the designation, provided that excluding the area will not result in the extinction of the listed species for which the habitat is being designated. In making any future determination about designating critical habitat south of Malibu Creek, including the San Mateo Creek watershed on Camp Pendleton, NMFS will thoroughly evaluate whether or not any potentially designated areas may be excluded from the designation based on this weighing of benefits.

*Comment 7:* One commenter argued that NMFS failed to comply with the National Environmental Policy Act (NEPA) and prepare an economic analysis.

*Response:* The main objectives of NMFS' proposal were to recognize that the freshwater geographic range of anadromous *O. mykiss* extended further south than was previously thought to be the case, and to ensure that any anadromous *O. mykiss* occurring south of Malibu Creek were protected under the ESA. In effect, the proposal was intended to aimed at clarifying the geographic range of a previously listed population. Because NMFS' proposal dealt with the geographic revision of a presently listed ESU and did not propose any modification to the existing critical habitat designation, there was no statutory requirement for NMFS to prepare any economic analyses. If NMFS concludes that the existing critical habitat designation for this ESU should be revised in the future to include freshwater and estuarine habitats south of Malibu Creek, then the requisite economic analyses required by the ESA and our implementing regulations will be prepared. NMFS has previously determined that it is not necessary to prepare NEPA analyses for listing decisions or critical habitat designations made pursuant to the ESA (See NOAA Administrative Order 216-6).

*Issue: Biology and Ecology of Steelhead*

*Comment 8:* Many commenters asserted that ''resident'' rainbow trout (resident *O. mykiss*) occurring both above and below dams or other barriers within the ''historic range'' of the species should be part of the listed Southern California steelhead ESU.

*Response:* NMFS' December 2000 proposed range extension dealt only with the anadromous form of *O. mykiss*, for which new distributional information was available, and did not address the status of resident forms above and below barriers. The relationship of resident forms to the anadromous form and the status of resident forms under the ESA is the subject of pending litigation.

*Comment 9:* Camp Pendleton questioned the long-term sustainability or viability of the steelhead population in San Mateo Creek in light of the variable rainfall, streamflow, and other habitat conditions for steelhead in Southern California. They also expressed concerns about the costs of maintaining habitat for a population that might not be viable in the long-term.

*Response:* The long-term persistence of steelhead in San Mateo Creek may be uncertain given its distance from potential source populations, the highly variable rainfall conditions in southern California that influence access to this watershed, and other factors affecting *O. mykiss* within the watershed. However, the steelhead in San Mateo Creek should not be viewed as an independent population or subpopulation that is unconnected to other steelhead populations or subpopulations in southern California. In contrast, the steelhead in San Mateo Creek should be viewed as part of a larger meta-population unit that is comprised of many other populations or subpopulations occupying other streams in the ESU, and it is the viability of this larger population unit that is most important. Individually, the production capability of small coastal streams in this ESU such as San Mateo Creek may be relatively small compared to larger, perennial river systems that are more productive and can support larger populations, but collectively both the small and large systems in the ESU provide a means to ensure a greater diversity of populations and/or subpopulations in the larger meta-population unit. In addition, the smaller systems provide for range expansion and recovery after drought or other perturbations that reduce population numbers. The utilization of larger numbers of both small and large scale habitats by anadromous *O. mykiss* increases the likelihood of the long-term persistence of the ESU. The fact that the *O. mykiss* population in San Mateo Creek is derived from anadromous parents that entered the watershed and

spawned indicates that adult steelhead can still utilize this system when conditions allow them to do so, and this underscores the need to protect the habitat values that still exist and provide for steelhead utilization of the system.

*Comment 10:* One commenter questioned whether specific populations of landlocked *O. mykiss* (i.e. Pauma Creek and Sweetwater Creek) would be part of the listed Southern California steelhead ESU, and, therefore, protected under the ESA as a result of this proposal.

*Response:* NMFS' December 2000 proposed range extension dealt only with the anadromous form of *O. mykiss*, for which new distributional information was available, and did not address the status of landlocked populations of resident forms. NMFS and FWS are currently engaged in discussions regarding this issue.

*Comment 11:* One commenter questioned why San Onofre Creek, which has steelhead habitat but does not currently support a steelhead population, was not specifically included in the range extension.

*Response:* The main objectives of NMFS' proposed range extension were three-fold: First, to notify the public that there was new information showing that the freshwater geographic range of anadromous *O. mykiss* extended south of Malibu Creek to at least San Mateo Creek; second, to notify the public that NMFS considered the *O. mykiss* found south of Malibu Creek to be part of the listed Southern California steelhead population; and third, to ensure that anadromous *O. mykiss* occurring south of Malibu Creek, either as isolated individuals or as populations would be protected under the ESA.

As discussed in the proposed rule, the new information that is available suggests that anadromous *O. mykiss* only occur as far south as San Mateo Creek. Although San Onofre Creek is located in close proximity to San Mateo Creek and does have habitat that could be utilized by anadromous *O. mykiss*, there is no evidence indicating that anadromous *O. mykiss* currently inhabit the San Onofre Creek watershed. Since the proposed range extension addressed only the distribution of listed anadromous *O. mykiss* rather than habitat that may potentially be utilized by this life history form, San Onofre Creek was not specifically included in the proposed range extension.

However, NMFS recognizes that suitable habitat may occur in watersheds south of San Mateo Creek (e.g. San Onofre Creek) and that anadromous *O. mykiss* historically occurred further south than San Mateo Creek. For these reasons, and because anadromous *O. mykiss* may stray to streams south of San Mateo Creek and occupy them when habitat conditions allow them to do so, NMFS will consider any anadromous *O. mykiss* found south of San Mateo Creek to be part of the listed ESU unless there is evidence indicating they are non-listed resident forms or are derived from hatchery rainbow trout populations. Because the southern extent of the range of anadromous *O. mykiss* may vary over time rather than remain fixed as a result of variable rainfall and other habitat conditions and the ability of the life form to stray from natal streams, NMFS has decided not to delineate a specified southern boundary for this ESU in this final determination.

*Issue: Recovery and Management of Southern California Steelhead*

*Comment 12:* One commenter indicated that a recovery plan is needed for the Southern California steelhead ESU and that any such plan must include the recently discovered San Mateo Creek population and any other steelhead populations that occur south of Malibu Creek.

*Response:* NMFS agrees that a recovery plan is needed for the endangered Southern California steelhead ESU. Within the next 6 months, NMFS is committed to establishing a recovery team to develop biological recovery goals that will provide the framework for identifying and evaluating the management and other measures that need to be implemented to achieve recovery of the ESU. As part of developing the biological recovery goals for this ESU, the recovery team will investigate the population structure of this ESU and then identify the number, size, and spatial distribution of populations and subpopulations that are needed over the geographic range of the ESU to achieve recovery. In making this assessment, the recovery team will take into consideration all steelhead populations within the ESU including the San Mateo Creek population, as well as fish that may occur further south. As discussed elsewhere in this notice, NMFS expects the recovery team to also evaluate whether or not *O. mykiss* populations above barriers, as well as the habitat that supports these populations, are necessary for recovery.

*Comment 13:* One commenter urged formulation of a recovery plan that restores historically occupied streams in Orange and San Diego Counties.

*Response:* It is premature to conclude that all historically occupied streams south of Malibu Creek in Orange and San Diego counties will need to be restored to achieve recovery of the Southern California steelhead ESU. The determination of how much historically occupied habitat, if any, must be restored to achieve recovery of this ESU is closely related to the development of biological recovery goals for this ESU. As discussed elsewhere in this document, the development of biological recovery goals will require an assessment of the population structure of the ESU and an evaluation of how many populations, including their size and spatial distribution, are necessary to achieve recovery. If the recovery planning process determines that recovery of this ESU will require the restoration of habitat and establishment of populations in currently unoccupied areas south of Malibu Creek, then a key component of the recovery planning effort will be to identify specific unoccupied streams that need to be restored and to lay out the measures needed to achieve that restoration.

*Comment 14:* One commenter advocated the development and implementation of a comprehensive restoration plan for steelhead and its habitat in San Mateo and San Onofre Creeks, both of which are located on Camp Pendleton.

*Response:* NMFS supports the development of a restoration plan for San Mateo and San Onofre Creeks. As discussed in the proposed rule, California voters passed a State-wide initiative that provided $800,000 for the restoration of these two creeks to support native fish species such as steelhead, three-spine stickleback, and arroyo chub. The California Coastal Conservancy controls these funds and is in the process of working with a wide range of agencies and organizations including the Cleveland National Forest, Camp Pendleton Marine Corps Base, FWS, DFG, NMFS, and environmental groups to develop and implement a restoration plan for these watersheds which focuses on key limiting factors. NMFS anticipates that this plan will focus on addressing the control of exotic plants, the control of exotic fish species which compete with and/or prey upon steelhead and other native species, and the possible restoration of habitat. In addition to this larger planning and restoration effort, NMFS expects to work closely with Camp Pendleton through section 7 of the ESA to evaluate, and if necessary to modify, its programs for protecting and managing these watersheds.

*Comment 15:* Camp Pendleton commented that it has been a good steward and manager of the San Mateo

Creek watershed, which functions principally as a migratory corridor, and that they are implementing management measures to protect this watershed and its associated riparian habitat.

*Response:* NMFS recognizes that the lower portion of San Mateo Creek which passes through Camp Pendleton serves mainly as a migration corridor. NMFS also recognizes that Camp Pendleton has worked closely with the FWS to develop and implement a riparian management program to protect FWS-listed species that are riparian dependent. Although this riparian management program was developed for FWS-listed species, the program likely provides benefits to steelhead and its habitat as well. As discussed previously, NMFS expects to engage Camp Pendleton in an ESA section 7 consultation that will evaluate the effects of its activities, including implementation of its riparian management strategy for San Mateo Creek, on steelhead and its habitat. If new or modified management measures are needed to protect and conserve steelhead and its habitat on Camp Pendleton, they will be developed through this section 7 process.

*Comment 16:* Camp Pendleton raised concerns about possible conflicts between steelhead protection and management on the Base and its ability to carry out the Base's training and national security mission.

*Response:* NMFS is sensitive to the need for Camp Pendleton to be able to carry out its military and national security missions. Nevertheless, it is important for Camp Pendleton, as a Federal agency, to fulfill its obligations under the ESA and ensure that their operations and activities do not jeopardize the continued existence of Southern California steelhead. NMFS is committed to working closely with Camp Pendleton through section 7 of the ESA to ensure that both goals can be met: the military and national security missions of Camp Pendleton and the conservation of steelhead and its habitat. Camp Pendleton has considerable experience dealing with the management of FWS-listed species that occupy habitat on the Base, including the development of a riparian management strategy and program for riparian dependent species in the San Mateo Creek watershed which is used by steelhead. This past experience demonstrates that the protection and conservation of ESA-listed species can be achieved in a manner that is compatible with the military mission of the Base. NMFS is confident that the protection and conservation of steelhead and its habitat on Camp Pendleton can also be achieved in a manner that is compatible with the military and national security missions of the Base.

*Comment 17:* Camp Pendleton committed to fulfilling all of its obligations under the ESA for the management of steelhead if further genetic testing demonstrated that the *O. mykiss* found in San Mateo Creek were steelhead and not hatchery trout plants.

*Response:* NMFS is confident that Camp Pendleton will fulfill its ESA section 7 obligations to ensure that the Southern California steelhead ESU is not jeopardized, as well as its further obligations under the ESA to promote steelhead conservation. As discussed elsewhere in this document, the results of additional genetic analysis (mtDNA) conducted on 16 tissue specimens by Dr. Jennifer Nielson demonstrated that all the sampled juvenile fish had the MYS5 haplotype carried by native coastal *O. mykiss* and were not of hatchery origin.

*Issue: Sufficiency of Available Data*

*Comment 18:* Several commenters opposed the proposed range extension and argued that there was insufficient data to conclude that the *O. mykiss* in San Mateo Creek are steelhead and part of the Southern California ESU. Some commenters argued that additional data needs to be collected to confirm NMFS's proposal and that in the interim any final determination should be delayed.

*Response:* NMFS recognizes that the proposed range extension was based on a limited amount of information; however, section 4(b)(1)(A) of the ESA requires that NMFS make any determinations about listing solely on the basis of the best available scientific and commercial data. At the time of the range extension proposal, NMFS believed it had the best available information and that the available information supported a conclusion that the juvenile *O. mykiss* in San Mateo Creek were the progeny of anadromous *O. mykiss* that had strayed from another stream in the Southern California steelhead ESU. In addition, NMFS believed it was important to formally recognize that the range of anadromous *O. mykiss* extended further south than was thought to be the case so that the public and potentially affected parties were aware that this life history form occurred south of Malibu Creek, at least to San Mateo Creek, and so that fish south of Malibu Creek would be protected under the ESA. Since NMFS proposed the range extension for anadromous *O. mykiss*, further genetic analysis has been conducted by Dr. Jennifer Nielsen on tissues samples from an additional 16 juvenile fish collected in 1999 and 2000. The results of this analysis demonstrate that all tested fish carried the mtDNA haplotype (MYS5) which is found most commonly in steelhead from southern California. This finding is consistent with the results of the more limited genetic analysis conducted originally by DFG and upon which the proposed range extension was in part based. NMFS believes it has used the best available information to make its determination, and that any further delay in protecting anadromous *O. mykiss* found south of Malibu Creek under the ESA is not consistent with the agency's obligation to protect and conserve this endangered population.

*Comment 19:* A few commenters speculated that the *O. mykiss* found in San Mateo Creek were actually hatchery trout planted by DFG or trout that had escaped from ponds stocked by private landowners with in-holdings in Cleveland National Forest.

*Response:* As discussed elsewhere in the response to comments, the available mtDNA data for all fish that have been tested to date (2 prior to NMFS' proposal and 16 after the proposal) shows that they carried the mtDNA haplotype (MYS5) which is most commonly found in southern California steelhead populations. This haplotype has not been found in any hatchery or domestic trout populations; thus, NMFS concludes that the juvenile *O. mykiss* found in San Mateo Creek are derived from native southern California steelhead and are not the result of domestic trout planting.

*Comment 20:* One commenter questioned whether the *O. mykiss* in San Mateo Creek are part of the Southern California ESU.

*Response:* As discussed in the proposed range extension, NMFS believes the available information (e.g. proximity of San Mateo Creek to nearest extant populations of southern California steelhead, mtDNA data demonstrating presence of a haplotype most common in Southern California steelhead populations, and otolith microchemistry data) all points to a conclusion that adult steelhead strayed into San Mateo Creek from elsewhere in Southern California and successfully spawned in 1997. As such, the *O. mykiss* in San Mateo Creek are progeny of anadromous *O. mykiss* (or steelhead) and should be part of the listed population. The additional mtDNA analysis performed by Dr. Jennifer Nielson is consistent with the original mtDNA analysis and reinforces this conclusion.

*Comment 21:* One commenter questioned the validity of the Southern California steelhead ESU as a definable

unit, as well as the overall ESU concept NMFS has developed and its applicability to steelhead on the west coast.

*Response:* NMFS disagrees with the commenter and believes that its ESU policy is scientifically sound and that the west coast steelhead ESUs, as defined, are consistent with the agency's stated policy.

NMFS has published a policy describing how it will apply the ESA definition of ''species'' to anadromous salmonid species such as *O. mykiss* (see 56 FR 58612, November 20, 1991). More recently, NMFS and FWS published a joint policy, which is consistent with the NMFS policy, regarding the definition of DPSs (see 61 FR 4722, February 7, 1996). The earlier policy is more detailed and applies specifically to Pacific salmonids, therefore it has been used by NMFS for all of its west coast salmonid ESU determinations, including those for west coast steelhead (see 61 FR 41541 and 62 FR 43937). This policy states that one or more naturally reproducing salmonid populations will be considered distinct, and, therefore, a ''species'' under the ESA if they represent an ESU of the biological species. To be considered an ESU, a population must satisfy two criteria: (1) It must be reproductively isolated from other population units of the same species, and (2) it must represent an important component of the evolutionary legacy of the biological species. The first criterion, reproductive isolation, need not be absolute but must have been strong enough to permit evolutionarily important differences to occur in different population units. The second criterion is met if the population contributes substantially to the ecological or genetic diversity of the species as a whole. Guidance on how this policy should be applied is contained in a NOAA Technical Memorandum entitled: ''Definition of 'Species' under the ESA: Application to Pacific Salmon'' (Waples 1991). A more detailed discussion of steelhead ESU boundaries and the factors NMFS considered in defining these ESUs, including the Southern California steelhead ESU, is provided in the proposed and final listing determinations for west coast steelhead (61 FR 41541; 62 FR 43937). In making these ESU determinations, NMFS relied on genetic, ecological, life history, and habitat related information.

*Issue: Factors Contributing to Decline or Risk*

*Comment 22:* One commenter asserted that the Foothill Corridor is a ''threat'' to the San Mateo Creek steelhead population and that NMFS' proposal did not adequately acknowledge this risk factor.

*Response:* NMFS acknowledges that it did not explicitly discuss the Foothill Corridor project, which is currently in the planning stages, as a possible threat to the destruction, modification, or curtailment of steelhead habitat in San Mateo Creek. NMFS is well aware of this project and has been coordinating with the Federal Highway Administration (FHA) as part of the environmental review process which is currently ongoing for the project. NMFS recognizes that the project could have some potential impacts on the San Mateo Creek watershed depending upon which project alternative is selected and how the project is designed, constructed, operated, and mitigated. NMFS will continue to coordinate with FHA as the NEPA documentation for the project is prepared and provide comments and recommendations as appropriate. Because this project has the potential to impact anadromous *O. mykiss* in San Mateo Creek, as well as the watershed itself, NMFS expects that FHA will initiate an ESA section 7 consultation with us to ensure that construction and operation of the project does not jeopardize anadromous *O. mykiss* and that any impacts are minimized.

*Issue: Economic Effects*

*Comment 23:* One commenter asserted that expanding the range of the listed ESU would create economic burdens or impacts on local agencies, particularly in those areas where anadromous *O. mykiss* do not occur in watersheds between Malibu Creek and San Mateo Creek. For this reason, the commenter argued that NMFS should not expand the range of the ESU.

*Response:* NMFS does not believe that the range extension will cause economic impacts in those watersheds where anadromous *O. mykiss* do not presently occur. In the proposed range extension, NMFS made it clear that anadromous *O. mykiss* were only thought to occur in two streams south of Malibu Creek (i.e., San Mateo Creek and Topanga Creek), and that all other streams and watersheds had been so highly modified that they no longer contained habitat suitable for supporting anadromous *O. mykiss*. Issue: Administrative Process

*Comment 24:* One commenter criticized NMFS for failing to make all of the data underlying its range extension proposal available for public review.

*Response:* NMFS described all of the information supporting the proposed range extension in the **Federal Register** publication announcing the proposal (65 FR 79328). The **Federal Register** document also identified NMFS' points of contact for futher information, and directed interested parties to request further information or references from the Southwest Region's Assistant Regional Administrator or the identified point of contact. All information upon which the proposed range extension was based was readily available on request and at least one party did request the information.

*Comment 25:* One commenter believed NMFS should extend the public comment period to provide greater opportunity for public comment and review of the available information supporting the proposed range extension.

*Response:* The original comment period for the proposed range extension was 60 days. NMFS did extend the public comment period an additional 30 days, both to provide the public with additional opportunity to review the proposed extension and develop comments, as well as to accommodate a public hearing which was held in San Clemente, CA.

*Comment 26:* Many commenters requested that NMFS hold one or more public hearings to take public testimony on the proposed range extension.

*Response:* In response to many such requests, NMFS did schedule a public hearing in San Clemente, CA. This hearing location was selected because it was in close proximity to San Mateo Creek which was the focus of the proposed range extension. The selection of this location resulted in a well attended hearing and provided an opportunity for 37 individuals to provide comments. To accommodate this hearing, NMFS extended the public comment period an additional 30 days.

**Revised Geographic Range of Listed Southern California Steelhead**

In August 1997, NMFS listed the Southern California steelhead ESU as an endangered species (62 FR 43937). Although this ESU was broadly described as occupying all coastal rivers from the Santa Maria River southward to the southern extent of the species range, the final regulation more specifically defined the listed population as all naturally spawned populations of steelhead (i.e. anadromous *O. mykiss*), and their progeny, which occupied rivers and streams from the Santa Maria River in San Luis Obispo County, CA (inclusive) to Malibu Creek in Los Angeles County, CA (inclusive). Although Malibu Creek was identified as the southernmost stream supporting a persistent, naturally

spawning population of anadromous *O. mykiss* based on the best available information, NMFS acknowledged in both the proposed (61 FR 41541) and final listing determinations that there was some limited anecdotal information that the anadromous life form may occasionally occur as far south as the Santa Margarita River.

As described in NMFS' December 19, 2000, proposed range extension for listed Southern California steelhead (65 FR 79328), new information was collected and analyzed by the California Department of Fish and Game (DFG) in 1999 and 2000 (DFG 2000) that indicated anadromous *O. mykiss* spawned and were rearing in San Mateo Creek which is located approximately 100 miles (161.3 kilometers (km)) further south than Malibu Creek which had previously been identified as the southernmost coastal stream supporting *O. mykiss* The San Mateo Creek watershed arises in the Cleveland National Forest and flows in a southwesterly direction to the Pacific Ocean just south of San Clemente in northern San Diego County. Much of the lower portion of San Mateo Creek flows through the Camp Pendleton Marine Corps Base. Approximately 6-7 miles (9.7-11.3 km) are accessible to anadromous *O. mykiss* in the mainstem and tributaries. According to information in Titus *et al.* (in press), Woelfel (1991), and DFG (2000), San Mateo Creek was an important steelhead-producing stream prior to 1950 and evidently supported a local sport fishery of both juveniles and adults. More recently, however, Nehlsen *et al.* (1991) classified the San Mateo Creek steelhead population as extinct.

Although this new information is limited, it is the best available information, and it indicates that adult steelhead entered San Mateo Creek and successfully spawned in 1997. The juvenile progeny of those spawning adults were observed by DFG during its field investigations in the spring and summer of 1999. More recent information from DFG in May 2000 suggests that *O. mykiss* still occupy portions of San Mateo Creek and may have successfully spawned again since 1997. The limited genetic information presented by DFG (DFG, 2000) suggests that the juvenile *O. mykiss* found in 1999 have close genetic affinities to native southern California steelhead and are not the result of domestic trout planting. More recently, Dr. Jennifer Nielsen has completed mtDNA analysis of an additional 16 tissues samples from *O. mykiss* collected in San Mateo Creek in 1999 and 2000. The results of this analysis indicate that all sampled fish carried the MYS5 haplotype which is found most commonly in southern California steelhead. Since there is no evidence of a resident trout population or recent evidence of steelhead presence in San Mateo Creek (DFG, 2000; Titus *et al.*, in press; Lang *et al.*, 1998), NMFS believes the adult steelhead which successfully spawned in 1997 were strays from another watershed elsewhere in the Southern California steelhead ESU. Based on the information collected by DFG (DFG, 2000), the new genetic data analysis performed by Dr. Jennifer Nielsen, and a review of all comments on the proposed range extension, NMFS concludes that the *O. mykiss* population in San Mateo Creek is part of the listed Southern California steelhead population.

The Malibu Creek and San Mateo Creek watersheds are separated by approximately 100 miles (161.3 km). Therefore, inclusion of the San Mateo Creek steelhead population in the Southern California ESU raises the question of whether or not steelhead occur or may be present in those watersheds located between Malibu Creek and San Mateo Creek. Based on information reported by Titus *et al.* (in press), steelhead were historically reported in several watersheds between Malibu Creek and San Mateo Creek (i.e., Los Angeles River, San Gabriel River, Santa Ana River, and San Juan Creek), but are now extinct as a result of major habitat modification or habitat blockage associated with flood control, urban development, and other factors. Given the existing habitat conditions in these highly modified river systems, NMFS does not believe they are currently suitable for steelhead utilization, and, therefore, are highly unlikely to support steelhead absent major restoration efforts.

Information regarding the current presence of *O. mykiss* in other streams between Malibu Creek and San Mateo Creek is lacking with the exception of a recent observation of fish in Topanga Creek which is approximately 4 miles (6.5 km) south of Malibu Creek. Titus *et al.*, (in press) indicated that *O. mykiss* were observed in Topanga Creek in 1979 and in the early 1990s. In April 2000, an adult *O. mykiss* was reported in Topanga Creek. A NMFS' biologist conducted a site visit and confirmed the presence and identification of two *O. mykiss* ranging from 14-20 inches (359-573 mm) in total length. Both fish were observed in a relatively deep pool (4 ft (1.2 meters (m))deep) located about 1 mile (1.7 km) upstream of the confluence with the ocean. Based on the existing habitat conditions and the size of the fish, it is unlikely that they spent their entire life cycle in Topanga Creek. Since there is no evidence of any stocking of rainbow trout in Topanga Creek, it is most likely that these fish originated from some other stream within the ESU. The nearest streams known to support steelhead are Malibu Creek and Arroyo Sequit, both of which are located only a few miles north of Topanga Creek.

NMFS recognizes that habitat suitable for anadromous *O. mykiss* may occur in watersheds south of San Mateo Creek (e.g. San Onofre Creek and perhaps elsewhere) and that anadromous *O. mykiss* historically occurred further south than San Mateo Creek. For these reasons, and because anadromous *O. mykiss* may stray to streams south of San Mateo Creek just as they did to San Mateo Creek in 1997 during years of high rainfall, NMFS will consider all anadromous *O. mykiss* that are found to occur in coastal streams, including estuarine habitat, between Malibu Creek and San Mateo Creek or further south of San Mateo Creek to be part of the listed Southern California steelhead population unless there is evidence indicating they are non-listed resident forms or are derived from hatchery rainbow trout populations. Because the southern boundary of anadromous *O. mykiss* in Southern California is likely to vary over time given highly variable and uncertain rainfall patterns and habitat conditions, NMFS is not delineating a specific stream as the southern boundary for the listed population in this final rule. Instead, the final rule indicates that the listed *O. mykiss* population extends from the Santa Maria River to the southern extent of the species range. As discussed previously, however, NMFS does not believe that anadromous *O. mykiss* presently occur further south than San Mateo Creek. If information becomes available in the future that a persistent population of anadromous *O. mykiss* exists further south than San Mateo Creek, NMFS will promptly inform the public by means of notification in the **Federal Register**.

**Status of Southern California Steelhead ESU**

The Southern California steelhead ESU was listed as an endangered species in August 1997 (62 FR 43937). As discussed in the final listing determination, this ESU is considered to be at a high risk of extinction based on the results of NMFS' west coast steelhead status review (Busby *et al.*, 1996) and in a subsequent status update (NMFS, 1997).

Historically, steelhead occurred as far south as northern Baja California. Titus *et al.*, (in press), as cited in the final listing determination, concluded that all steelhead populations south of Malibu Creek in Los Angeles County were extinct. Estimates of pre-1960s abundance for several rivers in this ESU (i.e. Santa Ynez, Ventura, Santa Clara, Malibu Creek) suggest that individual steelhead populations numbered in the thousands of individuals. Published abundance estimates for the Ventura and Santa Clara Rivers, for example, ranged from 4,000-6,000 and 7,000-9,000 fish, respectively. At the time of NMFS' final listing determination in 1997, the total run size for several streams in the ESU (e.g., Santa Ynez, Ventura River, Santa Clara River, Malibu Creek) was estimated to number fewer than 200 individuals each (Titus *et al.*, in press). Recent information regarding steelhead abundance for the Santa Ynez, Ventura, and Santa Clara Rivers suggests that the abundance estimates made at the time of the final listing determination were probably high.

NMFS' primary concerns about this ESU at the time of listing were the widespread and dramatic declines in abundance relative to historical levels, and the major reduction in the species range. Given the extremely low abundance estimates and the associated risk associated with demographic and genetic variability in small populations, the long-term persistence or sustainability of this ESU in the future was a critical concern to NMFS. In addition, NMFS was concerned that the restricted spatial distribution of the remaining populations placed the ESU as a whole at risk because of reduced opportunities for re-colonization of streams suffering local population extinctions. NMFS concluded that the principal factors responsible for the decline of steelhead populations within this ESU were water diversions and extraction, habitat blockages and degradation, agricultural activities, and urbanization. Little new information regarding the abundance of steelhead in this ESU has been collected since NMFS' final listing determination in 1997, with the exception of limited data collected as a result of monitoring efforts in the Santa Ynez and Santa Clara Rivers. These data are not comprehensive enough to estimate population sizes, but they do indicate that these steelhead populations in Southern California continue to be very small.

As discussed previously in this document, NMFS has concluded that the *O. mykiss* population in San Mateo Creek is part of the Southern California ESU based on the available information. Based on the information compiled and analyzed by DFG (DFG, 2000), the juvenile *O. mykiss* population found in San Mateo Creek in 1999 appeared to be very small and was likely produced by a limited number of adults that strayed into the watershed and spawned in 1997. Given the small number of fish found in San Mateo Creek, the absence of any other naturally reproducing populations of steelhead in those streams occurring between Malibu Creek and San Mateo Creek, and the extremely low abundance estimates for all other populations within the ESU, NMFS concludes that the Southern California steelhead ESU continues to be at a high risk of extinction.

**Summary of Factors Affecting the Species**

Section 4(a)(1) of the ESA and NMFS' implementing regulations (50 CFR part 424) set forth procedures for listing species. The Secretary of Commerce (Secretary) must determine, through the regulatory process, if a species is endangered or threatened based upon any one or a combination of the following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or education purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or human-made factors affecting its continued existence.

In conjunction with its proposed listing determination for west coast steelhead ESUs in 1996, NMFS prepared a report summarizing the factors leading to the decline of west coast steelhead, including the Southern California steelhead ESU. This report was entitled: ''Factors for Decline: A Supplement to the Notice of Determination for West Coast Steelhead'' (NMFS, 1996). This report concluded that all of the factors identified in section 4(a)(1) of the ESA have played a role in the decline of west coast steelhead ESUs. The report specifically identified destruction and modification of habitat, overutilization for recreational purposes, and natural and human-made factors as being the primary causes for the decline of steelhead on the west coast.

NMFS (1996) identified several specific factors that contributed to the decline of steelhead populations in the Southern California ESU as it was defined in the proposed and final listing determinations, including: habitat blockages, water diversion and extraction, urbanization, agriculture, and recreational harvest. McEwan and Jackson, 1996; and Titus *et al.*,(in press) also cited extensive loss of habitat due to water development, impassible dams, and de-watering of portions of rivers as the principal reasons for the decline of steelhead in Southern California. Habitat problems resulting from water development include inadequate flows, flow fluctuations, blockages (partial and full), and entrainment (McEwan and Jackson, 1996). These factors for decline are discussed in more detail in NMFS (1996), McEwan and Jackson (1996), and in NMFS' 1997 final listing determination (62 FR 43937). Although NMFS has been working to address impacts to this endangered ESU through sections 7 and 10 of the ESA since it was listed in 1997, these same factors continue to adversely affect the small steelhead populations which persist in the watersheds ranging from the Santa Maria River southward to the southern extent of this life form's range.

As discussed previously, NMFS has decided not to delineate a specific stream as the southern boundary for the listed anadromous *O. mykiss* population in this final rule because the southern boundary of this life form is likely to vary over time due to variable and unstable climatic, hydrographic, and freshwater habitat conditions, and the ability of this life form to naturally stray from its natal streams. Nevertheless, the currently available information indicates that anadromous *O. mykiss* do not occur in coastal streams south of San Mateo Creek. Accordingly, the following discussion focuses only on those factors affecting anadromous *O. mykiss* within the geographic area that extends from Malibu Creek southward to and including San Mateo Creek.

*1. The Present or Threatened Destruction, Modification, or Curtailment of Steelhead Habitat or Range*

With the exception of the recent observations of fish in San Mateo Creek and Topanga Creek, anadromous *O. mykiss* populations south of Malibu Creek are thought to be extirpated due to habitat destruction or blockages associated with urbanization and flood control (Titus *et al.*, in press), although extensive monitoring has not been conducted to assess their presence. For example, steelhead access and use of the Los Angeles River is currently precluded by the presence of flood control structures throughout much of its lower reach such as the concrete lining of the river channel and the dam at the Sepulveda Flood Control Basin. The lower reaches of the San Gabriel River are highly urbanized with the

channel modified for flood control, and the river is impounded further upstream. The Santa Ana River is similarly modified for flood control and flows largely consist of effluent from water treatment plants except in the rainy season. Because of these limited flows and restricted releases from Prado Dam, fish habitat is limited in the lower Santa Ana River. San Juan Creek, a much smaller stream in southern Orange County, is also channelized for flood control in its lower reach (approximately 2-3 miles (3.2-4.8 km)) and other potential barriers to upstream movement also exist.

San Mateo Creek was once thought to be an important production area for steelhead in San Diego County (Nehlsen *et al.*, 1991; DFG, 2000). As summarized in Titus *et al.*, (in press), steelhead appear to have been most abundant in the San Mateo Creek watershed prior to 1950. After 1950, there are many fewer observations of steelhead and none after the early 1980s until fish were found there in 1999. For example, Woelfel (1991) found no steelhead or resident trout in San Mateo Creek during surveys in 1987-88. Similarly, Lang *et al.*, (1998) failed to observe or capture any steelhead during surveys in 1995, 1996, and 1997. The steelhead population in San Mateo Creek was probably reduced by natural episodes of sediment input from within the watershed. However, increased groundwater extraction in the lower creek area since the mid-1940s may also have contributed to reducing the ability of steelhead to use the system as they historically did (DFG, 2000; Titus *et al.*, in press; Lang *et al.*, 1998). Riparian vegetation has been lost, stream channel width has increased, and surficial flow has been reduced or eliminated during most of the year. Accordingly, the migration corridor for immigrating adult and emigrating juvenile steelhead has become unreliable. Human-caused fires farther upstream have also resulted in large sediment input that has filled pools and contributed sediment to the lagoon at the river mouth, both of which are important rearing habitat for juvenile steelhead. Although habitat conditions in the lower river may not always be conducive to adult or juvenile passage, Lang *et al.*, (1998) and DFG (2000) have identified upstream spawning and rearing habitat which can be used by steelhead if sufficient stream flows allow for adult passage.

*2. Overutilization for Commercial, Recreational, Scientific, or Education Purposes*

NMFS' review of factors affecting west coast steelhead concluded that harvest was a factor contributing to the decline of the Southern California steelhead ESU (NMFS, 1996). According to McEwan and Jackson (1996), steelhead in most streams in Santa Barbara, Ventura, and Los Angeles Counties were until the early 1990s subject to the most liberal angling regulations anywhere in the State of California. Most streams in southern California were regulated by the general regulations of the Southern Sport Fishing District (which includes Santa Barbara, Ventura, Los Angeles, Orange, and San Diego counties) which allowed fishing year-round with a five-fish daily bag limit. The only streams with special protective regulations were the Ventura River and Malibu Creek.

Because steelhead populations in southern California had declined to such critically low population levels by the early 1990s, the California Fish and Game Commission (Commission) adopted more restrictive angling regulations for some streams (Santa Ynez River, Ventura River, Santa Clara River, and Gaviota Creek) in 1994. These more stringent regulations included: (1) a reduction in the fishing season from year round to the Saturday before Memorial Day through December 31; (2) a zero bag limit; and (3) a requirement that anglers use artificial lures with barbless hooks. In 1996, these same regulations were adopted by the Commission for the anadromous reaches of all coastal streams in southern California. Within the coastal area extending south of Malibu Creek to San Mateo Creek, these same regulations are now in effect for the following streams: Topanga Creek, San Juan Creek, and San Mateo Creek. Given the extremely low numbers of juvenile steelhead that were found in San Mateo Creek, and the possible sporadic occurrence of small numbers of steelhead in other streams, recreational angling may continue to be a risk to steelhead in some streams south of Malibu Creek.

*3. Disease or Predation*

Introductions of non-native species and habitat modifications have resulted in increased predator populations in numerous west coast river systems, thereby increasing the level of predation experienced by steelhead and other salmonids (NMFS, 1996). Exotic fish species that are potential predators of *O. mykiss* are known to occur in San Mateo Creek and other watersheds (San Onofre Creek, Santa Margarita River) on Camp Pendleton (Lang *et al.*, 1998). According to Lang *et al.*, (1998) brown bullhead dominated the fish assemblage in San Mateo Creek, with both adults and juveniles observed in perennial pools. Other species observed in the San Mateo Creek watershed include mosquito fish, adult and juvenile green sunfish, bluegill, and largemouth bass. One Channel catfish, which is a known predator of steelhead, was found dead in the upper San Mateo Creek in a portion of the Cleveland National Forest (Lang *et al.*, 1998). Brown trout have been stocked in San Mateo Creek (last time in the mid 1980s), but they were not observed during the most recent surveys (Lang *et al.*, 1998).

Mosquito fish were introduced for mosquito abatement and are found in most Camp Pendleton waters. This species has taken over the niche of the native three-spine stickleback which is often an important prey item for salmonids; thus, it could possibly serve as a prey item for steelhead in San Mateo Creek. Green sunfish dominated the San Mateo Creek lagoon in the late 1980s and early 1990's according to Swift (1994) and were the only fish found in perennial pools in the upper watershed and Devil Canyon in the late 1980's, suggesting that they may have displaced residual steelhead during the drought period (Woelfel, 1991). In other California streams (i.e., Malibu Creek and Carmel River) green sunfish were found to prey on juvenile trout (Swift, 1975; Greenwood, 1988; cited in Woelfel, 1991), and in San Clemente Reservoir on the Carmel River, green sunfish outcompeted trout for benthic food (Greenwood, 1988).

The control of exotic fish species in the San Mateo Creek watershed, both on Camp Pendleton and in Cleveland National Forest, is considered critical to reducing impacts to steelhead in that watershed (DFG, 2000; Lang *et al.*, 1998). Lang *et al.*, (1998) recommended implementation of measures to contain exotic fish species in small lakes and ponds where recreational fishing occurs, in conjunction with efforts to control in-river propagation of exotics using Rotenone, electro-shocking, seining, or other means in perennial pools during summer low flows.

*4. Inadequacy of Existing Regulatory Mechanisms*

Virtually all of the San Mateo Creek watershed is located on Federal land managed by the Cleveland National Forest and the Camp Pendleton Marine Corps Base. San Mateo Creek originates in the Cleveland National Forest and flows in a southwesterly direction through Camp Pendleton to the Pacific Ocean just south of San Clemente, CA. Within the San Mateo Creek watershed, the majority of spawning and rearing habitat is upstream from Camp Pendleton within the Cleveland

National Forest. That portion of San Mateo Creek on Camp Pendleton serves primarily as migratory habitat for adults and juveniles.

That portion of the San Mateo Creek watershed located on Cleveland National Forest land has not been greatly altered by human activity over the past 50 years (Woelfel, 1991). Forest lands in the watershed have remained natural and undeveloped over this period although there are a few private property in-holdings which have had limited development. Woelfel (1991) reviewed water use on these private in-holdings and concluded that stream flows in the watershed were not significantly altered. According to Woelfel (1991), one of the main activities of the Cleveland National Forest has been the protection of vegetation and water resources in its various watersheds through the prevention of forest fires. In part, this effort was intended to protect and manage forest vegetation so that water resources were retained and water quality remained high.

The lower portion of San Mateo Creek watershed, which flows through Camp Pendleton, may have been impacted by base activities according to Woelfel (1991). Woelfel (1991) suggested that groundwater extraction to support base military training operations and on-base agriculture has led to stream channel de-watering or reduced channel flows, loss of riparian vegetation, and increased erosion, and that military training operations, including accidental fires caused by live ammunition use, may have contributed to erosion problems in the watershed. The cumulative effect of groundwater extraction, reduction or loss of riparian vegetation, stream channel morphology changes, and accelerated erosion is that steelhead may have reduced opportunities for both upstream and downstream migration. Camp Pendleton has developed a programmatic management plan for protecting and conserving riparian dependent species that occur on the Base which includes the San Mateo Creek watershed. NMFS expects to work with Camp Pendleton to evaluate the effectiveness of this plan in protecting steelhead.

*5. Other Natural or Human-Made Factors Affecting Continued Existence of Steelhead*

Natural climatic conditions have exacerbated the problems associated with degraded and altered riverine and estuarine habitats. Persistent drought conditions have reduced already limited spawning, rearing and migration habitat. Climatic conditions appear to have resulted in decreased ocean productivity which, during more productive periods, may help offset degraded freshwater habitat conditions (NMFS, 1996). Efforts Being Made to Protect the Southern California Steelhead ESU

In conjunction with its west coast steelhead status review, NMFS reviewed a wide range of protective efforts for west coast steelhead and other salmonids, ranging in scope from regional strategies to local watershed initiatives. NMFS has summarized some of the major efforts in a document entitled ''Steelhead Conservation Efforts: A Supplement to the Notice of Determination for West Coast Steelhead under the Endangered Species Act'' (NMFS, 1996c).

In the coastal area extending from Malibu Creek southward to San Mateo Creek, steelhead-specific conservation efforts are currently very limited. The FWS recently completed an assessment of habitat distribution and restoration potential on the Camp Pendleton Marine Corps Base (Lang *et al.*, 1998; and DFG, 2000). Over the past 2 years, the DFG has made several qualitative assessments of steelhead presence in the San Mateo Creek watershed and has also undertaken several efforts to remove exotic predators from pools know to contain steelhead which are located in that portion of the watershed which occurs in the Cleveland National Forest.

In addition, efforts are currently underway on the development of restoration plans for San Mateo Creek and San Onofre Creek, both of which are located on Camp Pendleton, to support native fish species including the unarmored three-spine stickleback, arroyo chub, and steelhead. This restoration planning effort is expected to focus on control of exotic plants, control of exotic fish species which compete with and/or prey upon steelhead and other native species, restoration of streambed pools, channels, and stream banks, and the reintroduction of native plants and possibly native fish species. Several agencies and private organizations, including the Cleveland National Forest, Camp Pendleton Marine Corps Base, FWS, DFG, Trout Unlimited, San Diego Trout, and the Coastal Conservancy, are participating in development of this program. NMFS strongly supports this effort and will continue to participate in its development and implementation.

In addition to this restoration planning which is directed specifically at San Mateo and San Onofre Creek restoration, additional funding is potentially available for habitat restoration in other coastal watersheds in Southern California through DFG's Habitat Restoration Grant Program. For the past 3 years NMFS has transferred at least $9.0 million annually from its Pacific Coast Salmon Recovery Fund to the State of California for use in this Grant Program. A Memorandum of Understanding between NMFS and the State of California governs the expenditure of these funds, some of which have already been allocated for the habitat restoration projects within the geographic range of the endangered Southern California steelhead ESU.

**Final Determination**

Based on the best scientific information available at the time of listing in 1997, NMFS concluded that the Southern California steelhead ESU, as it was then defined (i.e., Santa Maria River to and including Malibu Creek), was in danger of extinction and should be listed as an endangered species (621 FR 43937). This determination was based on the fact that steelhead had already been extirpated from much of its historic range in southern California, the extremely low abundance of extant steelhead populations, and the continued threats to the species from widespread habitat degradation and loss, water diversions and extraction, and other factors. As discussed previously in this document, there is no new information indicating that steelhead populations occurring in watersheds ranging from the Santa Maria River to Malibu Creek have increased in abundance since the ESU was listed in 1997, and populations in this geographic area continue to be threatened by the same factors that existed at the time of listing.

Steelhead are almost completely extirpated from coastal watersheds south of Malibu Creek, with the exception of their recent observations in Topanga Creek and San Mateo Creek, and they occur only sporadically or in extremely low abundance in those streams. As discussed previously, most of the coastal rivers and streams south of Malibu Creek are highly impacted or modified and no longer support steelhead. Where steelhead have recently been found in San Mateo Creek, there are potential threats to their existence from land management activities on Cleveland National Forest and the Camp Pendleton Marine Corps Base.

Based on a review of the currently available information regarding the status of steelhead in the redefined Southern California ESU, as well as a consideration of the factors affecting steelhead throughout this geographic area, NMFS concludes that Southern

California steelhead ranging from the Santa Maria River to the southern extent of this life form's range continue to be endangered. As was the case in NMFS' 1997 listing determination, only the anadromous form of *O. mykiss* (i.e. steelhead and their progeny) ranging from the Santa Maria River to the southern extent of this life form's range is listed.

As discussed previously in this document, the currently available information indicates that anadromous *O. mykiss* or their progeny have only been found in two watersheds located south of Malibu Creek (Topanga Creek and San Mateo Creek). NMFS believes that steelhead have been extirpated from virtually all other streams and rivers between Malibu Creek and San Mateo Creek, including the Los Angeles River, San Gabriel River, Santa Ana River, and San Juan Creek, because viable habitat is extremely limited or no longer exists as a result of habitat degradation. For these reasons, NMFS does not expect that steelhead will be found to occupy these watersheds in the future absent major restoration efforts. Nevertheless, if steelhead or their progeny are found to occur in any stream or river between Malibu Creek and San Mateo Creek, NMFS will consider those fish to be part of the listed populations, and, therefore, protected under the ESA. Because anadromous *O. mykiss* may potentially stray to streams south of San Mateo Creek when hydrological and other habitat conditions are favorable, NMFS will also consider steelhead or their progeny that occur south of San Mateo Creek to be part of the listed ESU unless there is evidence to indicate they are non-listed resident forms or derived from hatchery rainbow trout populations.

**Prohibitions and Protective Measures**

Section 9 of the ESA prohibits certain activities that directly or indirectly affect endangered species. These prohibitions apply to all individuals, organizations, and agencies subject to U.S. jurisdiction. Section 9 prohibitions apply automatically to endangered species such as Southern California steelhead throughout its freshwater, estuarine, and marine range.

Sections 7(a)(2) and 7(a)(4) of the ESA require Federal agencies to consult with NMFS to ensure that activities they authorize, fund, or conduct are not likely to jeopardize the continued existence of a listed species or a species proposed for listing, or adversely modify critical habitat or proposed critical habitat. Federal agencies and actions that may be affected by the revision of the Southern California steelhead ESU and its critical habitat designation are the U.S. Forest Service (USFS) and their management and regulatory activities in Cleveland National Forest, the U.S. Marine Corps and its operation and management of Camp Pendleton Marine Corps Base, and the Corps of Engineers (COE) and its issuance of permits under the Clean Water Act.

Sections 10(a)(1)(A) and 10(a)(1)(B) of the ESA provide NMFS with authority to grant exceptions to the ESA's ''take'' prohibitions. Section 10(a)(1)(A) scientific research and enhancement permits may be issued to entities (Federal and non-Federal) for scientific purposes or to enhance the propagation or survival of a listed species. NMFS has issued section 10(a)(1)(A) research/enhancement permits for listed salmonids, including Southern California steelhead, to conduct activities such as trapping and tagging and other research and monitoring activities.

Section 10(a)(1)(B) incidental take permits may be issued to non-Federal entities conducting activities which may incidentally take listed species so long as the taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. The types of activities potentially requiring a section 10(a)(1)(B) incidental take permit include the operation and release of artificially propagated fish by state or privately operated and funded hatcheries, state regulated angling, academic research not receiving Federal authorization or funding, road building, grazing, and diverting water onto private lands.

**NMFS Policies on Endangered and Threatened Fish and Wildlife**

On July 1, 1994, NMFS and FWS published a policy in the **Federal Register** (59 FR 34272) indicating that the agencies would, to the maximum extent practicable at the time a species is listed, identify those activities that will not be considered likely to result in violations of section 9, as well as activities that will be considered likely to result in violations. NMFS believes that, based on the best available information, the following actions will not result in a violation of section 9 with regard to Southern California steelhead:

1. Possession of steelhead which are acquired lawfully by permit issued by NMFS pursuant to section 10 of the ESA, or by the terms of an incidental take statement pursuant to section 7 of the ESA.

2. Federally funded or approved projects that involve activities such as military operations, agriculture, grazing, mining, road construction, discharge of fill material, stream channelization or diversion for which section 7 consultation has been completed, and when activities are conducted in accordance with any terms and conditions provided by NMFS in an incidental take statement accompanying a biological opinion.

3. Incidental take of steelhead authorized through a section 10(a)(1)(B) permit which occurs in the course of an otherwise lawful activity.

Activities that NMFS believes could potentially harm Southern California steelhead, and, therefore, may violate the section 9 take prohibitions of the ESA include, but are not limited to:

1. Land-use activities that adversely affect steelhead habitat (e.g., agriculture, water extraction, recreational activities, road construction in riparian areas and areas susceptible to mass wasting and surface erosion).

2. Destruction/alteration of steelhead habitat, such as removal of woody debris or riparian shade canopy, dredging, discharge of fill material, draining, ditching, diverting, blocking, or altering stream channels or surface or ground water flow.

3. Discharges or dumping of toxic chemicals or other pollutants (e.g., sewage, oil, gasoline) into waters or riparian areas supporting steelhead.

4. Violation of discharge permits.

5. Pesticide applications.

6. Collecting or handling of steelhead. Permits to conduct these activities are available for purposes of scientific research or to enhance the propagation or survival of the species.

7. Introduction of non-native species likely to prey on steelhead or displace them from their habitat.

These lists are not exhaustive. They are intended to provide some examples of the types of activities that might or might not be considered by NMFS as constituting a prohibited take of Southern California steelhead. Questions regarding whether specific activities may constitute a violation of the section 9 take prohibitions, and general inquiries regarding prohibitions and permits, should be directed to NMFS (see **ADDRESSES**).

**Critical Habitat**

Section 4(a)(3)(A) of the ESA requires that, to the maximum extent prudent and determinable, NMFS designate critical habitat concurrently with a determination that a species is endangered or threatened. In accordance with this requirement, NMFS designated freshwater and estuarine critical habitat for the endangered

Southern California steelhead ESU in February 2000 that ranges from the Santa Maria River southward to and including Malibu Creek (65 FR 7764).

NMFS believes there is insufficient information at present to determine if all or some of the freshwater habitat south of Malibu Creek, whether occupied or unoccupied, is essential for the conservation of this ESU because only two coastal watersheds south of Malibu Creek are currently known to support anadromous *O. mykiss*, including San Mateo Creek which is well separated from the remainder of the populations in the listed ESU. Prior to making any determination regarding the modification of the existing critical habitat designation, NMFS intends to complete an analysis of the full range of habitat, both occupied and unoccupied, that is essential for the conservation and recovery of this ESU. NMFS expects that this effort will be conducted in conjunction with the development of biological recovery goals for this ESU by a NMFS appointed recovery team.

In conjunction with these efforts, NMFS intends to work with Federal land managers in the San Mateo Creek watershed (i.e. Camp Pendleton Marine Corps Base and Cleveland National Forest) to review and evaluate their existing land management and habitat protection programs to determine the extent to which they protect steelhead and their habitat in the San Mateo Creek watershed.

## References

A complete list of all cited references is available upon request (see **ADDRESSES**).

## Classification

*National Environmental Policy Act*

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in Pacific Legal Foundation v. Andrus, 675 F. 2d 825 (6th Cir. 1981), NMFS has concluded that ESA listing actions are not subject to the environmental assessment requirements of the National Environmental Policy Act (NEPA). See NOAA Administrative Order 216-6.

*Executive Order 12866 and Regulatory Flexibility Act*

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. In addition this final rule is exempt from review under Executive Order 12866.

*Paperwork Reduction Act*

This final rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

*Executive Order 13132 - Federalism*

In keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual State and Federal interest, NMFS has conferred with state and local government agencies in the course of assessing the status of this ESU, and considered, among other things, state and local conservation measures. State and local governments have expressed support for both the conservation of this ESU and for those activities which affect it. NMFS staff have had discussions with various government agency representatives regarding the status of this ESU and have sought working relationships with them in order to promote restoration and conservation of this and other ESUs.

## List of Subjects in 50 CFR Part 224

Administrative practices, and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: April 18, 2002.

**William T. Hogarth,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set forth in the preamble, 50 CFR part 224 is amended as follows:

## PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 224 continues to read as follows:

**Authority:** 16 U.S.C. 1531-1543; and 16 U.S.C. 1361 *et seq.*

2. In § 224.101, paragraph (a) is revised to read as follows:

### § 224.101 Enumeration of endangered marine and anadromous species.

* * * * *

(a) *Marine and anadromous fish.* Shortnose sturgeon (*Acipenser brevirostrum*); Totoaba (*Cynoscian macdonaldi*); Snake River sockeye salmon (*Oncorhynchus nerka*); Southern California steelhead (*Oncorhynchus mykiss*), which includes all naturally spawned populations of steelhead (and their progeny) in streams from the Santa Maria River, San Luis Obispo County, CA (inclusive) to the U.S. - Mexico Border; Upper Columbia River steelhead (*Oncorhynchus mykiss*), including the Wells Hatchery stock and all naturally spawned populations of steelhead (and their progeny) in streams in the Columbia River Basin upstream from the Yakima River, Washington, to the U.S. - Canada Border; Upper Columbia River spring-run chinook salmon (*Oncorhynchus tshawytscha*), including all naturally spawned populations of chinook salmon in Columbia River tributaries upstream of the Rock Island Dam and downstream of Chief Joseph Dam in Washington (excluding the Okanogan River), the Columbia River from a straight line connecting the west end of the Clatsop jetty (south jetty, Oregon side) and the west end of the Peacock jetty (north jetty, Washington side) upstream to Chief Joseph Dam in Washington, and the Chiwawa River (spring run), Methow River (spring run), Twisp River (spring run), Chewuch River (spring run), White River (spring run), and Nason Creek (spring run) hatchery stocks (and their progeny); Sacramento River winter-run chinook salmon (*Oncorhynchus tshawytscha*).

* * * * *

[FR Doc. 02–10773 Filed 4–30–02; 8:45 am]

BILLING CODE 3510–22–S

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 622

**[I.D. 010302D]**

**RIN 0648–AL86**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Comprehensive Sustainable Fishery Act Amendment to the Fishery Management Plans of the U.S. Caribbean

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

**ACTION:** Notice of agency action.

**SUMMARY:** NMFS has disapproved the Comprehensive Amendment Addressing Sustainable Fishery Act Definitions and Other Required Provisions of the Magnuson-Stevens Act in the Fishery Management Plans of the U.S. Caribbean (Comprehensive SFA Amendment) submitted by the Caribbean Fishery Management Council (Council). Under the procedures of the Magnuson-Stevens

Fishery Conservation and Management Act (Magnuson-Stevens Act), NMFS determined that the Comprehensive SFA Amendment was inconsistent with the requirements of the Sustainable Fisheries Act of 1996 (SFA) and the National Environmental Policy Act (NEPA).

**FOR FURTHER INFORMATION CONTACT:** Peter Eldridge, telephone: 727–570–5305; fax: 727–570–5583; e-mail: Peter.Eldridge@noaa.gov.

**SUPPLEMENTARY INFORMATION:** The SFA requires NMFS and the Councils to comply with new overfishing, rebuilding, and bycatch provisions. Fishery Management Plans (FMPs) are required to assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from each fishery. FMPs must assess and satisfy the nature and extent of scientific data, which is needed for effective implementation of the plan. Also, the SFA requires fishery managers to establish a standardized reporting methodology to assess the amount and type of bycatch occurring in fisheries. Conservation and management measures shall, to the extent practicable, minimize bycatch and, to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

The Council subsequently developed and submitted a Comprehensive SFA Amendment that addressed SFA requirements for Caribbean FMPs. On January 25, 2002, NMFS published a notice of availability (NOA) of the Comprehensive SFA Amendment to the Caribbean FMPs and requested public comments through March 26, 2002 (67 FR 3679).

On April 25, 2002, after considering extensive comments received during the public comment period for the amendment, NMFS disapproved the Caribbean Comprehensive SFA Amendment primarily because NMFS believes that an environmental impact statement (EIS) should be developed that provides a more comprehensive set of alternatives for SFA parameters, rebuilding schedules, and bycatch reporting standards. A summary of comments received and responses is given below.

## Comments and Responses

Three environmental organizations, 60 individual commenters and one petition with 548 individuals listed provided a similar set of comments on the Comprehensive SFA Amendment.

*Comment 1*: One environmental organization stated, ''In its current state, the Comprehensive Amendment violates the SFA, fails to prevent overfishing, fails to rebuild fish populations, and fails to address the fishery's bycatch problem. Hence, in its current state, the Comprehensive Amendment is a major federal action significantly adversely affecting the environment. On the other hand, should NMFS choose to revise the Comprehensive Amendment so as to comply with the SFA, it would be a major federal action significantly benefitting the human environment. Either, way, NMFS must develop an EIS.''

*Response*: NMFS does not completely endorse all aspects of the comment. Nonetheless, the comment highlights the importance of the Amendment and is persuasive that additional alternatives should be considered to produce a better document. NMFS, working with the Council, intends to develop an EIS on the above issues and incorporate the findings of the EIS into a revised Comprehensive SFA Amendment that will address the concerns noted in public comments.

*Comment 2*: Two environmental organizations noted that the SFA mandates that fishery managers ≥establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery.≥ The national standard guidelines also require that ''[a] review and, where necessary, improvement of data collection methods, data sources, and application of data must be initiated for each fishery to determine the amount, type, disposition, and other characteristics of bycatch and bycatch mortality in each fishery.'' The organizations recommended that the NMFS disapprove this aspect of the Comprehensive SFA Amendment.

*Response*: NMFS agrees. Bycatch reporting will be addressed in the revised Amendment.

*Comment 3*: One environmental organization recommended that commercial landings in the U.S. Virgin Islands be reported by species rather than gear. Further, such landings should be reported similar to those in Puerto Rico.

*Response*: NMFS agrees that commercial landings, wherever possible, should be reported by species or species groups, but notes that this could require additional resources. This issue will be addressed in the revised Amendment.

*Comment 4*: All commenters objected to the way that the reef fish SFA parameters (maximum sustainable yield, optimum yield, minimum stock size threshold, and maximum fishing mortality threshold) were developed by using only the average landings for the period 1983 through 1999. They noted that landings for many species had declined during that period and that there was reason to believe that some species were either overfished or undergoing overfishing. They believe that the assumption that the current levels of harvest are sustainable is incorrect and would continue overfishing as well as prevent rebuilding of overfished stocks. Further, they recommended that average landings developed from either a 4–year or 8–year time period would provide better results.

*Response*: Due to the data-poor nature of fisheries in the Caribbean, it is not clear which series of landings data would provide the best SFA proxies. Despite this, it is reasonable to consider alternative series of landings, and this will be done in the revised Amendment.

*Comment 5*: Commenters noted that the Comprehensive SFA Amendment did not contain regulatory measures that would immediately address overfishing or overfished species. They stated that the Amendment should have and cited this as a deficiency.

*Response*: Upon consideration of the public comments received, NMFS believes that it would be appropriate to consider regulatory measures, including rebuilding schedules, in the revised Amendment that would address overfishing and overfished species. It should be noted that Amendment 2 to the Queen Conch FMP, currently under development, would prohibit the possession and harvest of queen conch in the EEZ until this resource is rebuilt.

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

Dated: April 25, 2002.

**William T. Hogarth,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 02–10692 Filed 4–30–02; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

**[Docket No. 011218304-2062-02; I. D. 121701A]**

**RIN 0648-AP69**

## Fisheries of the Exclusive Economic Zone Off Alaska; Steller Sea Lion Protection Measures and 2002 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries off Alaska; Amendment and Correction

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

**ACTION:** Emergency interim rule; amendment, correction, and request for comments.

**SUMMARY:** This document amends and corrects a January 8, 2002, emergency interim rule implementing Steller sea lion protection measures and 2002 harvest specifications for the Alaska groundfish fisheries by making corrections to the preamble and regulatory text. Preamble corrections are needed to accurately describe the regulatory text and to correct typographical errors. Regulatory amendments and revisions are needed to clarify the intent of requirements and to correct cross references.

**DATES:** Effective May 1, 2002, except for the correction of § 679.7(a)(18), the suspension of § 679.28(f)(3)(ii), and the correction of § 679.28(f)(3)(viii), which will be effective 1200 hours A.l.t. on June 10, 2002, through July 8, 2002, and the suspension of § 679.7(f)(8), the addition of § 679.7(f)(16), the suspension of § 679.28(f)(3)(iv), the addition of § 679.28(f)(3)(ix), the suspension of § 679.50(c)(4)(vi)(B), and the addition of § 679.50(c)(4)(vi)(C), which will be effective May 1, 2002 through July 8, 2002.

Comments must be received on or before 5 p.m., A.l.t., May 31, 2002.

**ADDRESSES:** Comments must be sent to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel-Durall, or delivered to room 401 of the Federal Building, 709 West 9th Street, Juneau, AK. Comments will not be accepted if submitted via e-mail or Internet. Copies of the Supplemental Environmental Impact Statement on Steller Sea Lion Protection Measures in the Federal Groundfish Fisheries Off Alaska (SEIS), including the 2001 biological opinion and regulatory impact review, and the Environmental Assessment (EA) for the Total Allowable Catch for the Year 2002 Alaska Groundfish Fisheries may be obtained from the same address. The SEIS and EA are also available on the NMFS Alaska Region home page at http://www.fakr.noaa.gov.

**FOR FURTHER INFORMATION CONTACT:** Melanie Brown, NMFS, 907–586–7228 or e-mail at melanie.brown@noaa.gov.

**SUPPLEMENTARY INFORMATION:** The emergency interim rule published January 8, 2002 (67 FR 956), implements Steller sea lion protection measures and final 2002 harvest specifications for the groundfish fisheries of the Bering Sea and Aleutian Islands management area (BSAI) and the Gulf of Alaska (GOA). As published, the final rule inadvertently contained errors in the preamble and regulatory text. This document corrects the preamble and amends and revises regulatory text and tables.

### Corrections to the Preamble

This document corrects the preamble to clarify the definition of the harvest limit area (HLA) for the Atka mackerel platoon fisheries and to clarify the geographical extent of the Atka mackerel directed fishing restrictions in Bering Sea critical habitat areas. First, NMFS notes that the definition of the HLA at § 679.2 includes critical habitat around Tanaga Island/Bumpy Point extending west of 178° W. long., even though the site is located east of 178° W. long. The preamble is corrected to include within the HLA these waters of Tanaga Island/Bumpy Point critical habitat.

In addition, Atka mackerel directed fishing closure east of 178° W long. was erroneously described as ''west'' of 178° W. long. in the preamble to the emergency interim rule. This error is corrected by this action.

NMFS further notes that § 679.22 imposes Atka mackerel directed fishing restrictions in the Bering Sea critical habitat areas only for those critical habitat waters within 20 nautical miles (nm) of listed rookeries and haulouts located in the Bering Sea subarea. These corrections will make the preamble language consistent with the regulatory text at § 679.22. A large portion of the Steller Sea Lion Conservation area (SCA) also is listed as critical habitat in the Bering Sea under 50 CFR 226.202, but this was not intended by the Council or NMFS to be included in the Atka mackerel directed fishing critical habitat closures. The preamble in the January 8, 2002, emergency interim rule did not explain that the regulation excludes the SCA waters from the Atka mackerel critical habitat closures in the Bering Sea subarea.

The language regarding the nontrawl Pacific cod fishing season is corrected and expanded to include the description of the seasons consistent with the regulatory text at § 679.23. This expanded description was erroneously omitted from the preamble.

The language describing the State of Alaska restrictions around rookeries is corrected to clarify that the State restricts only commercial fishing around these rookeries, rather than the transit of vessels.

The heading on Table 5 for the ''A season'' was erroneously printed above only the ''A DFA (40% of annual DFA)'' column heading. The ''A season'' column heading should also appear above the ''SCA'' column heading and is extended over this column by this correction.

The year in the title to Table 7 reads ''2001'' and is corrected to read ''2002''. Footnote 2 to Table 7 has a typographical error that is also corrected with this action.

Table 9 included a footnote 7 stating that unused halibut PSC for Pacific cod vessels using nontrawl gear would be available in the following season. The Council and NMFS intend that no halibut PSC should be available from June 10 through August 15 because of high halibut bycatch rates at this time of the year. Should this emergency interim rule be extended, unused portions of halibut PSC may be available during the following season after August 15.

Table 12 did not indicate the full A season allocation in the SCA for cooperative sector vessels equal to or less than 99 ft (30.2 m) length overall (LOA). This document corrects the amounts for all cooperative sector vessels for the A season inside the SCA.

The footnote to Table 24 did not accurately describe the time period of no apportionment for Pacific halibut prohibited species catch limits. The footnote describes the time period as the ''4th quarter'' which is the period from September 1 through October 1. No apportionment for the shallow-water and deep-water fishery complexes is available during October 1 through December 31. This document corrects the footnote to describe the correct apportionment period.

### Corrections and Amendments to the Regulatory Text in the Emergency Interim Rule

In § 679.2, the definition of the harvest limit area (HLA) is corrected to

include the sites located west of 177° 57.00' W. long. The coordinate in the definition was intended to include all of Tanaga Island/Bumpy Point. The definition, which was intended to include all of Tanaga Island/Bumpy Point, did not take into account the eastern boundary coordinate for Tanaga Island/Bumpy Point.

Section 679.7(a) is corrected to clarify the vessel monitoring system (VMS) requirement and fishing prohibition. The reference to gear types is removed because the information exists in § 679.4. The prohibition is corrected to include the operation of a vessel rather than conducting directed fishing for groundfish or IFQ halibut to ensure that all vessels endorsed for the Pacific cod, pollock, or Atka mackerel directed fisheries are subject to the prohibition, even while harvesting fish of other species such as crab, salmon, or lingcod. This also ensures that a vessel unloading fish or processing fish in port will also be required to operate its VMS. The prohibition is also made applicable in the BSAI and GOA reporting area by this correction, so that State of Alaska waters are included in the area covered by this prohibition as intended by NMFS and the Council. A vessel endorsed for the Pacific cod, Atka mackerel, or pollock fishery must operate VMS when the fishery the vessel is endorsed for is open so that NMFS is able to monitor compliance with the closures in waters, including the State of Alaska waters, around haulouts, rookeries, and foraging areas.

Section 679.7(f) is amended to clarify the prohibition against discard of Pacific cod for participants in the IFQ halibut fishery. If a vessel is registered under § 679.4 to directed fish for Pacific cod, then it is required to retain all catches of Pacific cod if the directed fishery is open, and up to the maximum retainable amount (MRA) if the directed Pacific cod fishery is closed. If a vessel used in the IFQ halibut fishery is not registered for the Pacific cod directed fishery, it is required to discard Pacific cod once the amount of Pacific cod harvested has reached the MRA specified at § 679.20. This paragraph is amended to state that vessels not registered for the Pacific cod directed fishery are not prohibited from discarding Pacific cod.

Section 679.20 (a)(7)(ii)(D) and (a)(7)(ii)(E) describe methods of reallocating unused Pacific cod trawl allocations and contain incorrect or incomplete allocation references. Paragraph (a)(7)(ii)(D) did not include a reference to paragraph (a)(7)(iii)(D) which establishes the seasonal apportionments and gear allocations applicable to reallocation under this paragraph. Paragraph (a)(7)(ii)(E) contains an erroneous reference to Pacific cod non-trawl gear allocations, which is not applicable to trawl gear reallocations. This action corrects these reallocation paragraphs to reference only those paragraphs establishing applicable trawl allocations.

In § 679.22(a)(11)(v), an ''and'' instead of an ''or'' was erroneously used in listing the gear types subject to the regulation. The closure implemented by § 679.22(a)(11)(v) applies to vessels using any one of the gear types listed rather than all of the gear types listed. This error is corrected by revising this paragraph.

Section 679.22(b)(3)(iii) is revised to specify those vessels that are prohibited from directed fishing for Pacific cod in the Pacific cod no fishing zones. The closure applies to all vessels in these zones within the exclusive economic zone and to vessels that have been issued Federal fishery permits and are participating in the State of Alaska parallel groundfish fisheries. However, vessels with Federal fisheries permits participating in the State-managed Pacific cod fishery are not prohibited from fishing in the Pacific cod no fishing zones in the GOA. The Steller sea lion protection measures were not intended to apply to the State-managed Pacific cod fishery, and this correction clarifies the application of the Pacific cod no fishing zones.

Section 679.28(f)(3) is amended to clarify the VMS reporting and transmission confirmation requirements for vessels that will initially enter a fishery that requires VMS and for vessels that may replace a VMS. Paragraph (f)(3)(ii) is suspended starting June 10, 2002, because requirements in this paragraph are clarified and contained in § 679.28(f)(3)(viii). As part of the reasonable and prudent measures in the 2001 Biological Opinion, NMFS is required to monitor the location of vessels with Federal Fisheries permit endorsements for the Atka mackerel, pollock, and Pacific cod directed fisheries. The vessel owner is required to provide information specified in § 679.28(f)(3)(viii) by FAX and receive confirmation that the VMS transmission is being received before operating his or her vessel during an open directed fishery for which the vessel is endorsed. For vessels that are initially entering a fishery that requires VMS, the vessel owner will be required to receive confirmation of transmission 72 hours before leaving port to allow time to make repairs or to ensure that the transmission is being received before the vessel enters the fishing grounds. Because a number of vessels with Pacific cod Federal Fishery Permit endorsements may also participate in other commercial fisheries, including crab, salmon, or lingcod, the correction includes the notification of when the vessel will begin operation, consistent with the prohibition on operation without a VMS under § 679.7(a)(18). A vessel may not operate in a BSAI or GOA reporting area until the transmission is confirmed, consistent with § 679.7(a)(18). Section 679.28(f)(3)(iv) is suspended and § 679.28(f)(3)(ix) is added to clarify that a vessel is required to stop fishing when informed only by an authorized officer that position reports are not being received, rather than being informed by NMFS staff.

Section 679.50(c)(4)(vi)(B) is amended to clarify that the observer requirement applies to motherships and catcher/processors participating in a directed CDQ fishery. The paragraph as promulgated in the January 8, 2002, emergency interim rule applies to all motherships and catcher/processors instead of to only those processor vessels participating in the CDQ program.

In Table 23 of this part, footnote 11 describing the Pacific cod trawling closures during the Atka mackerel HLA directed fishery does not accurately describe the waters where the closures apply. The 20-nm closure around Gramps Rock was intended by the Council and NMFS only for waters west of 178° W. long. The footnote is corrected by this action. Also, the table heading on the last page of Table 23 is removed as it contains no data. Only the remaining text of footnote 5 though footnote 11 should be carried over.

**Corrections**

In the emergency interim rule implementing Steller sea lion protection measures and final 2002 harvest specifications for the groundfish fisheries of the BSAI and the GOA, published on January 8, 2002 (67 FR 956, FR Doc. 01-32251), corrections are made as follows:

1. On page 961, column 1, in the last two lines of paragraph 3, (h) is corrected to read as follows: ''... and (h) no directed fishing with trawl gear for Atka mackerel in critical habitat east of 178° W. long.''

2. On page 961, column 2, in the continuation of paragraph 4, the last two lines are corrected to read as follows: ''... and (f) closure of all BS subarea critical habitat within 20 nm of rookeries and haulouts to directed fishing for Atka mackerel with trawl gear.''

3. On page 965, column 1, in the first complete paragraph, the second sentence is corrected to read as follows: ''For purposes of Atka mackerel platooning and for restriction of directed fishing for Pacific cod with trawl gear during the Atka mackerel HLA directed fishery, the definition of the HLA is waters located west of 178° long. within 20 nm seaward of Steller sea lion sites listed in Table 24 of 50 CFR part 679 and located west of 177°57.00 W. long.''

4. On page 965, column 1, in the second complete paragraph, the first sentence is corrected to read as follows: ''Atka mackerel directed fishing is prohibited in the Seguam foraging area and critical habitat surrounding rookeries and haulouts, east of 178° W. long. to provide maximum protection to Steller sea lions and because Atka mackerel is readily available in waters outside of critical habitat.''

5. On page 965, column 3, paragraph 5, the fourth sentence is corrected to read as follows: ''The B season for vessels equal to or greater than 60 ft (18.3 m) LOA using hook-and-line gear and vessels using jig gear in the BSAI begins at 1200 hours, A.l.t., on June 10 and ends on December 31. The B season for vessels using hook-and-line, pot, or jig gear in the GOA and vessels equal to or greater than 60 ft (18.3 m) LOA using pot gear in the BSAI begins at 1200 hours, A.l.t., on September 1 and ends on December 31.''

6. On page 967, column 2, the first paragraph, the last sentence is corrected to read as follows: ''The State-managed and State parallel fisheries through emergency orders and regulations prohibit commercial fishing in waters within 3 nm of all of the rookeries listed on Table 21.''

7. On page 968, column 1, under the Bering Sea Closures section, paragraph 1, the first sentence is corrected to read as follows: ''1. Directed fishing for Atka mackerel by federally permitted vessels using trawl gear is prohibited in critical habitat within 20 nm of rookeries and haulouts in the Bering Sea subarea.''

8. On page 974, Table 5 is corrected so that the ''A season'' heading appears above both the ''A DFA'' and the ''SCA limit'' columns to read as follows:

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TABLE 5.–ALLOCATIONS OF THE POLLOCK TAC AND DIRECTED FISHING ALLOWANCE (DFA) TO THE INSHORE, CATCHER/PROCESSOR, MOTHERSHIP, AND CDQ COMPONENTS[1]
[All amounts are in metric tons]

| Area and Sector | 2002 DFA | A Season[1] | | B Season[1,2] |
|---|---|---|---|---|
| | | A DFA (40% of Annual DFA) | SCA limit[3] | B DFA (60% of Annual DFA) |
| Bering Sea subarea | 1,485,000 | 594,000 | | 891,000 |
| CDQ | 148,500 | 59,400 | 41,580 | 89,100 |
| ICA[4] | 53,460 | ---------- | ---------- | ---------- |
| AFA Inshore | 641,520 | 256,608 | 179,626 | 384,912 |
| AFA C/Ps[5] | 513,216 | 205,286 | 143,700 | 307,930 |
| Catch by C/Ps | 469,593 | 187,837 | ---------- | 281,756 |
| Catch by CVs[5] | 43,623 | 17,449 | ---------- | 26,174 |
| Restricted C/P cap[6] | 2,566 | 1,026 | ---------- | 1,540 |
| AFA Motherships | 128,304 | 51,322 | 35,925 | 76,982 |
| Excessive shares cap[7] | 224,532 | ---------- | ---------- | ---------- |
| Aleutian Islands ICA[8] | 900 | | | |
| Bogoslof District ICA[8] | 90 | | | |

[1]After subtraction for the CDQ reserve and the incidental catch allowance, the pollock TAC is allocated as a DFA as follows: inshore component - 50 percent, catcher/processor component - 40 percent, and mothership component - 10 percent. Under paragraph 206(a) of the AFA, the CDQ reserve for pollock is 10 percent. NMFS, under regulations at § 679.24(b)(4), prohibits nonpelagic trawl gear to engage in directed fishing for non-CDQ pollock in the BSAI. The A season, January 20 - June 10, is allocated 40 percent of the DFA and the B season, June 10 - November 1 is allocated 60 percent of the DFA.

[2] This emergency interim rule expires on July 8, 2002, before the B season will conclude. Therefore, the B season is not fully authorized unless the emergency interim rule is extended or superceded.

[3] The SCA limits harvest to 28 percent of each sectors annual DFA until April 1. The remaining 12 percent of the annual DFA allocated to the A season may be taken outside of the SCA before April 1 or inside the SCA after April 1. If the 28 percent of the annual DFA is not taken inside the SCA before April 1, the remainder is available to be taken inside the SCA after April 1.

[4] The pollock incidental catch allowance for the BS subarea is 4 percent of the TAC after subtraction of the CDQ reserve.

[5] Subsection 210(c) of the AFA requires that not less than 8.5 percent of the directed fishing allowance allocated to listed catcher/processors (C/Ps) shall be available for harvest only by eligible catcher vessels (CVs) delivering to listed catcher/processors.

[6]The AFA requires that vessels described in section 208(e)(21) be prohibited from exceeding a harvest amount of one-half of one percent of the directed fishing allowance allocated to vessels for processing by AFA catcher/processors.

[7]Paragraph 210(e)(1) of the AFA specifies that "No particular individual, corporation, or other entity may harvest, through a fishery cooperative or otherwise, a total of more than 17.5 percent of the pollock available to be harvested in the directed pollock fishery."

[8] Consistent with the Steller sea lion protection measures, the Aleutian Islands subarea and the Bogoslof District are closed to directed fishing for pollock. The amounts specified are for incidental catch amounts only, and are not apportioned by season or sector.

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9. On pages 975 and 976, in the title to Table 7, the year ''2001'' is corrected to read ''2002''.

10. On page 976, Table 7, the last sentence in footnote 2 is corrected to read as follows: ''Any unused portion of a seasonal Pacific cod allowance will be reapportioned to the next seasonal allowance.''

11. On page 978, Table 9, footnote 7 is corrected to read as follows: ''[7]With the exception of the nontrawl Pacific cod directed fishery, any unused halibut PSC apportionment may be added to the following season's apportionment. Any unused halibut PSC apportioned to the nontrawl Pacific cod directed fishery during the January 1 through June 10 time period will not be available until after August 15.''

12. On page 980, Table 12, in the third column of the table under the heading the A season inside SCA in the first line, ''161,601'' is corrected to read ''154,025'' and in the second line, ''17,675'' is corrected to read ''25,250''.

13. On page 992, Table 24, the footnote is corrected to read as follows: ''No separate apportionment to shallow-water and deep-water fishery complexes during October 1 to December 31.''

## Classification

The Administrator, Alaska Region, NMFS (Regional Administrator), has determined that this amendment is necessary for the conservation and management of the groundfish fisheries of the BSAI and GOA. The Regional Administrator also has determined that this amendment is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws. No relevant Federal rules exist that may duplicate, overlap, or conflict with this action.

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

Consistent with the National Environmental Policy Act (NEPA), NMFS prepared an EA for the total allowable catch specifications portion of the January 8, 2002, emergency interim rule. NMFS also prepared an SEIS for the Steller sea lion protection measures; a notice of availability of the draft SEIS was published in the Federal Register on August 31, 2001 (66 FR 45984). Comments were received and responded to in the final SEIS and the final document was issued November 23, 2001 (66 FR 58734). The final SEIS and EA are available from NMFS (see **ADDRESSES**). Based on a comparison of the effects of the other alternatives in the SEIS, NMFS determined that this action meets the requirements of the Endangered Species Act (ESA) with regard to Steller sea lion protection. Potential adverse impacts on marine mammals resulting from fishing activities conducted under the emergency interim rule (67 FR 956, January 8, 2002) are discussed in the EA and final SEIS. The corrections and amendments in this action are within the scope of these NEPA analyses.

A formal section 7 consultation under the ESA was initiated for the emergency interim rule (67 FR 956, January 8, 2002) under the FMPs for the groundfish fisheries of the BSAI and the GOA. In a biological opinion dated October 17, 2001, NMFS determined that fishing activities conducted under the Steller sea lion protection measures implemented by the emergency interim rule (67 FR 956, January 8, 2002) are not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat. The determination based on biological opinions dated December 22, 1999, and December 23, 1999, was extended for 1 year from January 1, 2002, to January 1, 2003, for purposes of the harvest specifications implemented by the January 8, 2002, emergency interim rule. These amendments and corrections are consistent with the objectives for Steller sea lion protection measures implemented in 2001 under section 209(c)(6) of Pub. L. 106-554, the ESA, and other applicable laws, and will not affect listed species or critical habitat in any manner not previously evaluated in prior consultations.

By this action, NMFS is correcting the 2002 harvest specifications and Steller sea lion protection measures which have been in effect since January 1, 2002, for the BSAI and GOA. These amendments and corrections clarify to whom and where the regulations apply and eliminate inconsistencies in regulations for activities currently being conducted pursuant to emergency regulations, published on January 8, 2002, (67 FR 956). A delay in implementing these corrections and amendments would continue to impose inconsistent regulatory requirements on regulated fishermen. Additionally, if prior notice and an opportunity for public comment was afforded, the underlying rule being amended and corrected by this rule might no longer be effective and then the changes implemented by this emergency interim rule might be moot. Accordingly, good cause exists to forego public notice and comment pursuant to 5 U.S.C. 553(b)(3). For the same reasons, good cause exists to waive the delay in the effective date pursuant to 5 U.S.C. 553(d)(3). Because prior notice and opportunity for public comment are not required for this amendment to the emergency interim rule by 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* are not applicable. Therefore, a regulatory flexibility analysis has not been prepared.

## List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: April 25, 2002.

**William T. Hogarth,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For reasons set out in the preamble, 50 CFR part 679 is amended as follows:

## PART 679--FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Title II of Division C, Pub. L. 105-277; Sec. 3027, Pub. L. 106-31; 113 Stat. 57; 16 U.S.C. 1540(f); and Sec. 209, Pub. L. 106-554.

### § 679.2 [Corrected]

2. On page 999, in the second column, in § 679.2, in the definition for Harvest limit area, the last line, the coordinate ''177.58° W. long.'' is corrected to read ''177°57.00′ W. long.''.

3. On page 999, beginning in the third column, in § 679.7, paragraph (a)(18) is corrected to read as follows:

### § 679.7 Prohibitions.

* * * * *

(a) * * *

(18) *Pollock, Pacific cod, and Atka mackerel directed fishing and VMS* (applicable 1200 hours A.l.t., June 10, 2002, through July 8, 2002). Operate a vessel which is authorized under § 679.4 (b)(5)(v) to participate in the Atka mackerel, Pacific cod or pollock directed fisheries in any BSAI or GOA reporting areas, unless the vessel carries an operable NMFS-approved Vessel Monitoring System (VMS) transmitter and complies with the requirements in § 679.28(f).

* * * * *

4. In § 679.7, paragraph (f)(8) is suspended May 1, 2002, through July 8, 2002, and paragraph (f)(16) is added May 1, 2002, through July 8, 2002, to read as follows:

### § 679.7 Prohibitions.

* * * * *

(f) * * *

(16) (Applicable May 1, 2002, through July 8, 2002) Discard Pacific cod or

rockfish that are taken when IFQ halibut or IFQ sablefish are on board, unless:

(i) Pacific cod or rockfish are required to be discarded under § 679.20,

(ii) the vessel is not registered under § 679.4 for the Pacific cod directed fishery and the amount of Pacific cod harvested has reached the maximum retainable amount under § 679.20(e), or

(iii) in waters within the State of Alaska, Pacific cod or rockfish are required to be discarded by laws of the State of Alaska.

* * * * *

5. In § 679.20, paragraphs (a)(7)(ii)(D) and (a)(7)(ii)(E) are revised to read as follows:

**§ 679.20 General limitations.**

* * * * *

(a) * * *

(7) * * *

(ii) * * *

(D) *Reallocation within the trawl sector* (applicable through July 8, 2002). If, during a fishing season, the Regional Administrator determines that either catcher vessels using trawl gear or catcher/processors using trawl gear will not be able to harvest the entire amount of Pacific cod in the BSAI allocation to those vessels under paragraphs (a)(7)(i), (a)(7)(ii)(C) or (a)(7)(iii)(D) of this section, he/she may reallocate the projected unused amount of Pacific cod to vessels using trawl gear in the other trawl component through notification in the **Federal Register** before any reallocation to vessels using other gear type(s).

(E) *Unused seasonal allowance for trawl* (applicable through July 8, 2002). Any unused portion of a seasonal allowance of Pacific cod for vessels using trawl gear under paragraphs (a)(7)(ii)(D) and (a)(7)(iii)(D) of this section may be reapportioned by the Regional Administrator, through notification in the **Federal Register**, to the subsequent seasonal allocations for vessels using trawl gear.

* * * * *

6. In § 679.22, paragraphs (a)(11)(v) and (b)(3)(iii) are revised to read as follows:

**§ 679.22 Closures.**

(a) * * *

(11) * * *

(v) *Pacific cod closures.* Directed fishing for Pacific cod by federally permitted vessels using trawl, hook-and-line, or pot gear is prohibited within the Pacific cod no fishing zones around selected sites. These sites and gear types are listed on Table 23 of this part and are identifiable by ''BS'' in column 2.

* * * * *

(b) * * *

(3) * * *

(iii) *Pacific cod closures.* Directed fishing for Pacific cod by federally permitted vessels using trawl, hook-and-line, or pot gear in the federally managed Pacific cod or State of Alaska parallel groundfish fisheries, as defined in the Alaska Administrative Code (5 AAC 28.087(c), January 3, 2002), is prohibited within Pacific cod no fishing zones around selected sites. These sites and gear types are listed in Table 23 of this part and are identifiable by ''GOA'' in column 2.

* * * * *

7. In § 679.28, paragraph (f)(3)(ii) is suspended 1200 hours A.l.t., June 10, 2002, through July 8, 2002, paragraph (f)(3)(iv) is suspended May 1, 2002, through July 8, 2002, and paragraph (f)(3)(ix) is added effective May 1, 2002, through July 8, 2002, to read as follows:

**§ 679.28 Equipment and operational requirements.**

* * * * *

(f) * * *

(3) * * *

(ix) (Effective May 1, 2002, through July 8, 2002) Stop fishing immediately if informed by an authorized officer that NMFS is not receiving position reports from the VMS transmitter.

8. On page 1004, in the first column, in § 679.28, paragraph (f)(3)(viii) is corrected to read as follows:

**§ 679.28 Equipment and operational requirements.**

* * * * *

(f) * * *

(3) * * *

(viii) (Applicable 1200 hours A.l.t., June 10, 2002, through July 8, 2002) Reporting and transmission confirmation requirements for vessels endorsed under § 679.4(b)(5)(v) and installing a VMS:

(A) For vessels initially entering a fishery which requires VMS:

(*1*) Provide to NMFS Enforcement Division by FAX the VMS transmitter(s) ID and the vessel ID on which the VMS(s) are used.

(*2*) At least 72 hours before leaving port, activate the VMS transmitter and call NMFS Enforcement Division at 907-586-7225 between the hours of 0800 hours, A.l.t., and 1630 hours, A.l.t. to receive confirmation that the VMS transmissions are being received.

(B) For all other vessels endorsed under § 679.4(b)(5)(v) and installing a VMS:

(*1*) If the vessel is switching its VMS transmitters, provide to NMFS Enforcement Division by FAX the following information: the VMS transmitter ID, and the ID of the vessel on which the VMS will be used.

(*2*) Activate the VMS transmitter and call NMFS Enforcement Division at 907-586-7225 between the hours of 0800 hours, A.l.t., and 1630 hours, A.l.t. to receive confirmation that the VMS transmissions are being received.

(C) No vessel required to carry a VMS pursuant to § 679.7(a)(18) may operate in a BSAI or GOA reporting area until the vessel has received confirmation from NMFS that the VMS transmissions are being received.

* * * * *

9. In § 679.50, paragraph (c)(4)(vi)(B) is suspended effective May 1, 2002, through July 8, 2002, and paragraph (c)(4)(vi)(C) is added effective May 1, 2002, through July 8, 2002, to read as follows:

**§ 679.50 Groundfish Observer Program applicable through December 31, 2002.**

* * * * *

(c) * * *

(4) * * *

(vi) * * *

(C) (Effective May 1, 2002, through July 8, 2002) A mothership or catcher/processor vessel engaged in fishing with trawl gear in a directed CDQ fishery for other than pollock CDQ must carry at least two CDQ observers as described at paragraphs (h)(1)(i)(D) and (E) of this section aboard the vessel, at least one of whom must be certified as a lead CDQ observer.

* * * * *

10. In Table 23 to CFR part 679, footnote 11 is revised. The revised page containing the amendment to Table 23, footnote 11, reads as follows:

Table 23 to 50 CFR Part 679 Steller Sea Lion Protection Areas Pacific Cod Fisheries Restrictions

* * * * *

described in Figure 1 of this part south of a straight line connecting 55°00'N/170°00'W, and 55°00' N/168°11'4.75" W.

[6]Hook-and-line no fishing zones apply only to vessels greater than or equal to 60 feet LOA in waters east of 167° W long. For Bishop Point the 10 nm closure west of 167° W. long. applies to all hook and line vessels.

[7]The trawl closure between 0 nm to 10 nm is effective from January 20 through June 10. Trawl closure between 0 nm to 3 nm is effective from September 1 through November 1.

[8] The trawl closure between 0 nm to 15 nm is effective from January 20 through June 10. Trawl closure between 0 nm to 20 nm is effective from September 1 through November 1.

[9]Restriction area includes only waters of the Gulf of Alaska Area.

[10]Contact the Alaska Department of Fish and Game for fishery restrictions at these sites.

[11]Directed fishing for Pacific cod using trawl gear is prohibited in the harvest limit area (HLA) as defined at § 679.2 until the HLA Atka mackerel directed fishery in the A or B seasons is completed. The 20 nm closure around Gramp Rock applies only to waters west of 178° W long. After closure of the Atka mackerel HLA directed fishery, directed fishing for Pacific cod using trawl gear is prohibited in the HLA between 0 nm and 10 nm of rookeries and between 0 nm and 3 nm of haulouts.

[12] The 20 nm closure around this site is effective only in waters outside of the State of Alaska waters of Prince William Sound.

[13] See § 679.22(a)(11)(i)(C) for exemptions for catcher vessels less than 60 feet (18.3 m) LOA using jig or hook-and-line gear between Bishop Point and Emerald Island closure areas.

[14]Trawl closure around this site is limited to waters east of 170°0'00" W long.

* * * * *

[FR Doc. 02–10693 Filed 4–30–02; 8:45 am]

**BILLING CODE 3510–22–C**

# Proposed Rules

Federal Register
Vol. 67, No. 84
Wednesday, May 1, 2002

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

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[UT–001–0042; FRL–7203–8]**

### Approval and Promulgation of Air Quality Implementation Plans; State of Utah; Salt Lake County—Trading of Emission Budgets for $PM_{10}$ Transportation Conformity

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** On March 15, 2002, the Governor of Utah submitted a proposed revision to the Utah State Implementation Plan (SIP) that would allow trading from the motor vehicle emissions budget for primary Particulate Matter of 10 microns or less in diameter ($PM_{10}$) to the motor vehicle emissions budget for Nitrogen Oxides ($NO_X$) which is a $PM_{10}$ precursor. This trading mechanism will allow Salt Lake County to increase their $NO_X$ budget by decreasing their $PM_{10}$ budget by an equivalent amount in order to achieve motor vehicle emissions budgets for $NO_X$ and $PM_{10}$ that may then be used to demonstrate transportation conformity with the Salt Lake County $PM_{10}$ attainment demonstration element of the SIP. The trading between emissions budgets to demonstrate transportation conformity is allowable, as long as a trading mechanism is approved into the SIP. In his letter of March 15, 2002, the Governor asked that EPA parallel process a proposed revision to the $PM_{10}$ attainment demonstration SIP including a new rule, R307–310 ''Salt Lake County: Trading of Emission Budgets for Transportation Conformity.''

In this action, EPA is proposing approval and soliciting public comment on the proposed SIP revision, involving Utah's new Rule R307–310, that would allow the trading of on-road mobile source primary $PM_{10}$ emissions to $PM_{10}$ precursor on-road mobile source $NO_X$ emissions on a one to one basis. The resulting adjusted budgets may then be used for demonstrating transportation conformity with the Salt Lake County $PM_{10}$ attainment demonstration element of the SIP.

**DATES:** Written comments must be received on or before May 31, 2002.

**ADDRESSES:** Written comments may be mailed to: Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466

Copies of the documents relevant to this action are available for public inspection during normal business hours at the following offices: United States Environmental Protection Agency, Region VIII, Air and Radiation Program, 999 18th Street, Suite 300, Denver, Colorado 80202–2466.

Copies of the State documents relevant to this action are available for public inspection at: Utah Department of Environmental Quality, Division of Air Quality, 150 North 1950 West, Salt Lake City, Utah 84114–4820.

**FOR FURTHER INFORMATION CONTACT:** Tim Russ, Air and Radiation Program, Mailcode 8P–AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466 Telephone number: (303) 312–6479

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever ''we'', ''us'', or ''our'' are used we mean the Environmental Protection Agency.

### I. What Is the Purpose of This Action?

With this action, we are utilizing our parallel processing procedure for consideration of a revision to the Utah SIP. Parallel processing allows EPA to propose rulemaking on a SIP revision, and solicit public comment, at the same time the State is processing the SIP revision. The schedule provided with the Governor's March 15, 2002, submittal indicated that the Utah Air Quality Board (UAQB) proposed the SIP revision for a 30-day State public comment period beginning on April 1, 2002, and ending on April 30, 2002. The State will conduct a public hearing during this 30-day time frame. The Governor's submittal indicates that final action by the UAQB is anticipated by May 13, 2002. When the Governor submits the final SIP revision to us for approval, we will consider any comments received on our proposed rule and proceed with a final rulemaking action. However, should the State substantially change the proposed SIP revision, before the Governor submits the final version to us, we will re-propose and again solicit public comment on the State amended SIP revision before we take final rulemaking action. For further information regarding parallel processing, please see 40 CFR part 51, Appendix V, section 2.3.1.

In this action, we are proposing approval and soliciting public comment regarding the Governor's March 15, 2002, submittal of Utah's proposed new Rule R307–310 that will allow certain trading of emission budgets for the purposes of transportation conformity for $PM_{10}$ for Salt Lake County.

### II. What is the State's Process to Submit these Materials to EPA?

Section 110(k) of the CAA addresses our actions on submissions of revisions to a SIP. The CAA requires States to observe certain procedural requirements in developing SIP revisions for submittal to us. Section 110(a)(2) of the CAA requires that each SIP revision be adopted after reasonable notice and public hearing. This public process must occur prior to the final revisions being submitted by a State to us.

At the March 13, 2002, UAQB meeting, the UAQB proposed for public comment the new Rule R307–310. The UAQB has scheduled a public hearing for April 22, 2002, for considering public comment on the above SIP revision.

### III. EPA's Evaluation of the Proposed Rule R307–310

*(a) Background and Purpose*

Transportation conformity is required by the section 176 of the Clean Air Act (CAA) to ensure that federally supported highway and transit project activities are consistent with (''conform to'') the purpose of a state air quality implementation plan (SIP). Conformity to the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards. EPA's transportation conformity rule establishes the criteria and procedures for determining whether transportation activities conform to the state air quality plan.

One key provision of EPA's transportation conformity rule (see 40 CFR part 93) requires a demonstration that emissions from the transportation plan and Transportation Improvement Program (TIP) are consistent with the emissions budgets in the applicable SIP (40 CFR 93.118 and 93.124). The transportation emissions budget(s) is defined as the level of on-road mobile source emissions relied upon in the SIP to attain or maintain compliance with the National Ambient Air Quality Standard (NAAQS) in the nonattainment or maintenance area.

In this particular instance, the NAAQS involved is $PM_{10}$ , the nonattainment area is Salt Lake County, the motor vehicle emissions budgets involve direct emissions of $PM_{10}$ and $NO_X$, the latter as a precursor to the formation of $PM_{10}$, and the applicable SIP is the July 8, 1994, EPA-approved Utah $PM_{10}$ attainment demonstration SIP (see 59 FR 35036) with respect to the Salt Lake County element.

Transportation conformity is demonstrated when future year's projected on-road mobile source's emissions for a particular pollutant or precursor are estimated to be at or below the on-road motor vehicle's emissions budget for that pollutant or precursor in the applicable SIP. With reference to conformity for the $PM_{10}$ NAAQS for Salt Lake County, conformity must be demonstrated separately for the $PM_{10}$ and $NO_X$ budgets established in the Salt Lake County $PM_{10}$ attainment demonstration element of the SIP. However, emissions can be traded between the $PM_{10}$ and $NO_X$ budgets if there is an approved rule in the SIP to allow trading to take place as per 40 CFR 93.124(c). The provision in 40 CFR 93.124(c) states:

> ''A conformity demonstration shall not trade emissions among budgets which the applicable implementation plan (or implementation plan submission) allocates for different pollutants or precursors, or among budgets allocated to motor vehicles and other sources, unless the implementation plan establishes appropriate mechanisms for such trades.''

With respect to the above conformity rule requirement, the State has developed the proposed new Rule R307–310 which will establish an on-road mobile source emissions trading mechanism that; (1) involves only $PM_{10}$ and $NO_X$ motor vehicle emission budgets from the $PM_{10}$ attainment demonstration SIP, (2) allows trading in only one direction from the $PM_{10}$ budget to the $NO_X$ budget on a one to one basis, (3) applies only to transportation conformity determinations in Salt Lake County in conjunction with the $PM_{10}$ attainment demonstration SIP, and (4) is pursuant to 40 CFR part 93.

*(b) Proposed New Rule R307–310 Description*

An overview of all portions of the State's new Rule R307–310 is provided below:

1. R307–310 is entitled ''Salt Lake County: Trading of Emission Budgets for Transportation Conformity.''

2. R307–310–1 ''Purpose.'' The stated purpose of this new rule is:

''This rule establishes the procedures that may be used to trade a portion of the primary $PM_{10}$ budget when demonstrating that a transportation plan, transportation improvement program, or project conforms with the motor vehicle emissions budgets in the Salt Lake County portion of Section IX, Part A of the State Implementation Plan, ''Fine Particulate Matter ($PM_{10}$).''

3. R307–310–2. ''Definitions.'' This section provides applicable definitions:

''The definitions contained in 40 CFR 93.101, effective as of July 1, 2001, are incorporated into this rule by reference. The following additional definitions apply to this rule.

''Budget'' means the motor vehicle emission projections used in the attainment demonstration in the Salt Lake County portion of Section IX, Part A of the State Implementation Plan, ''Fine Particulate Matter ($PM_{10}$).''

''$NO_X$'' means oxides of nitrogen.

''Primary $PM_{10}$'' means $PM_{10}$ that is emitted directly by a source. Primary $PM_{10}$ does not include particulate matter that is formed when gaseous emissions undergo chemical reactions in the ambient air.

''Transportation Conformity'' means a demonstration that a transportation plan, transportation improvement program, or project conforms with the emissions budgets in a state implementation plan, as outlined in 40 CFR, Chapter 1, Part 93, ''Determining Conformity of Federal Actions to State or Federal Implementation Plans.''

4. R307–310–3. ''Applicability''. This portion of the rule defines its applicability. We note that this rule may only be applied to Salt Lake County and only for $PM_{10}$ :

''(1) This rule applies to agencies responsible for demonstrating transportation conformity with the Salt Lake County portion of Section IX, Part A of the State Implementation Plan, ''Fine Particulate Matter ($PM_{10}$).''

(2) This rule does not apply to emission budgets from Section IX, Part D.2 of the State Implementation Plan, ''Ozone Maintenance Plan.''

(3) This rule does not apply to emission budgets from Section IX, Part C.7 of the State Implementation Plan, ''Carbon Monoxide Maintenance Provisions.''

5. R307–310–4. ''Trading Between Emission Budgets.'' This portion of the rule describes the trading mechanism (we note and agree with the State that it is appropriate that the primary $PM_{10}$ budget may be used to supplement the $NO_X$ budget, but that the $NO_X$ budget may not be used to supplement the primary $PM_{10}$ budget. EPA agrees with this concept and provides further technical justification below.):

''(1) The agencies responsible for demonstrating transportation conformity are authorized to supplement the budget for $NO_X$ with a portion of the budget for primary $PM_{10}$ for the purpose of demonstrating transportation conformity for $NO_X$. The $NO_X$ budget shall be supplemented using the following procedures.

(a) The metropolitan planning organization shall include the following information in the transportation conformity demonstration:

(i) The budget for primary $PM_{10}$ and $NO_X$ for each required year of the conformity demonstration, before trading allowed by this rule has been applied;

(ii) The portion of the primary $PM_{10}$ budget that will be used to supplement the $NO_X$ budget, specified in tons per day using a 1:1 ratio of primary $PM_{10}$ to $NO_X$, for each required year of the conformity demonstration;

(iii) The remainder of the primary $PM_{10}$ budget that will be used in the conformity demonstration for primary $PM_{10}$, specified in tons per day for each required year of the conformity demonstration; and

(iv) The budget for primary $PM_{10}$ and $NO_X$ for each required year of the conformity demonstration after the trading allowed by this rule has been applied.

(b) Transportation conformity for $NO_X$ shall be demonstrated using the $NO_X$ budget supplemented by a portion of the primary $PM_{10}$ budget as described in (a)(ii). Transportation conformity for primary $PM_{10}$ shall be demonstrated using the remainder of the primary $PM_{10}$ budget described in (a)(iii).

(c) The primary $PM_{10}$ budget shall not be supplemented by using a portion of the $NO_X$ budget.''

*(c) Proposed New Rule R307–310 Technical Justification*

The Governor provided the following technical justification that is designed to support the proposed new Rule R307–310 and address the specific issue involving mobile sources emissions trading, as contemplated by 40 CFR

93.124(c), for $PM_{10}$ and $NO_X$. EPA and the UDAQ jointly developed the following technical justification:

1. Description

$PM_{10}$ is particulate matter with diameters smaller than 10 micrometers. $PM_{10}$ consists of solid and/or liquid particles of (1) primary particles that are directly emitted particulate matter (PM) or PM that quickly condenses upon release and (2) secondary particles which are PM that is formed in the atmosphere from gaseous precursors. Important gaseous precursors to PM include sulfur dioxide ($SO_2$) which converts to sulfate ($SO_4$=) particles, nitrogen oxides ($NO_X$) which convert to nitrate ($NO_3$-) particles, volatile organic compounds (VOCs), some of which convert to secondary organic aerosols, and ammonia ($NH_3$) which adds to the mass of sulfate PM and allows nitric acid to convert to $PM_{10}$ in the form of ammonium nitrate.

Currently in Salt Lake County, conformity for $PM_{10}$ utilizes $PM_{10}$ and $NO_X$ emission figures that were derived from the 1994 EPA-approved $PM_{10}$ attainment demonstration SIP (see 59 FR 35036, July 8, 1994). Since the regulatory goal is to achieve and maintain attainment of the NAAQS and conformity related to total $PM_{10}$, not individual components, it should not matter in conformity analysis whether $PM_{10}$ consists of directly emitted (primary) $PM_{10}$ or secondary nitrate $PM_{10}$ formed in the atmosphere from precursor $NO_X$ gas emissions, provided the budgets for $PM_{10}$ and $NO_X$ are consistent with a demonstration of attainment. This technical justification outlines the scientific rationale for why excess $NO_X$ emissions can be offset on a 1 to 1 basis with available $PM_{10}$ budget in the Salt Lake County attainment demonstration, and why this is conservative (i.e., protective of the environment).

2. What Fraction of the $NO_X$ Emissions Convert to $PM_{10}$?

Each ton of gaseous $NO_X$ that gets converted to $PM_{10}$ creates more than a ton of $PM_{10}$ because the molecular weight of ammonium nitrate $PM_{10}$ is greater than the molecular weight of $NO_X$ gaseous emissions. Considering the ratio of the molecular weights of the $NO_X$ precursor gas and the resulting ammonium nitrate aerosol ($PM_{10}$), a ton of $NO_X$ that is converted from a gas to a particle can form as much as 1.74 tons of $PM_{10}$.

However, not all $NO_X$ emissions are converted because it takes time to convert $NO_X$ to nitric acid ($HNO_3$), which is the necessary gaseous precursor to ammonium nitrate $PM_{10}$. These reactions generally occur at rates of 1 to 10 percent per hour. Thus, it would take at least 10 hours to fully convert to nitric acid. After this initial conversion, only a fraction of the gaseous nitric acid will condense as ammonium nitrate $PM_{10}$, depending on equilibrium considerations. Finally, during the gas-to-particle conversion process, deposition will remove a significant amount of material. Throughout this process of $NO_X$ conversion to nitric acid, and then to $PM_{10}$ and deposition, an equivalent amount of directly emitted $PM_{10}$ is having a much larger effect on $PM_{10}$ concentration. Directly emitted $PM_{10}$ has an effect on concentration immediately upon release, while $NO_X$ emissions require hours to register their effect.

The conversion of $NO_X$ to $PM_{10}$ has been discussed at EPA at least since 1996:

> ''The conversion process may depend on several variables, including the availability of chemical reactants in the atmosphere for the conversion process, and the difference in mass between the $PM_{10}$ precursor molecule and the $PM_{10}$ particle that the precursor reacts to become. Another concern is that the rate of conversion of the precursor to $PM_{10}$ may be so long that the precursor may not entirely convert to $PM_{10}$ within the same nonattainment area. Thus, there would be less counteracting effect and no net improvement to air quality in the area. Under the EPA's proposal, a source of a $PM_{10}$ precursor may offset its increased emissions with the same precursor type or $PM_{10}$ (or a combination of the two). In this situation, a net improvement in air quality would be assured. At this point, however, the EPA is not proposing to allow offsetting among different types of $PM_{10}$ precursors, or offsetting $PM_{10}$ increases with reduction in $PM_{10}$ precursors, because the Agency does not now have a scientific basis to propose conversion factors. (61 FR 38305, July 23, 1996)''

This particular technical justification, for the proposed Rule R307–310, to only allow the trading of the $PM_{10}$ budget to the $NO_X$ budget, but to not allow the substitution of $NO_X$ for primary $PM_{10}$, is consistent with the above-referenced EPA statements. Therefore, both EPA's existing information and the most current scientific data support allowing primary $PM_{10}$ to be traded to the $NO_X$ budget, while continuing to demonstrate attainment, in the proposed new Rule R307–310 SIP revision.

3. Consistency with the EPA-Approved Salt Lake County $PM_{10}$ SIP

The 1994 approved $PM_{10}$ SIP element for Salt Lake County contains an attainment demonstration that is based on a combination of Chemical Mass Balance (CMB) modeling and a micro-inventory for the area. The CMB model matches chemical profiles on filters collected on high pollution days with profiles of emission sources in the area to determine the degree of impact from individual sources. The modeling was complicated because the majority of the $PM_{10}$ collected on the filters in Salt Lake County was a result of chemical reactions that occur in the atmosphere. Nitrogen oxides ($NO_X$) and sulfur dioxide (SO2) are gases that undergo chemical reactions to form nitrates and sulfates that are measured as $PM_{10}$ on the filters. Primary $PM_{10}$ emissions from all source categories, including mobile sources, were evaluated using CMB to determine the impact at each of the monitoring sites. Mobile source primary $PM_{10}$ impacts were estimated using a ''finger print'' of emissions from this category. Nitrates could not be differentiated among the major source groups using CMB. The mobile source contribution to the total measured nitrate was determined using a straight emission inventory apportionment.

An analysis based on the SIP's control strategy worksheet for the ''Air Monitoring Center'' (AMC) site was performed, which is the controlling monitoring site for Salt Lake County (it has the highest projected year 2003 $PM_{10}$ concentration, at 147.4 $\mu g/m^3$).

Page 35 of the State's originally submitted $PM_{10}$ SIP [1] provides the CMB-based attainment demonstration calculations for the year 2003, and page 36 of the originally submitted $PM_{10}$ SIP provides the corresponding results for all the years covered by the SIP revision.

In 2003, the total primary $PM_{10}$ contribution from mobile sources was estimated to be 37.4 $\mu g/m^3$. (This is the sum of all the individual mobile source primary $PM_{10}$ categories: leaded, diesel, unleaded, road dust, and brakewear.) The total nitrate contribution from mobile sources was estimated to be 16.7 $\mu g/m^3$.

The existing Salt Lake County $PM_{10}$ SIP motor vehicle emission budgets are 40.3 tons per day of primary $PM_{10}$, and 32.3 tons per day of $NO_X$. These budgets were derived by the Wasatch Front Regional Council (WFRC), the Metropolitan Planning Organization or MPO, using the Salt Lake County $PM_{10}$ SIP element attainment year (2003) inventories, adjusted for winter vehicle miles traveled (VMT) rates.

At the AMC monitor, the CMB modeling contained in the SIP indicates

[1] The Utah $PM_{10}$ SIP, that includes the Salt Lake County element, was submitted by the Governor on November 15, 1991 and was approved by EPA on July 8, 1994 (59 FR 35036).

that 40.3 tons per day of $PM_{10}$ results in a concentration of 37.4 μg/m$^3$ of primary $PM_{10}$, and 32.3 tons per day of $NO_X$ results in a concentration of 16.7 μg/m$^3$ of nitrate. Thus, each ton of $PM_{10}$ emissions produces 0.93 μg/m$^3$ of primary $PM_{10}$, and each ton of $NO_X$ produces 0.52 μg/m$^3$ of nitrate. In equivalent terms, each ton of $NO_X$ emissions has the same ambient impact as 0.56 tons of $PM_{10}$ emissions (0.52 divided by 0.93). Thus, substituting $PM_{10}$ emissions for $NO_X$ emissions in the budgets would produce lower overall emissions and continue to demonstrate attainment in the Salt Lake Countys $PM_{10}$ nonattainment area.

4. Impact of the $PM_{10}$ and $NO_X$ Trading Rule on Other Pollutants

In addition to being a nonattainment area for $PM_{10}$, Salt Lake County is part of the Salt Lake/Davis Counties ozone maintenance area.[2] Salt Lake City is also a carbon monoxide (CO) maintenance area.[3] However, this proposal does not have an adverse impact on these two pollutants. For ozone, the approved ozone maintenance plan has its own motor vehicle $NO_X$ emissions budget, which has been set at a level demonstrated to keep Salt Lake and Davis Counties in attainment with the 1-hour ozone standard. We note that the ozone maintenance plan actually has separate motor vehicle $NO_X$ emissions budgets for Salt Lake and Davis Counties, but it allows WFRC to demonstrate conformity for each county individually or on a combined basis at their discretion. Nothing in this proposal for the new Rule R307–310 changes the Salt Lake/Davis Counties ozone motor vehicle emissions budgets for $NO_X$ and WFRC must continue to comply with these budgets in order to demonstrate conformity for ozone. Therefore, there will be no adverse impact on continued attainment of the 1-hour ozone standard for Salt Lake County. In fact, WFRC's most recent conformity analyses show that the area complies with the Salt Lake/Davis Counties combined existing 1-hour ozone $NO_X$ motor vehicle emissions budget by a wide margin in future years.

With respect to carbon monoxide, $NO_X$ emissions are not precursors to carbon monoxide and nothing in this proposal for the new Rule R307–310 would be expected to impact Salt Lake City's current CO maintenance status. Like ozone, the CO maintenance plan has its own CO motor vehicle emissions budget, which has been set at a level demonstrated to keep Salt Lake City in attainment with the CO standard. Nothing in this proposal changes this CO motor vehicle emissions budget and as stated above for ozone, WFRC has been able to demonstrate conformity with this CO motor vehicle emissions budget by a wide margin.

5. Conclusion

On the basis of the above analyses and since $NO_X$ has less impact on a per ton basis than primary $PM_{10}$ emissions, there will be a net benefit on ambient air concentrations of $PM_{10}$ when excess $NO_X$ emissions are offset on a 1:1 basis with available $PM_{10}$ budget in the transportation conformity demonstration. Therefore, using a portion of the motor vehicle $PM_{10}$ emissions budget to offset excess on-road mobile sources $NO_X$ emissions on a 1:1 basis continues to demonstrate attainment of the $PM_{10}$ NAAQS and is conservative and justifiable.

The analyses provided in this technical justification were designed to show that the trading ratio of $PM_{10}$ to $NO_X$ was less than 1:1, but they do not establish what this ratio should be. Until a more extensive analysis is completed, that will be subject to EPA approval, it is not possible to determine the exact amount of $NO_X$ that would be needed to offset an increase in $PM_{10}$ emissions. Therefore, trading of $PM_{10}$ to $NO_X$ emissions can only be justified in one direction at this time.

## IV. Evaluation/Reconciliation—Implementation and Periodic Review of the Effectiveness of the New Rule R307–310 for Salt Lake County

The proposed new Rule, R307–310, establishes the procedures that may be used to trade a portion of the primary $PM_{10}$ motor vehicle emissions budget to the $NO_X$ motor vehicle emissions budget when demonstrating that a transportation plan, transportation improvement program, or project conforms with the motor vehicle emissions budgets for $PM_{10}$ and $NO_X$ in the Salt Lake County element of the Utah $PM_{10}$ portion of the State Implementation Plan. As stated above in the technical justification, the Salt Lake/Davis Counties ozone maintenance plan and the Salt Lake City carbon monoxide maintenance plan are not expected to be affected by this new rule.

However, because trading of motor vehicle emissions budgets for conformity purposes is not common, there is the possibility that unforseen circumstances may arise in the future that may affect the implementation of the new Rule R307–310. Therefore, a periodic review of the effectiveness of this new rule is important to ensure there are not any unintended adverse consequences due to this proposed motor vehicle emissions budget trading rule.

In a letter dated March 22, 2002, from Richard Sprott, Director, Utah Division of Air Quality to Richard Long, Director, Air and Radiation Program for EPA Region 8, the State committed to evaluate the performance of the proposed new rule, R307–310, every three years to determine its overall effect and whether it has adversely affected the EPA-approved Salt Lake/Davis Counties ozone maintenance plan or the EPA-approved Salt Lake City carbon monoxide maintenance plan. The State also committed to make appropriate recommendations to the UAQB, as necessary, to remedy adverse effects. The language in the State's March 22, 2002, letter further indicates that if needed, EPA may exercise its authority to perform a SIP call that is consistent with 40 CFR 51.493(f)(1)(i) should the State fail to make the necessary revisions.

EPA believes this commitment by the State to be adequate. However, we also note that EPA is not precluded from performing our own evaluation analysis of the proposed trading rule at any time that we deem appropriate. Further, if we determine there are adverse air quality effects associated with the implementation of the proposed new Rule, R307–310, or if we determine that the State has failed to make the necessary revisions to remedy identified adverse effects in either the $PM_{10}$, ozone, or CO SIPs, EPA may exercise our authority to issue a SIP call consistent with the provisions of section 110(k)(5) of the Clean Air Act (CAA) as amended in 1990. To clarify, although the State has indicated in its letter of March 22, 2002, that a SIP call may happen consistent with 40 CFR 51.493(f)(1)(i), EPA is in no way only restricted to this particular section of the CFR. If necessary, EPA will issue a SIP call, as provided under section 110(k)(5) of the CAA, as we deem appropriate. In conjunction with a SIP call contemplated under section 110(k)(5) of the CAA, we will also consider establishing a schedule of sanctions as provided under section 179 of the CAA.

## V. Consideration of CAA section 110(l)

Section 110(l) of the CAA states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further

[2] The Salt Lake/Davis Counties ozone (1-hour standard) redesignation to attainment was approved by EPA on July 17, 1997 (62 FR 38213).

[3] The Salt Lake City carbon monoxide redesignation to attainment was approved by EPA on January 22, 1999 (64 FR 3216).

progress towards attainment of a NAAQS or any other applicable requirements of the CAA. In view of the State's rule language for its new Rule R307–310, the analyses presented above in section ''(c) Proposed New Rule R307–310 Technical Justification'', and the fact that $NO_X$ has less impact on a per ton basis than primary $PM_{10}$ emissions there will be a net benefit on ambient air concentrations of PM10 when excess $NO_X$ emissions are offset on a one to one basis. Therefore, the proposed new Rule R307–310, that would allow the trading of a portion of the $PM_{10}$ motor vehicle emissions budget to the $NO_X$ motor vehicle emissions budget on a one to one basis, continues to demonstrate attainment of the PM10 NAAQS and is conservative and justifiable. We have concluded that our proposed approval of the State's new Rule R307–310 will meet the intent of section 110(l) of the CAA.

## VI. Proposed Rulemaking Action and Request for Public Comment

We are soliciting public comment on all aspects of this proposed rule. As stated above, we are proposing approval of the Governor's March 15, 2002, proposed revision to the Utah State Implementation Plan, involving a new Rule, R307–310, that would allow the trading of a portion of the $PM_{10}$ motor vehicle emissions budget to the $NO_X$ motor vehicle emissions budget. This trading mechanism will allow a portion of the $PM_{10}$ motor vehicle emissions budget to be applied to the $NO_X$ motor vehicle emissions budget on a 1:1 ratio, thus increasing the $NO_X$ motor vehicle emissions budget and decreasing the $PM_{10}$ motor vehicle emissions budget by an equivalent amount. These adjusted budgets may then be used for transportation conformity purposes with the Salt Lake County $PM_{10}$ attainment demonstration element of the SIP. Send your comments in duplicate to the address listed in the **ADDRESSES** section of this proposed rule. We will consider your comments in deciding our final action if your letter is received before May 31, 2002.

## Administrative Requirements

*(a) Executive Order 12866*

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

*(b) Executive Order 13045*

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

This rule is not subject to Executive Order 13045 because it is not economically significant under Executive Order 12866 and it does not involve decisions intended to mitigate environmental health or safety risks.

*(c) Executive Order 13132*

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves state rules implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

*(d) 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.''

This 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. Thus, Executive Order 13175 does not apply to this rule.

*(e) Executive Order 13211 (Energy Effects)*

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

*(f) Regulatory Flexibility*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply propose approval requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act,

preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

*(g) Unfunded Mandates*

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

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

*(h) National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

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

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: April 22, 2002.

**Robert E. Roberts,**

*Regional Administrator, Region VIII.*

[FR Doc. 02–10727 Filed 4–30–02; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 63

**[FRL–7204–6]**

**RIN 2060–AE82**

## National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing and Miscellaneous Coating Manufacturing

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rules; extension of comment period and notice of public hearing.

**SUMMARY:** This action announces a new date for a public hearing EPA is holding to take comments on the Agency's proposed rule for national emission standards for hazardous air pollutants (NESHAP): Miscellaneous Organic Chemical Manufacturing and Miscellaneous Coating Manufacturing, published on April 4, 2002. The comment period for the above-named action is also being extended.

**DATES:** *Comments.* Submit comments on or before June 28, 2002.

*Public Hearing.* The public hearing will be held on May 23, 2002, from 10 a.m. to 4 p.m. (EST). The hearing may conclude prior to 4 p.m., depending on the number of attendees and level of interest. If you are interested in attending the hearing, you must call the contact person listed below (*see* **FOR FURTHER INFORMATION CONTACT**). You must contact the EPA and request to speak at a public hearing by May 10, 2002.

**ADDRESSES:** *Comments.* By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–96–04, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–96–04, U.S. EPA, 401 M Street, SW, Washington, DC 20460. The EPA requests a separate copy also be sent to the contact person listed below (*see* **FOR FURTHER INFORMATION CONTACT**).

*Public Hearing.* A public hearing will be held at 10 a.m. on May 23, 2002 in the new EPA facility located at 109 T.W. Alexander Drive, Auditorium in Building C, Room C111, Research Triangle Park, North Carolina, 27709.

*Docket.* Docket No. A–96–04 contains supporting information used in developing the NESHAP. The docket is located at the U.S. EPA, 401 M Street, SW, Washington, DC 20460 in room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** For information about the proposed NESHAP, contact Mr. Randy McDonald, Organic Chemicals Group, Emission Standards Division (C504–04), U.S. EPA, Research Triangle Park, North Carolina, 27711, telephone number (919) 541–5402, electronic mail address *mcdonald.randy@epa.gov.* For information about the public hearing, contact Ms. Maria Noell, Organic Chemicals Group, Emission Standards Division (C504–04), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5607, electronic mail address *noell.maria@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Comments**

Comments and data may be submitted by electronic mail (e-mail) to: *a–and–r–docket@epa.gov.* Electronic comments must be submitted either as an ASCII file to avoid the use of special characters and encryption problems or on disks in WordPerfect® file format. All comments and data submitted in electronic form must note the docket number: A–96–04. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Mr. Randy McDonald, c/o OAQPS Document Control Officer (C404–02), U.S. EPA, Research Triangle Park, NC 27709. The EPA will disclose information identified as CBI only to the extent allowed by the

procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

**World Wide Web (WWW)**

In addition to being available in the docket, an electronic copy of the proposed NESHAP will also be available on the WWW through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the proposed NESHAP will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

The EPA published its proposed rules for the Miscellaneous Organic Chemical Manufacturing source category and the Miscellaneous Coating Manufacturing source category, on April 4, 2002 (67 FR 16154). In the proposed rules, we originally scheduled the public hearing date for May 6, 2002, contingent upon receiving a request for one. We did receive a request to hold a public hearing, so we are announcing that the public hearing date is rescheduled for May 23, 2002. We also scheduled the comment period to end on June 3, 2002; however, we are now extending the comment period to June 28, 2002. We are extending these dates because many of the facilities affected by the proposed rules will also be subject to other proposed MACT standards that will have public comment periods overlapping with the comment periods of the Miscellaneous Organic Chemical Manufacturing and the Miscellaneous Coating Manufacturing NESHAP. In addition, many of these facilities also have actions due, such as precompliance reports, during this same time period on promulgated MACT standards that affect them. This extension of the public comment period and the public hearing date will provide these facilities additional time necessary to better prepare meaningful comments on these proposed rules.

Dated: April 25, 2002.

**Robert Brenner,**

*Acting Assistant Administrator for Air and Radiation.*

[FR Doc. 02–10728 Filed 4–30–02; 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–7204–7]**

**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; reopening 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. The Agency received a number of comments noting considerable information on strategies to reduce permeation emissions and suggesting that requirements controlling such emissions be proposed for land-based recreational vehicles. As a result, EPA is requesting comment on whether it should finalize an emission standard controlling permeation emissions from fuel tanks and hoses for land-based recreational vehicles. This document provides a detailed discussion regarding this issue and discusses what form a final standard regulating these permeation emissions would take. This document extends the period for written comments on that notice of proposed rulemaking to May 31, 2002. The extension only applies to comments on whether EPA should finalize emission standards regulating permeation emissions from land-based recreational vehicles, and, if so, the form such standards would take.

**DATES:** *Comments:* Send written comments on this notice by May 31, 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:** On October 5, 2001, we published a Notice of Proposed Rulemaking (NPRM) for the Control of Emissions from Nonroad Large Spark Ignition Engines and Recreational Engines (Marine and Land-Based) (66 FR 51098). The comment period for the NPRM was originally scheduled to end on December 17, 2001; however, the comment period was extended to January 18, 2002 as a result of several requests for additional time. During this comment period, we received many comments from a wide range of commenters covering a broad range of issues. One of the issues that was raised by several commenters [1] was the information related to the control of evaporative emissions related to permeation from fuel tanks and fuel hoses, and the lack of any proposed emission standards regulating these emissions from land-based recreational vehicles.

We have conducted our initial review and assessment of the issues and data raised in these comments, and believe that they have merit and should be presented to the public for further consideration. Therefore, we are asking for comment on the possibility of finalizing standards regulating permeation emissions from land-based recreational vehicles. Our work on evaporative emissions from marine applications indicates that the permeation emissions from tanks and hoses are a large part of the total emissions from these applications. Additionally, commenters stated that work done by the California Air Resources Board (ARB) on permeation emissions from plastic fuel tanks and rubber fuel line hoses for various types of nonroad equipment as well as portable plastic fuel containers indicated that these permeation emissions are a concern. Our own investigation into the hydrocarbon emissions related to permeation of fuel tanks and fuel hoses with respect to marine applications supports the concerns raised by the commenters. Given this, we are assessing the possibility of regulating permeation emissions from other vehicle types, including, off-highway motorcycles (OHM), all-terrain vehicles (ATVs) (including utility work and specialty

[1] See public docket A–2000–1 IV–D–186, items IV–D–198, and IV–D–202.

vehicles), and snowmobiles that may use fuel tanks or hoses with less-than-optimal control of permeation emissions.

**I. Description of Regulatory Concept**

We are reopening the comment period for land-based recreational vehicles to request comment on whether we should finalize standards that would require low permeability fuel tanks and hoses on off-highway motorcycles, ATVs, and snowmobiles starting with the 2006 model year. The requirements would phase-in beginning for all three types of recreational vehicle at 50 percent in 2006 and 100 percent in 2007. This is the same start year as was proposed in the October 5, 2001 NPRM for exhaust emission control for these three types of recreational vehicle. We believe cost-effective technologies exist to significantly reduce permeation emissions. Because all of these vehicles use high density polyethylene (HDPE) tanks, manufacturers would in all likelihood have to employ one of the barrier technologies ( *e.g.,* a fluorination or sulfonation treatment) described below to meet the standards. The use of metal fuel tanks would also meet the standards, since metal tanks do not experience any permeation losses. Fuel tanks built with permeation resistant barrier layers would also be possible, but could likely be more expensive and employ production practices not used on HDPE tanks in these applications. We also request comment on promulgating standards that would also require the use of low permeability fuel hoses on all land-base recreational vehicles, starting with 50 percent implementation in the 2006 model year and 100 percent in 2007.

Even though snowmobiles do not usually experience year around use, as is the case with ATVs, off-highway motorcycles, etc., we are including snowmobiles in this request for comment because it is common practice among snowmobile owners to store their snowmobiles in the off-season with fuel in the tank (typically half full to full tank). A fuel stabilizer is typically added to the fuel to prevent gum, varnish, and rust from occurring in the engine as a result of the fuel sitting in the fuel tank and fuel system for an extended period of time, but this does not reduce permeation. Thus, snowmobiles experience fuel permeation losses just like off-highway motorcycles and ATVs. We request comment on the fuel storage practices of snowmobile operators.

EPA requests comments in several areas with regard to the way in which requirement might be implemented. First, we request comment on the form these standards would take (*e.g.,* whether there should be absolute numerical limits on a gram per gallon basis or if the standard should be expressed as a grams per square meter per day of tank surface area). Given differences in wall thickness, tank geometry, material quality, and pigment, we also ask comment on whether an emission credit averaging, banking, and trading (ABT) scheme would be helpful and necessary for the fuel tank permeation requirements. If we do adopt ABT provisions, we would envision an ABT program similar in nature to that used for heavy-duty engines (*see* 40 CFR 86.004–15) but substituting fuel tank volume for transient conversion factor.

Information indicates that permeation emissions can essentially be eliminated at minimal cost. We are interested in comments on provisions that would require near zero permeation levels, with a small factor to address issues such as measurement accuracy or repeatability. Available data indicate that 95 percent reductions are achievable. Achieving reductions at this level repeatedly would require tanks with consistent material quality, amount, and composition including pigments and any additive packages. This would enable process and efficiency optimization and consistency in the effectiveness of surface treatment processes. These reductions imply a tank permeability standard of 0.04 grams per gallon per day at 30°C or about 0.4 to 0.5 grams per square meter per day. We are also requesting comments on the estimates for emissions reductions and costs presented in this notice.

Certification with these fuel tank requirements would require testing such as that described in 49 CFR 173 appendix B, California ARB test method 513, or equivalent, as laid out in the docket. Normally five tests would be required and the average value used. This test is based on a change in filled tank mass over a period of time. We would consider a temperature of 28°C ± 28°C to be an appropriate range for our testing requirement. Vehicle manufacturers or tank manufacturers could certify and either could contract with a party providing barrier treatment or another source to do the required testing.

With regard to fuel hoses, the requirement would apply to any line normally containing liquid gasoline in storage or operation. These fuel hoses could be certified as being manufactured in compliance with certain accepted SAE specifications. These certification statements could be done on a family basis, or possibly a blanket statement could cover a manufacturer's entire product line. Similarly, near zero permeation emissions from hoses are feasible. Assuming a factor to address testing concerns, EPA expects that 95 percent reductions over uncontrolled emission levels for permeation are achievable for rubber hoses. For fuel hoses, we would consider a standard of 5 grams per square meter per day at 23°C, as would be measured using the recommended test procedure in SAE J1527.

We also request comment on implementing requirements such as those described above by allowing the manufacturer to submit a statement at the time of certification that the fuel tanks and hoses used on their products meet standards, specified materials, or construction requirements based on testing results. For example, a manufacturer using plastic fuel tanks could state that the family at issue is equipped with a fuel tank with a low permeability barrier treatment such as fluorination and provide EPA the supporting test information as described above for the worst case configuration in the family. Key parameters could include tank geometry, wall thickness, pigment, additive package, and amount of material in the tank. All tanks in the family would require the same level or type of treatment in production.

We request comment on these and other options that would enable regulation and enforcement of low permeability requirements. Most notably we are interested in provisions that would allow the certificate holder assurance that the treated tanks and fuel hoses provided by suppliers/vendors consistently meet the performance specifications laid out in the certificate and provisions regarding liability.

Information concerning potential draft regulations covering these implementation provisions as discussed above can be found in the public docket (A–2000–1).

Another important element of the test requirements is fuel quality. Permeation testing generally involves a gasoline or hydrocarbon mixture and may involve alcohol as well. There are at least four possible test fuels for consideration. *These include:* (1) Neat gasoline such as current EPA certification fuel, (2) certification quality gasoline with a 10% ethanol blend as is prescribed for the Tier 2 automobile evaporative standards, (3) ASTM D471 test fuel C (50% iso-octane/50% toluene) and, (4) ASTM D471 test fuel I (test fuel C with 15% methanol). Permeation is greater with alcohol-blend fuels and since there

is a significant amount of ethanol and other alcohols used in gasohol and other summer and winter gasolines Tier 2 type evaporative test fuel is of special interest. We are requesting comments on the test fuel.

## II. Technological Feasibility

EPA believes there are available technologies that can reduce permeation emissions to near-zero levels. For example, fluorinated fuel tanks and low permeability hoses, which are already available for small additional costs, could reduce permeation of tanks and hoses by 95 percent or more. The application of these technologies to land-based recreational vehicles appears to be relatively straightforward, with little cost and no adverse performance or aesthetic impacts. In addition, the control technology would generally pay for itself over time by conserving fuel that would otherwise evaporate.

A recent regulation in California requires a change from untreated high-density polyethylene (HDPE) plastic to fluorinated or sulfonated HDPE portable gasoline cans. Fuel tanks used by land-based recreational vehicles are all made of HDPE. Comments from California ARB suggest that the same technology used for small portable HDPE gasoline fuel cans could be readily applied to the fuel tanks of recreational vehicles.

As discussed above, there are two types of fuel tank barrier processes that can be employed to reduce or eliminate permeation in HDPE plastic tanks. The fluorination process causes a chemical reaction where exposed hydrogen atoms are replaced by larger fluorine atoms which form a barrier on the surface of the fuel tank. In this process, fuel tanks are stacked in a steel basket and placed in a sealed reactor. All of the air in the reactor is removed and replaced with fluorine gas. By pulling a vacuum in the reactor, the fluorine gas is forced into every crevice in the fuel tanks. As a result of this process, both the inside and outside surfaces of the fuel tank are treated. As an alternative, for tanks that are blow molded, the inside surface of the fuel tank can be exposed to fluorine during the blow molding process. In a similar barrier strategy, called sulfonation, sulfur trioxide is used to create the barrier by reacting with the exposed polyethylene to form sulfonic acid groups on the surface. Either of these processes can be used to reduce gasoline permeation by more than 95 percent. [2]

The majority of fuel hoses used in recreational vehicles today are made of nitrile rubber which has a high rate of fuel permeation.[3] However, low permeation hoses are available that could be used in these applications. Low permeability hoses produced today are generally constructed in one of two ways: using a low permeability material or a low permeability barrier layer. One hose design, already used in some marine applications, uses a thermoplastic layer between two rubber layers to control permeation. This thermoplastic barrier may either be nylon or ethyl vinyl alcohol. In automotive applications, other barrier materials are used such as fluoroelastomers and fluoroplastics which are two to three orders of magnitude less permeable than hoses currently on recreational vehicles.[4] By replacing rubber hoses with low permeability hoses, permeation emissions through the fuel hoses can be reduced by more than 95 percent. An added benefit of low permeability lines is that some fluoropolymers can be made to conduct electricity and therefore can prevent the buildup of static charges.

## III. Projected Impacts

### *A. Economic Impact*

Off-highway motorcycle fuel tanks range in capacity from approximately one gallon on some smaller youth models to about three gallons on some enduro motorcycles. For ATVs, fuel tanks range from one gallon for the smaller youth models to five gallons for the larger utility models. Finally, snowmobile fuel tanks range from 10 gallons to about 12 gallons. We estimate that fluorination of the fuel tanks would cost about $0.50 per gallon of capacity. Cost is related to fuel tank size because the cost of the treatment to any given level of effectiveness depends on how many fuel tanks can be fit into the fluorination chamber and the amount of polymer to be treated. It is estimated that shipping, handling, and overhead costs would be an additional $0.22 to $0.81 per fuel tank depending on tank volume. Table 1 presents estimated costs of fuel tank permeation control using fluorination.

EPA's examination of land-based recreational vehicles indicated that none of these vehicles are equipped with fuel hoses that significantly reduce or eliminate permeation. The incremental cost of a fuel line with low permeation properties for recreational vehicles is estimated to be about $1.00 per foot. For off-highway motorcycles, it is estimated that they use approximately one to two feet of fuel line on average. For ATVs, we estimate one foot of fuel line on average. Snowmobiles are a little more complex since they use multi-cylinder engines (either two or three cylinders). For two cylinder engines we estimate two to three feet of fuel line and for three cylinder engines we estimate three to four feet of fuel line. We are interested in collecting more information regarding fuel hoses currently used on land-based recreational vehicles, in particular regarding the typical length, the material, and the permeation properties. Table 1 also presents estimated costs of hose permeation control. Fuel savings due to reducing permeation, which are discussed later, are not included in this table. The costs in Table 1 include a 30 percent manufacturer markup from the vehicle manufacturer.

TABLE 1.—AVERAGE COST OF PERMEATION CONTROL PER VEHICLE

| | OHM | ATVs | Snow-mo-biles |
|---|---|---|---|
| Average fuel tank capacity [gallons] | 3 | 4 | 11 |
| Fluorination cost (includes shipping/handling/overhead) | $2.19 | $2.93 | $5.43 |
| Average hose length [feet] | 1.5 | 1 | 3.5 |
| Increased Hose Cost | 1.95 | 1.30 | 4.55 |
| Total Cost Increase | 4.14 | 4.23 | 9.98 |

### *B. Environmental Impact*

As was discussed earlier, EPA as well as California ARB, have conducted permeation testing with regard to permeation emissions from HDPE plastic tanks. Permeation rates varied from 0.2 to1.0 grams per gallon per day with an average value of 0.76 g/gal/day. This data was based on tests with an average temperature of about 29°C. Temperature has a first-order effect on the rate of permeation. Roughly, permeation doubles with every 10°C increase in temperature. For example, we estimate that at 23°C, the average value for these fuel tanks would be about 0.50 g/gal/day. This test data can be found in the docket

[2] Kathios, D., Ziff, R., Petrulis, A., Bonczyk, J., ''Permeation of Gasoline and Gasoline-alcohol Fuel Blends Through High-Density Polyethylene Fuel Tanks with Different Barrier Technologies,'' SAE Paper 920164, 1992, Air Docket A–2000–01, Document No. II–A–60.

[3] Stahl, W., Stevens, R., ''Fuel-Alcohol Permeation Rates of Fluoroelastomers, Fluoroplastics, and other Fuel Resisitant Materials,'' SAE 920163, 1992.

[4] Denbow, R., Browning, L., Coleman, D., ''Report Submitted for WA 2–9, Evaluation of the Costs and Capabilities of Vehicle Evaporative Emission Control Technologies,'' ICF, ARCADIS Geraghty & Miller, March 22, 1999.

Fuel hoses on recreational vehicles generally have an inside diameter of about 6 mm (1/4 inch) and a permeation rate of 550 grams per square meter per day for uncontrolled hoses at 23°C. We base this permeation rate on the SAE J30 requirement for R7 fuel hose.[5] For 1 foot of fuel hose, this yields an emission rate of 5.0 g/day at 23°C.

Table 2 presents national totals for permeation emissions from recreational vehicles. These permeation estimates are based on the emission rates discussed above and population and turnover estimates used in our draft NONROAD emissions model.[6] The daily temperatures by region (6 regions are used) are based on a report which summarizes a survey of dispensed fuel and ambient temperatures in the United States.[7]

TABLE 2.—POTENTIAL PERMEATION EMISSION CONTROL REDUCTIONS

[tons/yr]

| Category | Scenario | 2005 | 2010 | 2020 | 2030 |
|---|---|---|---|---|---|
| Off-highway motorcycles | baseline | 6,203 | 6,434 | 6,903 | 6,847 |
| | control | 6,203 | 3,258 | 188 | 651 |
| | reduction | 0 | 246 | 519 | 563 |
| ATVs | baseline | 24,891 | 33,136 | 38,856 | 36,777 |
| | control | 24,891 | 21,574 | 4,139 | 7,046 |
| | reduction | 0 | 11,562 | 34,716 | 29,731 |
| Snowmobiles | baseline | 16,083 | 16,681 | 17,899 | 17,679 |
| | control | 16,083 | 8,462 | 517 | 2,320 |
| | reduction | 0 | 8,219 | 17,382 | 15,359 |
| Total | baseline | 47,178 | 56,251 | 63,658 | 61,303 |
| | control | 41,178 | 33,294 | 4,845 | 10,018 |
| | reduction | 0 | 22,957 | 58,813 | 51,286 |

*C. Cost per Ton of Emissions Reduced*

The average lifetimes of typical recreational vehicles are estimated to be about 9 years for off-highway motorcycle and snowmobiles and 13 years for ATVs. Permeation control techniques can reduce emissions by about 95 percent for plastic fuel tanks and more than 99 percent for rubber hoses. Multiplying this efficiency and these emission rates by the life of the vehicles and discounting at 7 percent gives us lifetime per vehicle emission reductions. Using the cost estimates above, we have also determined cost per ton of hydrocarbons reduced. These estimates are presented Table 3.

TABLE 3.—ESTIMATED COST PER TON OF HC REDUCED WITHOUT FUEL SAVINGS

| Category | Source | Cost (NPV) | Lifetime reductions (NPV, tons) | Discounted cost per ton ($/ton) |
|---|---|---|---|---|
| Off-highway motorcycles | fuel tank | $2.19 | 0.0026 | $828 |
| | fuel hose | $1.95 | 0.0315 | $62 |
| Total | | $4.14 | 0.0342 | $121 |
| ATVs | fuel tank | $2.93 | 0.0044 | $664 |
| | fuel hose | $1.30 | 0.0263 | $49 |
| Total | | $4.23 | 0.0307 | $138 |
| Snowmobiles | fuel tank | $5.43 | 0.0079 | $689 |
| | fuel hose | $4.55 | 0.0598 | $76 |
| Total | | $9.98 | 0.0677 | $147 |

Because these emissions are composed of otherwise useable fuel that is lost to the atmosphere, measures that reduce permeation emissions can result in potentially significant fuel savings. Table 4 presents our estimates of these fuel savings as well as adjusted cost per ton estimates which consider these fuel savings. The value of the fuel savings presented are based on a discount rate of 7 percent and an average nontax gasoline fuel price of $1.10 per gallon. As is shown below, the fuel savings are generally larger than the cost of using low permeation technology. To the consumer this is a net cost savings over the vehicle life of about $8 for off-highway motorcycles, $7 for ATVs, and $14 for snowmobiles. It is estimated that this technology would save about 20 million gallons of gasoline per year when fully implemented.

[5] SAE J30, ''Fuel and Oil Hoses,'' Surface Vehicle Standard, Society of Automotive Engineer Revised June 1998.

[6] This information is also available in Chapter 6 of the Regulatory Support Document for the NPRM. For more detailed information on the draft NONROAD model, see our Web site at *www.epa.gov/otaq/nonrdmdl.htm.*

[7] API Publication No. 4278, ''Summary and Analysis of Data from Gasoline Temperature Survey Conducted at Service Stations by American Petroleum Institute,'' Prepared by Radian Corporation for American Petroleum Institute, November 11, 1976, Docket A–2000–01, Document II–A–16.

TABLE 4.—ESTIMATED COST PER TON OF HC REDUCED WITH FUEL SAVINGS

| Category | Source | Fuel saved (gallons) | Value of fuel savings (NPV) | Discounted cost per ton ($/ton) |
|---|---|---|---|---|
| Off-highway motorcycles | fuel tank | 1.1 | $0.96 | $465 |
| | fuel hose | 13.4 | 11.45 | (301) |
| Total | | 14.6 | 12.41 | (242) |
| ATVs | fuel tank | 2.2 | 1.64 | 292 |
| | fuel hose | 12.9 | 9.79 | (323) |
| Total | | 15.1 | 11.43 | (235) |
| Snowmobiles | fuel tank | 3.4 | 2.82 | 326 |
| | fuel hose | 25.5 | 21.71 | (287) |
| Total | | 28.8 | 24.57 | (216) |

Dated: April 25, 2002.

**Elizabeth Craig,**

*Acting Assistant Administrator for Air and Radiation.*

[FR Doc. 02–10730 Filed 4–30–02; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Medicare & Medicaid Services

## 42 CFR Part 414

**[CMS–1084–WN]**

**RIN 0938–AK50**

## Medicare Program; Payment for Upgraded Durable Medical Equipment; Withdrawal

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

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** This document withdraws all provisions of the proposed rule pertaining to upgraded durable medical equipment (DME) that we published in the **Federal Register** on April 27, 2000. The proposed rule was based on a discretionary provision of the Balanced Budget Act (BBA) of 1997. We solicited comments on a methodology that would have permitted suppliers to charge Medicare beneficiaries more than the Medicare allowed payment amount for certain upgraded DME and bill the Medicare program on an assignment basis.

**DATES:** The proposed rule published on April 27, 2000 at 65 FR 24666 is withdrawn.

**FOR FURTHER INFORMATION CONTACT:** William Long, (410) 786–5655.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Historically, to bill DME claims under Medicare's assignment rules, suppliers were required to accept the Medicare allowed amount as payment-in-full. Under the proposed rule, Medicare payment would have been made to the supplier as if the DME were DME without the upgrade features. The beneficiary purchasing or renting the upgraded DME would pay the supplier an amount equal to the difference between the supplier's charge for the upgraded DME and the amount paid by Medicare for the DME without the upgraded features.

We are withdrawing this proposed rule because we recently implemented a process by which suppliers may bill on an assignment basis for upgraded DME. The supplier can now use Advance Beneficiary Notice (ABN), based on section 1879 of the Social Security Act (the Act), to inform beneficiaries they may be responsible for payment for items since the supplier expects Medicare payment for these items to be denied. Under the ABN process, the supplier would be permitted to bill on an assigned or unassigned basis for the item that would be covered by Medicare. The supplier would bill the beneficiary the difference between Medicare's allowed amount and the cost of the upgraded feature. The ABN nondiscretionary authority is broader than section 4551(c) of the BBA of 1997. Therefore, we are not implementing section 4551(c) of the BBA.

### II. Regulatory Impact Statement

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980 Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year).

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 to $25 million in any 1 year. For purposes of the RFA, all suppliers of DME are considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million.

This document withdraws all provisions of the proposed rule pertaining to upgraded durable medical equipment (DME) that we published in the **Federal Register** on April 27, 2000.

This withdrawal document will not have an impact of $110 million or more annually. Neither is this document expected to impose an unfunded mandate on States exceeding $110 million annually. Therefore, we have not prepared an analysis of cost and benefits as required by E.O. 12866 and the Unfunded Mandates Act for rules with significant economic impacts or that impose significant unfunded mandates on States. Also, we believe this withdrawal document will have very little direct impact on small entities as defined under the RFA or on small rural hospitals as defined under section 1102(b) of the Social Security Act. For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This document will not have a substantial effect on State or local governments.

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

### III. Collection of Information Requirements

As stated above, we are withdrawing this proposed rule because we recently implemented the ABN process by which suppliers may bill on an assignment basis for upgraded DME. The supplier can now use ABN to inform beneficiaries they may be responsible for payment for items since the supplier expects Medicare payment for these items to be denied. On October 12, 2001 and February 19, 2002 we published notices in the **Federal Register** announcing that we are seeking Paperwork Reduction Act reapproval of the ABN, approved under OMB number 0938–0566, with a current expiration date of April 31, 2002.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 21, 2001.

**Thomas A. Scully,**

*Administrator, Centers for Medicare & Medicaid Services.*

Approved: February 22, 2002.

**Tommy G. Thompson,**

*Secretary.*

[FR Doc. 02–10648 Filed 4–26–02; 12:04 pm]

BILLING CODE 4120–01–P

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 73

**[DA 02–908; MB Docket No. 02–58; RM–10415)**

## Radio Broadcasting Services; Shafter, CA.

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comment on a Petition for Rule Making filed on behalf of American Media General of Texas, Inc., licensee of Station KCOO, Channel 282A, Shafter, California, requesting the allotment of Channel 226A to Shafter, California, in order to permit it to modify its license to specify operation on Channel 226A. This is necessary because American Media General of Texas, Inc. is losing its transmitter site and has been unable to locate an available site that would accommodate operation on Channel 282A. The coordinates for the Channel 226A allotment at Shafter, California, would be 35–30–06 and 119–16–18.

**DATES:** Comments must be filed on or before June 10, 2002, and reply comments on or before June 25, 2002.

**ADDRESSES:** Secretary, Federal Communications Commission, Washington, DC, 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Vincent J. Curtis, Jr., c/o Fletcher, Heald & Hildreth, 1300 North 17th Street, Arlington, Virginia, 22209–3801.

**FOR FURTHER INFORMATION CONTACT:** Robert Hayne, Mass Media Bureau (202) 418–2177.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Notice of Proposed Rule Making* in MB Docket No. 02–58, adopted April 17, 2002, and released April 19, 2002. The full text of this Commission action is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals II, CY-A257, 445 12th Street, SW, Washington, D.C. The complete text of this action may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, D.C. 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail qualexint@aol.com. Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

### List of Subjects in 47 CFR

Radio Broadcasting

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Office of Broadcast License Policy, Media Bureau.*

[FR Doc. 02–10786 Filed 4–30–02; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 600

**[I.D. 040202C]**

## Magnuson-Stevens Act Provisions, Subpart H; General Provisions for Domestic Fishing; Correction

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

**ACTION:** Correction of notice of receipt of petition for rulemaking and request for comments.

**SUMMARY:** In the April 18, 2002, **Federal Register**, NMFS announced receipt of a petition for rulemaking under the Administrative Procedure Act. Oceana, a non-governmental organization concerned with the environmental health of the oceans, petitioned the U.S. Department of Commerce to promulgate immediately a rule to establish a program to count, cap, and control bycatch in U.S. fisheries. The announcement indicated under ''**ADDRESSES**'' where copies of the petition could be obtained, and under ''**SUPPLEMENTARY INFORMATION**'' that a copy of the petition was available at a

NMFS website. An error in the NMFS web address is corrected by this document.

**ADDRESSES:** Copies of the petition are available, and written comments on the need for such a regulation, its objectives, alternative approaches, and any other comments may be addressed to William T. Hogarth, Ph.D., Assistant Administrator for Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910; telephone 301–713–2239. Comments may also be sent via fax to 301–713–1193, attn: Val Chambers. Comments will not be accepted if submitted via e-mail or Internet.

**FOR FURTHER INFORMATION CONTACT:** Val Chambers, telephone 301–713–2341, fax 301–713–1193, e-mail Val.Chambers@noaa.gov.

**SUPPLEMENTARY INFORMATION:** Notice of receipt of the petition for rulemaking as filed by Oceana was published in the **Federal Register** on April 18, 2002 (67 FR 19154). The petition asserts that NMFS is not meeting its legal obligations for bycatch of birds, mammals, turtles, and fish under the Magnuson-Stevens Fishery Conservation and Management Act, the Endangered Species Act, the Marine Mammal Protection Act, and the Migratory Bird Treaty Act. The petition seeks a regulatory program that includes a workplan for observer coverage sufficient to provide statistically reliable bycatch estimates in all fisheries, the incorporation of bycatch estimates into restrictions on fishing, the placing of limits on directed catch and bycatch in each fishery with provision for closure upon attainment of either limit, and bycatch assessment and reduction plans as a requirement for all commercial and recreational fisheries.

## Correction

In proposed rule FR Doc. 02–9462 published on April 18, 2002, (67 FR 19154) make the following correction. On page 19154, under ''**SUPPLEMENTARY INFORMATION**'', in the third column, the first complete paragraph is corrected to read as follows:

''The exact and complete assertions of nonconformance with Federal law are contained in the text of Oceana's petition which is available via internet at the following NMFS web address: *http://www.nmfs.noaa.gov/sfa/sfweb/index.htm.* Also, anyone may obtain a copy of the petition by contacting NMFS at the above address.''

This corrects the error in the website address.

The Assistant Administrator for Fisheries has determined that the petition contains enough information to enable NMFS to consider the substance of the petition. NMFS will consider public comments received in determining whether or not to proceed with the development of the regulations requested by Oceana. To this end, NMFS, by separate letter, has requested each of the Regional Fishery Management Councils to assist in evaluating this petition. Upon determining whether or not to initiate the requested rulemaking, the Assistant Administrator for Fisheries, NOAA, will publish a notice of the agency's final disposition of the Oceana petition request in the **Federal Register**.

Dated: April 25, 2002.

**John H. Dunnigan,**

*Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 02–10757 Filed 4–26–02; 4:30 pm]

BILLING CODE 3510–22–S

# Notices

Federal Register

Vol. 67, No. 84

Wednesday, May 1, 2002

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

## AGENCY FOR INTERNATIONAL DEVELOPMENT

### Draft Report on Information Quality Guidelines

**AGENCY:** U.S. Agency for International Development (USAID)

**ACTION:** Notice.

**SUMMARY:** USAID's draft Report on Information Quality Guidelines (Report) is available for public comment on the USAID homepage: *http://www.usaid.gov/about/info_quality/.*

**DATES:** Please submit comments on or before May 31, 2002.

**ADDRESSES:** You may submit your comments directly from the above Web site. You may also mail written comments to Margaret Alter Miller, M/AA, 6.12–036 RRB, USAID, 1300 Pennsylvania Avenue, NW., Washington, DC 20523–7600 or email her at mamiller@usaid.gov.

**FOR FURTHER INFORMATION CONTACT:** Margaret Alter Miller; telephone 202–712–1054; telefax (202) 216 -3053; email *mamiller@usaid.gov.*

**SUPPLEMENTARY INFORMATION:** Pursuant to OMB Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information Disseminated by Federal Agencies, USAID has prepared a draft Report and has posted it on its website for public comment.

Dated: April 25, 2002.

**Richard C. Nygard,**

*Deputy CIO for Policy.*

[FR Doc. 02–10699 Filed 4–30–02; 8:45 am]

**BILLING CODE 6116–01–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

**[No. LS–02–07]**

### Lamb Promotion, Research, and Information: Certification of Organizations for Eligibility To Make Nominations to the Lamb Promotion, Research, and Information Board

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

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) is accepting applications from State, regional, and national lamb producer, seedstock producer, feeder, and first handler organizations or associations which desire to be certified as eligible to nominate lamb producers, seedstock producers, lamb feeders, or first handlers of lamb or lamb products for appointment to the Lamb Promotion, Research, and Information Board (Board). To nominate a producer, seedstock producer, feeder, or first handler member to the Board, organizations must first be certified by USDA. Notice is also given that upcoming appointments are anticipated and that during a period to be established by USDA, nominations will be accepted from eligible organizations.

**DATES:** Applications for certification must be received by close of business May 31, 2002.

**ADDRESSES:** Certification forms as well as information regarding the certification and nomination procedures may be requested from Marlene M. Betts, Acting Chief; Marketing Programs Branch, Room 2627–S; Livestock and Seed Program; AMS, USDA; STOP 0251; 1400 Independence Avenue, SW.; Washington, D.C. 20250–0251 or obtained via the Internet at *http://www.ams.usda.gov/lsg/mpb/rp-lamb.htm.*

**FOR FURTHER INFORMATION CONTACT:** Marlene M. Betts, Acting Chief, Marketing Programs Branch on 202/720–1115, via facsimile on 202/720–1125, or via e-mail at *Marlene.Betts@usda.gov.*

**SUPPLEMENTARY INFORMATION:**

The Commodity Promotion, Research, and Consumer Information Act of 1996 (Act)(7 U.S.C. 7411 *et seq.*) authorizes the establishment and implementation of a lamb promotion, research, and information program. Pursuant to the Act, a proposed Lamb Promotion, Research, and Information Order (Order) was published in the **Federal Register** on September 21, 2001 (66 FR 48764). The final Order was published in the **Federal Register** on April 11, 2002 (67 FR 17848). The Order provides for the establishment of a 13-member Board that will consist of 6 producers, 3 feeders—producers and feeders representing regions east and west of the Mississippi river—1 seedstock producer, and 3 first handlers appointed by USDA. The duties and responsibilities of the Board are provided under the Order.

The Order provides that USDA shall certify or otherwise determine the eligibility of any State, regional, or national lamb producer, seedstock producer, feeder, or first handler organizations or associations that meets the eligibility criteria established under the Order. Those organizations that meet the eligibility criteria specified under the Order will be certified as eligible to nominate members for appointment to the Board. Those organizations should ensure that the nominees represent the interests of producers, seedstock producers, feeders, and first handlers.

The Order provides that the members of the Board shall serve for terms of 3 years, except that appointments to the initially established Board shall be proportionately for 1-, 2-, and 3-year terms. No person may serve more than two consecutive 3 year terms. USDA will announce when nominations will be due from eligible organizations and when any subsequent nominations are due when a vacancy does or will exist. The Board composition is as follows:

| Unit/Region | Members |
|---|---|
| Producer Members: Region 1—East of the Mississippi | 2 |
| Producer Members: Region 2—West of the Mississippi | 2 |
| USDA Appointed Producer Members | 2 |
| Feeder Members: Region 1—East of the Mississippi | 1 |
| Feeder Members: Region 2—West of the Mississippi | 1 |
| USDA Appointed Feeder Member | 1 |
| Seedstock Producer Member | 1 |

| Unit/Region | Members |
|---|---|
| First Handler Members | 3 |
| Total | 13 |

Any eligible producer, seedstock producer, feeder, or first handler organization that is interested in being certified to nominate producers, seedstock producers, feeders, or first handlers for appointment to the Board, must complete and submit an official ''Application for Certification of Organization,'' form. That form must be received by close of business May 31, 2002.

Only those organizations that meet the criteria for certification of eligibility specified under § 1280.206(b) under the Order are eligible for certification. In certifying an organization, the following will be considered:

(1) The geographic territory covered by the active membership of the organization;

(2) The nature and size of the active membership of the organization, including the number of active producers, seedstock producers, feeders, or first handlers represented by the organization;

(3) Evidence of stability and permanency of the organization;

(4) Sources from which the operating funds of the organizations are derived;

(5) The functions of the organization; and

(6) The ability and willingness of the organization to further the purpose and objectives of the Act.

In addition, the primary consideration in determining the eligibility of an organization will be:

(1) The membership of the organization consists primarily of producers, seedstock producers, feeders, or first handlers who market or handle a substantial quantity of lamb or lamb products; and

(2) A primary purpose of the organization is in the production or marketing of lamb and lamb products.

All newly certified organizations will be notified in writing of the beginning and ending dates of the established nomination period and will be provided with required nomination forms.

The information collection requirements referenced in this notice has been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35) and have been assigned OMB No. 0581–0198, except Board nominees information form has been assigned OMB No. 0505–0001.

**Authority:** 7 U.S.C. 7411–7425.

Dated: April 25, 2002.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 02–10677 Filed 4–30–02; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

## Forest Service

## Revised Land and Resource Management Plan for the Ouachita National Forest in Arkansas and Oklahoma

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of Intent to prepare Environmental Impact Statement.

**SUMMARY:** The purpose of this notice is to inform the public that (pursuant to 16 U.S.C. 1604(f)(5) and 36 CFR 219.10(g)) the Regional Forester for the Southern Region of the USDA Forest Service intends to prepare an Environmental Impact Statement (EIS) to accompany a revision of the Land and Resource Management Plan (Forest Plan) for the Ouachita National Forest. The existing Forest Plan was approved on April 1, 1986. Since then, 37 amendments have been completed, including a significant amendment that resulted in publication of the 1990 Amended Land and Resource Management Plan. We now invite comments and suggestions from American Indian tribes, Federal agencies, state and local governments, individuals and organizations on the scope of the analysis to be included in the draft EIS (DEIS) (40 CFR 1501.7).

**DATES:** Comments on this Notice of Intent (NOI) and, specifically, on the scope of the analysis to be included in the EIS, should be received in writing by August 2, 2002. The agency expects to file the DEIS with the Environmental Protection Agency (EPA) and make it available for public comment in 2004. The Agency expects to file the final EIS (FEIS) in September of 2005.

**ADDRESSES:** Send written comments to Forest Plan, Ouachita National Forest, P.O. Box 1270, Hot Springs, AR 71902. Electronic mail should include ''FP Revision'' in the subject line and be sent to: *ouachita plan@fs.fed.us.*

**FOR FURTHER INFORMATION CONTACT:** Ouachita National Forest: Planning Team Leader Bill Pell (phone 501–321–5320; TDD 501–321–5307). Electronic mail should include ''FP Revision'' in the subject line and be sent to: *ouachita plan@fs.fed.us.* Information about Forest Plan revision and future opportunities to participate will be posted at the following website: *http://www.fs.fed.us/oonf/design planning.html.* The Regional Forester for the Southern Region, located at 1720 Peachtree Road, NW, Atlanta, Georgia 30309, is the Responsible Official.

*Affected Counties:* This NOI affects the following counties: Ashley, Garland, Hot Spring, Howard, Logan, Montgomery, Perry, Pike, Polk, Saline, Scott, Sebastian, and Yell, Arkansas; and LeFlore and McCurtain, Oklahoma.

**SUPPLEMENTARY INFORMATION:**

### A. Background Information

*1. The Role of Forest Plans*

National Forest System resource allocation and management decisions are made in two stages. The first stage is the Forest Plan, which involves the establishment of management direction by allocating lands and resources within the plan area to various uses or conditions through management areas and management prescriptions. The second stage is plan implementation through approval of project decisions. Forest Plans do not compel the agency to undertake any site-specific projects; rather, they establish overall goals and objectives (or desired resource conditions) that the individual National Forest will strive to meet. Forest Plans also establish limitations on what actions may be authorized and what conditions must be met as part of project-level decision-making.

The primary decisions made in a Forest Plan include: (1) Establishment of forest-wide multiple-use goals and objectives (36 CFR 219.11(b)); (2) establishment of forest-wide management requirements (36 CFR 219.13 to 219.27); (3) establishment of multiple-use prescriptions and associated standards for each management area (36 CFR 219.11(c)); (4) determination of land that is suitable for the production of timber (16 U.S.C. 1604(k) and 36 CFR 219.14); (5) establishment of the allowable sale quantity for timber within a time frame specified in the plan (36 CFR 219.16); (6) establishment of monitoring and evaluation requirements (36 CFR 219.11(d)); (7) recommendations concerning roadless areas that Congress could designate as wilderness (36 CFR 219.17); and (8) where applicable, designation of those lands administratively available for oil and gas leasing (36 CFR 228.102 (d) and (e)). The authorization of site-specific activities within a plan area occurs through project decision-making, the second stage of forest planning. Project decision-making must comply with NEPA procedures and must include a

determination that the project is consistent with the Forest Plan.

(**Note:** The above citations are from the 1982 36 CFR 219 planning regulations. *See also* section G.)

*2. The Beginning of the Forest Plan Revision Effort for the Oauchital National Forest*

For this Forest Plan revision, an effort was made to first define the current situation and estimate an ''initial need for change.'' A key part of defining the current situation was the Ozark-Ouachita Highlands Assessment, a multi-agency effort in which Ouachita National Forest employees actively participated. On October 16, 1996, a Notice was published in the **Federal Register** (Vol. 61. No. 201) that identified the relationships between the Ozark-Ouachita Highlands Assessment and Forest Plan revisions for the National Forest in Arkansas, Missouri, and Oklahoma. In addition to reviewing the results of this broad-scale assessment, which were made widely available in early 2000, and the draft conclusions of a more recent assessment (described below), the ''initial need for change'' was evaluated in light of the results of monitoring and relevant research, public comments received from 1990 through early 2002, and the experience of employees responsible for implementing the Forest Plan. These evaluations are the basis for the preliminary issues and proposed action identified in this notice. Additional issues or topics will be developed as needed to respond to public comments received in response to this NOI and subsequent scoping efforts.

*3. The Ozark-Ouachita Highlands Assessment and the Southern Forest Resource Assessment*

The USDA Forest Service and many other agencies participated in the preparation of the Ozark-Ouachita Highlands Assessment, which culminated in a final summary report and four technical reports that were made available to the public in early 2000 (available now at the Forest Plan address provided near the beginning of this document). This Assessment included National Forest System lands and private lands within the highlands of Arkansas, Missouri, and Oklahoma.

The Assessment facilitated ecologically based approaches to public lands management in the Ozark-Ouachita Highlands by collecting and analyzing broadscale biological, physical, social and economic data. The Assessment supports the revision of the Forest Plans by describing how the lands, resources, people and management of the National Forest interrelated within the larger context of the Ozark-Ouachita Highlands area. This Assessment, however, is not a ''decision document,'' and it did not involve the National Environmental Policy Act (NEPA) process.

The Southern Forest Resource Assessment was initiated in May 1999 to examine the status, trends, and potential future of southern forests. The USDA Forest Service led the effort in cooperation with the U.S. Fish and Wildlife Service, EPA, Tennessee Valley Authority, and southern States represented by their forestry and fish and wildlife agencies. This Assessment addresses the sustainability of southern forest in light of increasing urbanization and timber harvests, changing technologies (including chip mills), forest pests, climatic changes, and other factors that influence the region's forests. In late 2001, draft reports from the Southern Forest Resource Assessment were made available on the following website: *http://www.srs.fs.fed.us/sustain/report/index.htm.*

*4. Relationship of the Forest Plan revision for the Ouachita National Forest to revision efforts for the Mark Twain and Ozark-St. Francis National Forest*

Forest plan revision will be conducted simultaneously on these National Forests. We anticipate that a separate EIS and revised Forest Plan will be produced for each administrative unit. The respective Forest Supervisors have agreed to coordinate the revisions to the extent feasible and practical. The respective planning teams will work together to address common issues.

*5. The Role of Scoping in Revising the Land and Resource Management Plan*

This NOI includes a description of a Proposed Action in terms of preliminary ''needs for change'' for the revision of the Forest Plan and preliminary issues associated with those needed changes. The Proposed Action entails one or more of the plan decisions identified in the ''The Role of Forest Plans.'' Scoping to receive public comments on the preliminary issues and proposed action will begin following the publication of this NOI. Comments received during this period will be used to further refine the preliminary issues that should be addressed, the Forest Plan decisions that need to be analyzed (the ''proposed action'' and ''need for change''), and the range of alternatives that will be developed. For more information on how the public can become involved during the scoping period, see Section F of this NOI.

**B. Purpose and Need for Action**

The purpose for revising the Forest Plan derives from the requirements for land and resource management planning in the National Forest Management Act and its implementing regulations, which are contained in 36 CFR 219. According to 36 CFR 219.10(g), Forest Plans are ordinarily revised on a 10–15 year cycle. The need to revise this Forest Plan is also driven by the changing conditions identified in the Ozark-Ouachita Highlands Assessment, the Southern Forest Resource Assessment, and ongoing monitoring and evaluation results specific to the Ouachita National Forest.

**C. Preliminary Issues**

Preliminary issues for the Ouachita National Forest Plan revision focus on parts of the current Forest Plan where change may be needed. The preliminary issues were derived from the Ozark-Ouachita Highlands Assessment, the Southern Forest Resource Assessment, internal comments from forest managers, results of monitoring, the mid-plan review and comments received from the public. The Proposed Action in section D describes these issues in more detail.

*1. Ecosystem Health and Sustainability*

a. Changes may be needed in management direction for maintaining or restoring healthy forest ecosystems in the face of new threats from insect outbreaks and diseases. (36 CFR 219.27)

b. Changes may be needed in Forest Plan direction for maintaining habitats for viable populations of all native plant and animal species. (36 CFR 219.19)

c. Management standards for the use (and/or projected levels) of prescribed burning may need to be modified in light of changing air quality standards.

d. Changes in management standards and desired conditions for the transportation system within the Ouachita National Forest may be needed in order to respond to the findings of a forest scale roads analysis. (36 CFR 212.5)

*2. Roadless Areas, Recreation, Motorized Access*

a. Remaining roadless areas need to be considered for possible wilderness recommendation(s). (36 CFR 219.17)

b. Changes may be needed to address existing and likely future conflicts among dispersed recreation activities.

c. The mix of developed and dispersed recreation opportunities on the forest may need to be reevaluated.

d. Forest Plan direction concerning off-highway vehicle use may need to be changed in light of increasing demands for and concerns about this recreation activity.

*3. Silvicultural Practices*

a. Changes may be needed in the standards for implementing different reproduction cutting methods and other silvicultural practices and the predicted levels at which such methods and practices will be implemented on the Ouachita National Forest.

b. There may be a need to re-examine the relationships between silvicultural practices and desired conditions for the National Forest.

*4. Relationship of National Forest Management to Local Communities and Economies.*

a. Changes may be needed to enable the National Forest to more fully support long-term community development needs in the vicinity of the Ouachita National Forest.

**D. Proposed Action**

Since 1990, Forest Plan amendments, annual monitoring reports, a five-year review of plan implementation, and working with the public and other agencies have provided the Ouachita National Forest with valuable information about changes that are needed in the existing Forest Plan. This initiates the determination of the need to establish or change management direction as required under the NFMA regulations at 36 CFR 219.12(e)(5). The Proposed Action is that revision of the Forest Plan for the Ouachita National Forest focus primarily on the following ''needs for change''.

*1. Ecosystem Health and Sustainability*

a. Oak Decline and Oak Mortality

Oak decline and oak mortality are occurring on an estimated 30,000 acres of hardwood forests on national forest lands in Montgomery, Polk, Scott and Logan Counties, Arkansas. Although some oak mortality has been observed over a wide variety of sites, significant mortality is primarily occurring in oak-hickory stands at higher elevations on north-facing slopes. These stands are comprised of older trees (approaching 100 years of age), have high basal areas, and exist on relatively poor sites. There are approximately 500,000 acres of hardwood and hardwood-pine forests on the Forest, however, and all are potentially at risk for oak decline; the area affected by excessive oak mortality is expected to increase.

The Forest Plan provides broad goals and management standards to ''reduce insect and disease-caused losses'' but does not specifically address oak mortality. Although the Forest Plan addresses desired hardwood components of various management areas in detail, specific mention of a desired oak component is found in the management goal statements of only five management areas (9, 11, 15, 16, and 19). Current management direction needs to be reviewed in light of the growing incidence of oak mortality on this National Forest.

b. Threatened, Endangered and Species of Viability Concerns

For the most part, the populations of threatened, endangered, and species of viability concern that occupy portions of the Ouachita National Forest (or nearby downstream reaches) appear to be stable, fluctuating normally, or increasing. However, the viability of some of these species or groups of species (e.g., amphibians, birds) may need to be reconsidered in light of research or monitoring conducted since 1990. Another concern is that the Ouachita National Forest continues to fall short of providing the amounts of early seral habitat that are called for by the current Forest Plan. Over the past decade, the shortfall has risen to nearly 80,000 acres. The viability of species dependent on such habitats needs to be reevaluated.

c. Prescribed Burning

EPA will soon establish new National Ambient Air Quality Standards for ozone and particulate matter 2.5 microns and smaller in size. One or more ''non-attainment'' areas for one or both of these pollutants may be designated near or partially encompassing the Ouachita National Forest. Projections of desired and feasible levels of annual prescribed burning may need to be adjusted based on these new circumstances.

d. Transportation System

New direction for National Forest transportation system planning was issued in January of 2001. In May, an interim directive delayed implementation of the new regulations until 2002. The Ouachita National Forest will start implementing the new direction concerning roads analysis this year, including initiation of a forest-wide roads analysis. Doing so will bring even greater focus on roads maintenance needs, opportunities to obliterate unneeded roads, and public interest in motorized access to this national forest. The decision to revise the forest plan must be informed by a roads analysis (36 CFR 212.5).

*2. Roadless Areas, Recreation Needs and Conflicts, Motorized Access*

a. Roadless Areas

Six inventoried roadless areas within the Ouachita National Forest were identified in the Forest Service's FEIS, Roadless Area Conservation, dated November 2000. The Forest Plan for the Ouachita National Forest currently prohibits or strictly limits road construction in these six roadless areas, and no timber sales have been planned in recent years in these areas. These six areas and two additional roadless areas in McCurtain Co., Oklahoma, will be evaluated as potential wilderness areas during Forest Plan revision per 36 CFR 219.17. Any other lands meeting the criteria for inventoried roadless areas will also be evaluated.

b. Recreation Opportunities

According to Report 4 of the Ozark-Ouachita Highlands Assessment, ''Demand for nearly all categories of recreational activities is expected to increase in the next decade. Researchers project that the increase in the Highlands will be greater than the national average. Recreational activities with the largest projected increases in both percentage of the population and number of people participating include sightseeing, picnicking, visiting historical sites, and visiting beaches or other water sites.'' Horseback riding and off-highway vehicle use are also expected to increase. These demands and uses may increase the rate of user conflicts and environmental problems. In addition to the kinds of conflicts and problems associated with dispersed recreation activities, there are major concerns about developed recreation areas on the Ouachita National Forest. Because of their age and heavy use, many of these recreational facilities are deteriorating. Lack of funds to maintain and repair them may point to a need to close some areas and strictly limit designation of new ones.

c. Off-Highway Vehicle Use

Cross-country off-highway vehicle (OHV) travel is presently allowed over large portions of the Ouachita National Forest. Areas of concentrated use where OHV impacts pose persistent problems include Wolf Pen Gap, Little Missouri River watershed, the Lake Ouachita area, Poteau Mountain Wilderness, and some power line rights of way. There is no common understanding (externally or internally) of what constitutes ''resource damage'' due to OHVs (*i.e.,* what is and isn't acceptable). User conflicts, such as those experienced when some hunters and hikers

encounter OHV riders are increasing, as is demand for OHV access. Current Forest Plan direction includes guidelines to ''provide for off-road vehicle use'' and ''designate special areas for ORV use.'' More specific guidance many be needed.

*3. Silvicultural Practices*

When uneven-aged and irregular even-aged management practices were implemented on portions of the Ouachita National Forest in the early 1990s, there was little scientific information concerning the feasibility or environmental consequences of such practices. Now, most forest managers have 10 or more years of experience with these silvicultural methods. Moreover, multi-disciplinary research focused on stand-level silvicultural treatments (alternatives to clearcutting) has been conducted on the Ouachita National Forest since 1991. Post-treatment results will be available during Forest Plan revision and may point to needed changes in the Forest Plan. The mix and projected annual use of silvicultural practices may need to be reexamined.

*4. Relationship of National Forest Management to Local Communities and Economies*

The National Forest-Dependent Rural Communities Economic Diversification Act of 1990 directs the Forest Service to help national forest-dependent communities organize, plan, and implement actions that diversify local economies and to ensure that USDA-funded community action plans are consistent with national forest land and resource management plans. There may be a need to reexamine the relationships between national forest management direction and local community development (including economic development) needs.

*5. Other Needs for Change*

In addition to addressing the needs for change described in parts D.1. through D.4., the Proposed Action also includes the following:

a. Reevaluate management area definitions and boundaries.

b. Reevaluate road density standards in management area prescriptions.

c. Replace the current Visual Management System with the national Scenery Management System and consider the need for new visual objectives.

d. Examine and update land ownership adjustment needs across the Forest.

e. Consider any change needed to better address tribal rights and needs.

f. Review current direction for monitoring and evalaution and bring it in line with current needs.

g. Update the research needs identified in the 1990 Amended Plan.

h. Evaluate watershed health and consider changes in standards and guidelines to address priority needs.

i. Clarify standards for identifying lands suitable for timber production (as part of the management direction for certain management areas) and review the designation of lands not suited for timber production (36 CFR 219.14(d)); for the Ouachita National Forest, the required ten-year review of lands not suitable for timber production is being done in this revision.

j. Re-determine the allowable sale quantity (ASQ) for timber.

k. Determine whether changes are needed in definitions and forest plan direction for riparian areas and streamside management zones.

l. Determine whether changes are needed in management direction for existing wild and scenic river corridors.

m. Review forest plan direction concerning old growth to determine whether it is consistent with Southern Region direction.

**E. Preliminary Alternatives**

The actual alternatives presented in the DEIS will portray a full range of responses to the significant issues. The DEIS will examine the effects of implementing strategies to achieve different desired conditions and will develop possible management objectives and opportunities that would move the forest toward those desired conditions. A preferred alternative will be identified in the DEIS. The range of alternatives presented in the DEIS will include one that continues current management direction and others that will address the range of issues developed in the scoping process.

**F. Involving the Public**

The objective in this process for public involvement is to create an atmosphere of openness where all members of the public feel free to share information with the Forest Service and its employees on a regular basis. All parts of this process will be structured to maintain openness and trust. The Forest Service is seeking information, comments, and assistance from tribal governments, Federal, State and local agencies, and other individuals and organizations that may be interested in or affected by the proposed action. This input will be utilized in the preparation of the DEIS. The range of alternatives to be considered in the EIS will be based on the identification of significant issues, management concerns, resource management opportunities, and plan decisions. Public participation will be solicited by notifying in person and/or by mail, known interested and affected publics. News releases will be used to give the public general notice, and public scoping meetings will be conducted at several locations. Public participation will be sought throughout the plan revision process and will be important at several points along the way. The first opportunity to comment will be during the scoping process (40 CFR 1501.7). Scoping includes identifying additional potential issues (other than those previously described). The second step is to identify which issues are significant and which have either been covered by prior environmental review or are non-significant for revision. the list of significant issues will be available for public review and comment before the DEIS is prepared. Significant issues are used to develop and explore Forest Plan alternatives. Finally, the potential environmental effects of the proposed action and alternatives (*i.e.,* direct, indirect, and cumulative effects) will be thoroughly analyzed and disclosed in the DEIS, which will be available for public comment for at least 90 days. As part of the first step in scoping, a series of public opportunities have been scheduled to explain the planning process and provide an opportunity for public input. Following are the proposed locations and dates for these meetings: Broken Bow, Oklahoma, June 3, 2002; Poteau, Oklahoma, June 6, 2002; Hot Springs, Arkansas, June 10, 2002; Mena, Arkansas, June 11, 2002.

**G. Planning Regulations**

The Department of Agriculture published new planning regulations in November 2000. Concerns regarding the ability of the agency to implement these regulations prompted a review, and another revision of these regulations is now being developed. On May 10, 2001, Secretary Veneman signed an interim final rule allowing Forest Plan amendments or revisions initiated before May 9, 2002, to proceed under the new (November 2000) planning rule or under the 1982 planning regulations. The Ouachita National Forest Plan revision will be initiated under the 1982 planning regulations.

**H. Release and Review of EIS**

The DEIS is expected to be filed with the EPA and be available for public comment by September 2004. At that time, the EPA will publish a notice of availability of the DEIS in the **Federal Register**, The comment period will be

90 days from the date the EPA publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of the DEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC.* 435 U.S. 519, 553 (1978). Also environmental objections that could be raised at the DEIS stage but that are not raised until after completion of the FEIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F.Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 90-0day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS. To assist the Forest Service in identifying and considering issues and concerns on the proposed actions, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the DEIS. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statements. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the NEPA at 40 CFR 1503.3 in addressing these points. After the comment period on the DEIS ends, the comments will be analyzed, considered, and responded to by the Forest Service in preparing the FEIS. The FEIS is scheduled to be completed in September 2005. the Responsible Official (the Regional Forester, Southern Region, 1720 Peachtree Road, NW., Atlanta, Georgia 30309) will consider the comments, responses, and environmental consequences discussed in the FEIS together with all applicable laws, regulations, and policies in making a decision regarding revision. The Responsible Official will document the decision and reasons for the decision in a Record of Decision. This decision may be subject to appeal in accordance with 36 CFR 217.

Dated: April 25, 2002.

**R. Gary Pierson,**

*Acting Deputy Regional Forester.*

[FR Doc. 02–10779 Filed 4–30–02; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Revised Land and Resource Management Plan for the Ozark-St. Francis National Forests in Arkansas

**AGENCY:** Forest Service, USDA.

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

**SUMMARY:** The USDA Forest Service intends to prepare an environmental impact statement (EIS) for revising the Ozark-St. Francis National Forests Land and Resource Management Plan (hereinafter referred to as the Forest Plan) pursuant to 16 U.S.C. 1604(f)(5) and USDA Forest Service National Forest System Land and Resource Management Planning regulations. The revised Forest Plan will supersede the current Forest Plan, which the Regional Forester approved July 29, 1986, and has been amended 11 times.

The agency invites written comments and suggestions within the scope of the analysis described below. In addition, the agency gives notice that a full environmental analysis and decision-making process will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

**DATES:** Comments on this Notice of Intent (NOI) and, specifically, on the scope of the analysis to be included in the EIS, should be received in writing by August 2, 2002. The agency expects to file the draft EIS (DEIS) with the Environmental Protection Agency (EPA) and make it available for public comment in 2004. The Agency expects to file the final EIS (FEIS) in September of 2005.

**ADDRESSES:** Submit written comments to: Ozark-St. Francis National Forests, Planning, 605 West Main Street, Russellville, Arkansas 72801. Electronic mail should be sent to: *r8.ozark.planning@fs.fed.us*

**FOR FURTHER INFORMATION CONTACT:** Deryl Jevons, Forest Planning Tam Leader, at 479–968–2354. Information will also be posted on the forest web page at *http: //www.fs.fed.us/oonf/ozark/planning/planning.* The Regional Forester for the Southern Region located at 1720 Peachtree Street, NW., Atlanta, GA 30309, is the Responsible Official.

*Affected Counties:* This NOI affects Baxter, Benton, Conway, Crawford, Franklin, Johnson, Lee, Logan, Madison, Marion, Newton, Phillips, Pope, Searcy, Stone, Van Burden, Washington, and Yell counties in Arkansas.

**SUPPLEMENTARY INFORMATION:**

## A. Background Information

### *1. The Role of Forest Plans*

National Forest System resource allocation and management decisions are made in two stages. The first stage is the Forest Plan, which involves the establishment of management direction by allocating lands and resources within the plan area to various uses or conditions through management areas and management prescriptions. The second stage is plan implementation through approval of project decisions. forest Plans do not compel the agency to undertake any site-specific projects; rather, they establish overall goals and objectives (or desired resource conditions) that the individual national forest will strive to meet. Forest Plans also establish limitations on what actions may be authorized and what conditions must be met during project decision-making.

Agency decisions in Forest Plans do the following:

a. Establish forest-wide multiple-use goals and objectives (36 CFR 219.11(b)).

b. Establish management areas and management area direction through the application of management prescriptions and multiple-use prescriptions (36 CFR 219.11(c)).

c. Establish monitoring and evaluation requirements (36 CFR 219.11(d)).

d. Establish forest-wide management requirements (standards and guidelines) (36 CFR 219.13 to 219.27).

e. Determine the suitability and potential capability of lands for resource production. This includes identifying lands not suited for timber production and establishment of allowable sale quantity (36 CFR 219.14).

f. Where applicable, recommend official designation of special areas such as wilderness (36 CFR 219.17) and wild and scenic rivers to Congress.

g. Where applicable, designate those lands administratively available for oil and gas leasing and, when appropriate, authorize the Bureau of Land Management to offer specific lands for leasing. (36 CFR 228.102(d) and (e)).

**Note:** The above citations are from the 1982 36 CFR 219 planning regulations. See also section G.

*2. The Beginning of the Forest Plan Revision Effort for the Ozark-St. Francis National Forests*

For the Forest Plan revision, an effort was made to first define the current situation and estimate the ''need for change.'' A key part of defining the current situation was the Ozark-Ouachita Highlands Assessment. On October 16, 1996, a notice was published in the **Federal Register** (Vol. 61, No. 201) that identified the relationships between the Ozark-Ouachita Highlands Assessment and Forest Plan revisions for the National Forests in Arkansas, Missouri, and Oklahoma. In addition to reviewing the results of this broad-scale assessment and the draft conclusions of a more recent assessment (described below), the Forests evaluated the ''initial need for change'' using the experience of employees responsible for implementing the Forest Plan as well as the results of the mid-plan review, monitoring, research, and public comments received from 1990 through early 2002. These evaluations are the basis for the preliminary issues and proposed actions identified in this notice. Additional issues or topics will be developed as needed to respond to public comments received in response to this NOI and subsequent scoping efforts.

*3. The Ozark-Ouachita Highlands Assessment and the Southern Forest Resource Assessment*

The U.S. Forest Service and many other agencies participated in the preparation of the Ozark-Ouachita Highlands Assessment, which culminated in a final summary and four technical reports that were made available to the public in early 2000 (available at the Forest Plan web page address provided near the beginning of this document). This Assessment included national forest system lands and private lands within the highlands of Arkansas, Missouri, and Oklahoma.

The Assessment facilitated ecologically based approaches to public land management in the Ozark-Ouachita Highlands by collecting and analyzing broadscale biological, physical, social, and economic data. The Assessment supports the revision of the Forest Plan by describing how the lands, resources, people, and management of the national forests interrelate within the larger context of the Ozark-Ouachita Highlands area. This Assessment, however, is not a ''decision document'' and it did not involve the National Environmental Policy Act (NEPA) process.

The Southern Forest Resource Assessment was initiated in May 1999 to examine the status, trends, and potential future of southern forests. The USDA Forest Service led the effort in cooperation with the U.S. Fish and Wildlife Service, EPA, Tennessee Valley Authority, and southern States represented by their forestry and fish and wildlife agencies. This Assessment addresses the sustainability of southern forests in light of increasing urbanization and timber harvests, changing technologies (including chip mills), forest pests, climatic changes, and other factors that influence the region's forests. In late 2001, draft reports from the Southern Forest Resource Assessment were made available to the public. Some of these findings will be incorporated into the revised Forest Plan.

*4. Relationship of the Forest Plan Revision for the Ozark-St. Francis National Forests to Revision Efforts for the Mark Twain and the Ouachita National Forests*

Forest Plan revision will be conducted simultaneously on these national forests. The Forests anticipate that a separate EIS and revised Forest Plan will be produced for each administrative unit. The respective Forest Supervisors have agreed to coordinate the revisions when feasible and practical. The respective planning teams will work together to address common issues.

*5. The Role of Scoping in Revising the Land and Resource Management Plan*

This NOI includes a description of ''Preliminary Issues'' and ''Proposed Actions'' for the revision of the Forest Plan of the Ozark-St. Francis National Forests. The Proposed Actions concern one or more of the plan decisions identified in the purpose and need. Scoping to receive public comments on the preliminary issues and proposed actions will begin following the publication of this NOI. Public comments received during this period will be used to further define the preliminary issues that should be addressed, the Forest Plan decisions that need to be analyzed (the ''proposed actions'' and ''need for change''), and the range of alternatives that will be developed. For more information on how the public can become involved during the scoping period, see Section F of this NOI.

**B. Purpose and Need for Action**

The purpose for revising the Forest Plan comes from the requirements for land and resource management planning in the National Forest Management Act (NFMA) and the implementing regulations contained in 36 CFR 219. According to 36 CFR 219.10(g), Forest Plans are ordinarily revised on a 10–15 year cycle. The need to revise this Forest Plan is also driven by the changing conditions identified in the Ozark-Ouachita Highlands Assessment, the Southern Forest Resource Assessment, and ongoing monitoring and evaluation results.

**C. Preliminary Issues**

Preliminary issues for the Ozark-St. Francis National Forests plan revision focus on parts of the current Forest Plan where change may be needed. The preliminary issues were derived from: the Ozark-Highlands Assessment, the Southern Forest Resource Assessment, internal comments from forest managers, results of monitoring, the mid-plan review, and a series of public meetings. The proposed actions in section D give a detailed description of why the issues were developed.

*1. Mix of Developed Recreation Opportunities*

The Forest needs to determine the type of development, settings, and services to provide in the next 15 years.

*2. Public Access and Dispersed Recreation Opportunities*

The Forest needs to determine the combination of land allocation for motorized and non-motorized trail and road access to minimize conflict among users, provide recreation opportunities, and protect the resources.

*3. Special Areas*

The Forest needs to determine what special areas are needed. Some examples are: wild and scenic rivers, special interest areas, wilderness, scenic byways, research natural areas (RNAs), and experimental forests.

*4. Ecosystem Health and Sustainability*

The Forest needs to determine what actions and land allocations are needed to insure the health of ecosystems while considering plant, animal, and human interaction.

*5. Relationship of NFMA to Communities and Economies*

The issue is how to balance the economic and social needs of the public while managing for forest health and sustainability.

**D. Proposed Actions**

The following proposed actions are being considered for revision in the Forest Plan. Each was placed into one

of two categories: (1) Actions appropriate for inclusion in the revision because of laws or regulation. (2) Actions identified based on information found in monitoring reports, insight from Forest Service employees regarding the effectiveness of the current Plan, and public demand.

*1. Actions Appropriate for Inclusion in the Forest Plan Revision*

The following topics will be included in the Forest Plan revision because law and/or regulation require them to be considered in all Forest Plan revisions:

a. Wild and Scenic Rivers

The Wild and Scenic Rivers Act of 1968 was enacted to protect and preserve, in their free-flowing condition, certain selected rivers of the nation and their immediate environments. The Act established the National Wild and Scenic Rivers System, designated rivers to be included in the system, established policy for managing designated rivers, and prescribed a process for designating additional rivers to the system. The Act, in Section 5(d)(1), requires consideration of potential additions to the National System as part of the ongoing planning process.

The 1986 Forest Plan determined the rivers identified by the Department of the Interior through the Nationwide Rivers Inventory (1982) were eligible for further study. In April 1987, the Forest completed Amendment 2 to the Forest Plan, which classified each eligible river and established direction to protect those rivers until a suitability study could be completed. The Forest completed the sustainability study in 1991. The FEIS and Study Report evaluated 13 rivers, and recommended six. On April 23, 1992, Congress amended the Wild and Scenic Rivers Act, adding the six recommended rivers into the Wild and Scenic Rivers System. The Forests will review other rivers to see if they may be eligible for further study.

b. Wilderness Recommendation

Forest Service policy and regulations in 36 CFR 219.17, require that roadless areas be evaluated and considered for recommendation as potential wilderness during the forest planning process. The Ozark-St. Francis National Forests currently have five wilderness areas. Management Area 1 of the 1986 Forest Plan provides direction for these areas. These wildernesses were originally identified in the Roadless Area Review and Evaluation, known as RARE II. There are approximately 73,000 acres left from RARE II not designated as wilderness. This land was identified in a set of inventoried roadless area maps contained in the Forest Service Roadless Area Conservation, FEIS, Volume 2, dated November 2000. Forest Service interim direction 1920–2001–1, dated December 14, 2001, stated lands remaining from the RARE II inventory would be re-evaluated for roadless area characteristics during the Forest Plan revision process. The proposed action is for the Forest to evaluate these lands as well as any other lands that meet the criteria for inventoried roadless areas for potential wilderness area consideration.

c. Reevaluation of Lands Not Suited for Timber

NFMA and its implementing regulations require identification of lands suitable for timber management. The revision process provides an opportunity to reassess and better define lands suitable for timber management and to account for changes in land status and uses. The revision will also use technology (such as GIS data) that was not available during development of the original Forest Plan. The proposed action is to better define which lands are suited for timber production and make appropriate adjustments.

*2. Need for Change—Proposed Actions*

The following proposed actions will be included in the revision based on the following: information found in monitoring reports, insight from Forest Service employees and their experience with the current Plan, new direction and policy, the results from the Ozark-Highlands Assessment, and a series of public meetings.

Ecosystem Sustainability

a. *Oak Decline and Oak Mortality:* Oak Decline is occurring throughout the oak component of the forest due to advanced age, low site index, and three years of drought. These factors have led to an unprecedented insect epidemic of red oak borer, which has caused significant mortality on approximately 300,000 acres.

At present the primary areas of mortality are located on the Pleasant Hill, Bayou, and Boston Mountain Ranger Districts. Trees are being killed on all sites and in all age classes due to the epidemic proportions of the insect population. The Forest has approximately 700,000 acres of mature hardwood forest. Red oaks occur in about 95% of the hardwood forest. The Forest Plan does not address oak decline or mortality. The proposed action is to develop management plan direction to improve forest health and restore the oak ecosystem.

b. *Silvicultural Practices:* During plan development for the 1986 Forest Plan and during the appeal to the Plan in 1991, the public raised many questions concerning the types of silvicultural systems being proposed. At that time, there was little in the way of published research to support the effectiveness of silvicultural practices on the Ozark-St. Francis National Forests. Since that time, much has been learned. Monitoring has provided valuable insight for determining what does and does not work regarding reforestation practices. Research conducted through the Southern Research Station and the Ouachita/Ozark NFs has improved our understanding of shade tolerance, species composition, and stand dynamics. In addition, an increased emphasis on prescribed fire and the development of new herbicides with better effectiveness require evaluation for inclusion in this plan revision. The proposed action is to revise and update silvicultural practices available to forest managers.

c. *Management Area Boundaries:* The current Forest Plan divided the Forest into eight management areas based on similar management direction. The proposed action is to re-evaluate the effectiveness of these designations.

d. *Ecological Monitoring:* Since the 1986 Forest Plan, knowledge of ecological interactions has grown. Strategies for monitoring and evaluating effects of forest management on ecosystems need to be re-evaluated in light of increased knowledge. Revisions of these strategies would include revising the list of Management Indicator Species (MIS). The proposed action is to revise the monitoring requirements.

e. *Wildlife Management Practices:* The knowledge about managing wildlife from an ecological perspective has increased since the 1986 Forest Plan. Restoration of certain ecosystems through timber management and prescribed fire could supplement or replace the current food plot concept. Forest age class distribution is heavily weighted toward the older age classes, which in turn has negatively affected wildlife species dependent upon early and mid-seral habitat. Loss of the red oak on much of the Forest will negatively affect species dependent upon mast. Silvicultural prescriptions designed to balance age classes, re-established the red oak, and create early seral habitat need to be considered. The proposed action is to develop wildlife management practices incorporating ecological concepts.

f. *Prescribed Burning:* The 1986 Plan did not recognize fire dependent ecosystems. It is now recognized that fire played a significant role in the development of the vegetation on the Ozark-St. Francis National Forests. Landscape scale burning is a common practice for many forests today. This technique is more efficient and incorporates the concepts of ecosystem management in sustaining forest health. In order to burn larger areas, some of the standards in the Plan need to be reviewed. The proposed action is to provide for landscape scale burning and to recognize fire as a management tool needed to sustain the forest.

g. *Riparian Areas:* Areas next to lakes, perennial, ephemeral, and intermittent streams on the Ozark-St. Francis National Forests are important for protecting water quality, fish, and other aquatic resources. Riparian areas are complex ecosystems that provide food, habitat, and movement corridors for both water and land animal communities. Streamside management zones (SMZs) are needed to help minimize nonpoint source pollution to surface waters, and manage these important areas. The Ozark-St. Francis National Forests' current direction as outlined in Amendment 5 of the Forest Plan is hard to implement for ephemeral streams. The proposed action is to revise the Plan to incorporate riparian area management direction and to insure SMZ standards can be implemented.

h. *Natural Processes:* During the past 15 years, the Forest has experienced a number of catastrophic events such as fire, windstorms, floods, and insect damage. It is recognized that although they appear catastrophic, these events are part of natural processes. The current Forest Plan does not provide any direction or guidance for addressing these events. The proposed action is to provide management guidelines that work with natural processes and recognize how catastrophic disturbances can contribute to forest health and productivity.

*Recreation Management:* The Ozark-St. Francis National Forests are managed to provide a variety of recreational opportunities within a wide range of settings. The demand for new recreational opportunities including OHV/motorcycle use rock climbing, horseback riding, canoeing, kayaking, and full-service campsites has increased dramatically in the past decade. Trends indicate traditional recreational opportunities, including hunting, fishing, hiking, and primitive camping are expected to continue in popularity. Direction is needed to address trail compatibility with other uses and where these uses should occur.

Customer satisfaction needs to be a monitoring tool. Many areas are being used beyond capacity and resource damage is occurring. The Limits of Acceptable Change (LAC) process could be applied to scenic rivers, special areas, and heavily used dispersed areas. The proposed action is to provide new direction that responds to demand, demographics, marketing strategy, and recreational business management principles.

*Recreation Opportunity Spectrum (ROS):* ROS is used to classify varieties of outdoor recreational opportunities. The Forest Plan references ROS acreages, but does not use it to describe different settings or opportunities. ROS can be part of the description of the desired future condition (DFC). It can also be used for allocating and separating conflicting or competing uses. Establishing ROS will help with travel management planning, which influences the opportunities for various activities. The proposed action is to identify the ROS allocation for each area of the Forest.

*Scenery Management:* The 1974 Visual Quality Objective System (VQO) used in the Forest Plan needs to be replaced with the Scenery Management System (SMS). VQO used scenery to mitigate the effects of management actions. SMS recognizes scenery as a resource. SMS will establish overall resource goals and objectives to monitor the scenic resource. The proposed action is to implement SMS and recognize scenery as a resource.

*Public Access and Dispersed Recreation:* A number of roads have been obliterated or closed in the last decade using earthen mounds, gates, and signs. The current Forest Plan off-highway-vehicle (OHV) direction prohibits cross-country travel. In the past year, there has been a renewed emphasis to enforce the current policy. The closing of roads and emphasis on enforcing the OHV policy has received much attention. Closing areas to motorized use affects traditional access that many perceive as reducing recreational opportunities. Others in the public want areas to be managed as non-motorized uses to increase opportunities for solitude. Forest Service concerns include lack of budgets to maintain the current road system, impacts to the soil and water resources, and impacts to wildlife populations and habitat. The proposed action is to determine the combination of land allocation for motorized and non-motorized trail opportunities and road access to minimize conflict among users, provide recreation opportunities, and protect the resources.

Special Areas

a. *Special Interest Areas:* The 1986 Forest Plan designated Management Area 7 as Special Interest Areas (SIAs). These areas total approximately 23,000 acres and have unique scenic, geological, botanical, or cultural values. The proposed action is to identify potential additional special interest areas.

b. *Scenic Byways:* The Ozark-St. Francis National Forests have six scenic byways. Each of these has unique characteristics, which need to be maintained. Corridor managements objectives need to be defined. This may include such things as turnout lanes, vistas, and vegetation management guidelines. There may be other highways that need consideration. The proposed action is for the Plan to provide direction that will protect and enhance the qualities of the scenic byways and determine if other byways should be nominated.

c. *Other Special Areas:* Other special areas on the Forests include Research Natural Areas (RNAs) and experimental forests. The current Plan has two RNAs: Turkey Ridge (373 acres) on the St. Francis National Forest and Dismal Hollow (2,077 acres) on the Ozark National Forest. The Ozark-St. Francis National Forests also have two experimental forests, the 700-acre Henry Koen Experimental Forest and the 4,200-acre Sylamore Experimental Forest. Both of these areas are administered by the Southern Research Station (SRS). The need for additional RNAs and the continued need for experimental forests will be determined by the revision in coordination with the SRS.

*Lands and Special Uses:* The current Plan outlined a schedule of proposed land acquisitions and identified them on a map. Experience over the last 15 years has shown this to be too restrictive. Unanticipated acquisition and disposal opportunities have occurred over the last 15 years. The Plan should provide broad direction on acquisition and disposal goals, objectives, and priorities. The process needs to be streamlined to meet public expectations. Lack of funding for landlines is leading to many unsolved trespass cases and makes ROW (right-of-way) acquisition difficult. There are opportunities to consolidate corridors in special uses for electric lines and other utilities. The proposed action is to provide better direction for lands and special uses.

**E. Preliminary Alternatives**

The actual alternatives presented in the DEIS will portray a full range of responses to the significant issues. The DEIS will examine the effects of implementing strategies to achieve different desired future conditions and will develop possible management objectives and opportunities that would move the forests toward those desired conditions. A preferred alternative will be identified in the DEIS. The range of alternatives presented in the DEIS will include one that continues current management direction and others that will address the range of issues developed in the scoping process.

**F. Involving the Public**

The objective in the public involvement process is to create an atmosphere of openness where all members of the public feel free to share information with the Forest Service on a regular basis. All parts of this process will be structured to maintain this openness. The Forest Service is seeking information, comments, and assistance from individuals, organization, tribal governments, and federal, state, and local agencies that may be interested in or affected by the proposed action (36 CFR 219.6).

Public participation will be solicited by notifying (in person and/or by mail) known interested and affected publics. News releases will be used to inform the public of various steps of the revision process and locations of public involvement opportunities. Public participation opportunities include written comments, open houses, focus groups, and collaborative forums.

Public participation will be sought throughout the revision process but will be particularly important at several points along the way. The first formal opportunity to comment is during the scoping process (40 CFR 150.7). Scoping includes: (1) Identifying additional potential issues (other than those previously described); (2) from these, identifying significant issues, those which have been covered by prior environmental review or those which are non-significant for the plan revision; (3) exploring additional alternatives; and (4) identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects). Three public meetings are scheduled during the scoping process.

| Date | Location |
|---|---|
| June 13, 2002 ..... | Russellville, AR. |
| June 18, 2002 ..... | Jasper, AR. |
| June 20, 2002 ..... | Springdale, AR. |

**G. Planning Regulations**

The Department of Agriculture published new planning regulations on November 9, 2000. A USDA Forest Service review of this planning rule identified concerns with the ability to implement several provisions of the 2000 rule. There are also lawsuits challenging the 2000 rule that may affect its implementation.

To address these problems, the Chief of the Forest Service has started a process to develop a revision to the November 2000 planning rule. On May 10, 2001, Secretary Veneman signed an interim final rule allowing Forest Plan amendments or revisions initiated before May 9, 2002, to proceed under the new planning rule (November 2000) or under the 1982 planning regulations. The Ozark-St. Francis National Forests will proceed under the 1982 planning regulations pending future direction in revised regulations.

**H. Release and Review of the EISs**

The DEIS is expected to be filed with the EPA and to be available for public comment by September 2004. At that time, the EPA will publish a notice of availability of the DEIS in the **Federal Register**. The comment period will be 3 months from the date the EPA publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. Reviewers of the DEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC.* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the DEIS stage but that are not raised until after completion of the FEIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 3-month comment period so that substantive comments and objections are made available to the Federal Service at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed actions, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the NEPA at 40 CFR 1503.3 in addressing these points. After the comment period on the DEIS ends, the comments will be analyzed, considered, and responded to by the Forest Service in preparing the FEIS. The scheduled completion of the FEIS is by September 2005. The Responsible Official will consider the comments, responses, and environmental consequences discussed in the FEIS together with all applicable laws, regulations, and policies in making a decision regarding revision. The Responsible Official will document the decision and reasons for the decision in a Record of Decision. This decision may be subject to appeal in accordance with 36 CFR 217.

Dated: April 25, 2002.

**R. Gray Pierson,**

*Acting Deputy Regional Forester.*

[FR Doc. 02–10778 Filed 4–30–02; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF COMMERCE

### Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* U.S. Census Bureau.

*Title:* American Community Survey.

*Form Number(s):* ACS–1(2003), ACS–1(2003)PR(SP), ACS–1(GQ), ACS–3(GQ), ACS–4(GQ), ACS–290.

*Agency Approval Number:* 0607–0810.

*Type of Request:* Revision of a currently approved collection.

*Burden:* 1,927,300 hours.

*Number of Respondents:* 3,063,000.

*Avg Hours Per Response:* 38 minutes.

*Needs and Uses:* The U.S. Census Bureau requests authorization from the Office of Management and Budget (OMB) to conduct the American Community Survey (ACS) starting in November 2002. The Census Bureau has

been developing a methodology to collect and update every year demographic, social, economic, and housing data that are essentially the same as the ''long-form'' data that the Census Bureau traditionally has collected once a decade as part of the decennial census. Federal and state government agencies use such data to evaluate and manage federal programs and to distribute funding for various programs which include food stamps, transportation dollars, and housing grants. State, county, and community governments, nonprofit organizations, businesses, and the general public use information like housing quality, income distribution, journey-to-work patterns, immigration data, and regional age distributions for decisionmaking and program evaluation.

Since the Census Bureau collects the long-form data only once every ten years, the data become out of date over the course of the decade. To provide more timely data, the Census Bureau developed an alternative called Continuous Measurement (CM). CM is a reengineering effort that blends the strength of small area estimation with the high quality of current surveys. We realize that there is an increasing need for data describing lower geographic detail. Currently, the decennial census is the only source of data available for small-area levels. In addition, there is an increase in interest in obtaining data for small subpopulations such as groups within the Hispanic, Asian, and American Indian populations, the elderly, and children. CM will provide current data throughout the decade for small areas and small subpopulations.

The ACS is the data collection vehicle for CM. After years of development and testing, the ACS is ready for full implementation in FY 2003. The ACS will provide more timely information for critical economic planning by governments and the private sector. In the current information-based economy, federal, state, tribal, and local decisionmakers, as well as private business and nongovernmental organizations, need current, reliable, and comparable socioeconomic data to chart the future. Without the ACS, data users will have to use data collected during Census 2000 for the next ten years.

The ACS demonstration period began in 1996 in four sites. In 1997, the survey was conducted in eight sites to evaluate costs, procedures, and new ways to use the information. In 1998, the ACS expanded to include two counties in South Carolina that overlapped with counties in the Census 2000 Dress Rehearsal. This approach allowed the Census Bureau to investigate the effects on both the ACS and the census due to having the two activities going on in the same place at the same time. In 1999, the number of sites was increased to 31 comparison sites. The purpose of the comparison sites was to give a good tract-by-tract comparison between the 1999–2002 ACS cumulated estimates and the Census 2000 long-form estimates and to use these comparisons to identify both the causes of differences and diagnostic variables that tend to predict a certain kind of difference.

In 2000–2002, the Census Bureau conducted the Census 2000 Supplementary Survey, the 2001 Supplementary Survey, and the 2002 Supplementary Survey using the ACS methodology. Each of these surveys had a sample of approximately 700,000 residential addresses per year. These surveys were conducted to study the operational feasibility of collecting long-form type data in a different methodology from the decennial census, demonstrate the reliability and stability of state and large area estimates over time, and demonstrate the usability of multiyear estimates.

Beginning in November 2002, the Census Bureau will begin full implementation of the ACS by increasing the sample to a total of 250,000 residential addresses per month in the 50 states and the District of Columbia. For 2003–2005, the ACS will have an annual sample of approximately 3 million households. In addition, we will select approximately 3,000 residential addresses per month in Puerto Rico and refer to the survey as the Puerto Rico Community Survey.

*Affected Public:* Individuals or households.

*Frequency:* The ACS is conducted monthly. Respondents are required to report only once.

*Respondent's Obligation:* Mandatory.

*Legal Authority:* Title 13 U.S.C., Sections 141, 193, and 221.

*OMB Desk Officer:* Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, room 6608, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *mclayton@doc.gov).*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: April 26, 2002.

**Madeleine Clayton,**

*Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 02–10718 Filed 4–30–02; 8:45 am]

**BILLING CODE 3510–07–P**

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## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* Census Bureau.

*Title:* 2002 Economic Census Covering the Mining Sector.

*Form Number(s):* MI–21101, MI–21102, MI–21201, MI–21202, MI–21203, MI–21204, MI–21205, MI–21206, MI–21207, MI–21208, MI–21209, MI–21210, MI–21211, MI–21301, MI–21302.

*Agency Approval Number:* None.

*Type of Request:* New collection.

*Burden:* 55,080 hours in FY 2003.

*Number of Respondents:* 14,500.

*Avg Hours Per Response:* 3 hours and 50 minutes.

*Needs and Uses*: The 2002 Economic Census covering the Mining Sector will use a mail canvass, supplemented by data from Federal administrative records, to measure the economic activity of approximately 25,000 mining establishments classified in the North American Industry Classification System (NAICS). The mining sector of the economic census distinguishes two basic activities: mine operation and mining support activities. The economic census will produce basic statistics for number of establishments, shipments, payroll, employment, detailed supplies and fuels consumed, depreciable assets, inventories, and capital expenditures. It also will yield a variety of subject statistics, including shipments by product line, type of operation, size of establishments and other industry-specific measures.

The mining sector is an integral part of the economic census which is the major source of data about the structure and functioning of the United States economy, and features unique industry and geographic detail. The economic census provides essential information for government, industry, business, and the general public. The Federal Government uses the information from the economic census as an important part of the framework for the national accounts, input-output measures, key economic indexes, and other estimates

that serve as the factual basis for economic policymaking, planning, and administration. State governments rely on the economic census for comprehensive, geographical economic data in order to make decisions concerning policymaking, planning, and administration. Finally, industry, business, and the general public use information from the economic census for economic forecasting, market research, as benchmarks for their own sample-based surveys, and in making business and financial decisions.

*Affected Public:* Business or other for-profit.

*Frequency:* One time.

*Respondent's Obligation:* Mandatory.

*Legal Authority:* Title 13 U.S.C., Sections 131 and 224.

*OMB Desk Officer:* Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202)482–3129, Department of Commerce, room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *mclayton@doc.gov)*.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: April 26, 2002.

**Madeleine Clayton,**

*Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 02–10719 Filed 4–30–02; 8:45 am]

BILLING CODE 3510–07–P

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* Census Bureau.

*Title:* Current Retail Sales and Inventory Survey.

*Form Number(s):* SM–44(00)S, SM–44(00)SE, SM–44(00)SS, SM–44(00)B, SM–44(00)BE, SM–44(00)BS, SM–44(00)L, SM–44(00)LE, SM–44(00)LS, SM–45(00)S, SM–45(00)SE, SM–45(00)SS, SM–45(00)B, SM–45(00)BE, SM–45(00)BS, SM–72(00)S, SM–20(00)I, SM–20(00)L-Replacing B–101(97)S, B–101(97)B, B–111(97)S, B–111(97)B, B–111(97)L, B–113(97)I, B–113(97)L.

*Agency Approval Number:* 0607–0717.

*Type of Request:* Revision of a currently approved collection.

*Burden:* 14,761 hours.

*Number of Respondents:* 9,417.

*Avg Hours Per Response:* 8 minutes.

*Needs and Uses:* The Current Retail Sales and Inventory Survey provides estimates of monthly retail sales, end-of-month merchandise inventories, and quarterly e-commerce sales of retailers in the United States by selected kinds of business. Also, it provides monthly sales of food service establishments. The Bureau of Economic Analysis (BEA) uses this information to prepare the National Income and Products Accounts and to benchmark the annual input-output tables. Statistics provided from the Current Retail Sales and Inventory Survey are used to calculate the gross domestic product (GDP).

Estimates produced from the Current Retail Sales and Inventory Survey are based on a probability sample. The sample design consists of one fixed panel where all cases are requested to report sales and/or inventories each month.

As of April 2001 (June data month), we started publishing retail sales and inventory estimates on the North American Industry Classification System (NAICS). Prior to that period, estimates were published on the Standard Industrial Classification (SIC) basis. As a result of NAICS, we will continue to collect monthly sales on food services and publish a retail trade and food services total in addition to a retail trade total. NAICS provides a better way to classify individual businesses, and is widely adopted throughout both the public and private sectors. NAICS is more relevant as it identifies more industries that contribute to today's growing economy. NAICS was developed by the United States, Canada, and Mexico in order to produce comparable data between neighboring countries.

In 2000, we redesigned our current retail forms to incorporate a new series of form numbers, and to include the e-commerce screening or data request as a separate item. The content of the forms did not change; therefore there was no change in reporting burden.

*Affected Public:* Businesses or other for-profit.

*Frequency:* Monthly.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Title 13 U.S.C., Section 182.

*OMB Desk Officer:* Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202)482–3129, Department of Commerce, room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *mclayton@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: April 26, 2002.

**Madeleine Clayton,**

*Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 02–10720 Filed 4–30–02; 8:45 am]

BILLING CODE 3510–07–P

## DEPARTMENT OF COMMERCE

### Economic Development Administration

### Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

**AGENCY:** Economic Development Administration (EDA).

**ACTION:** To give all interested parties an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD MARCH 20, 2002—APRIL 18, 2002

| Firm name | Address | Date petition accepted | Product |
|---|---|---|---|
| RST & B Quilting and Bedding, Inc ..... | 325 Greer Road, Florence, SC 29506 ..... | 04/01/02 | Bedding items, comforters, pillow shams and ruffles. |

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD MARCH 20, 2002—APRIL 18, 2002—Continued

| Firm name | Address | Date petition accepted | Product |
|---|---|---|---|
| Bulk Lift International, Inc | 1013 Tamarac Drive, Carpentersville, IL 60110. | 04/01/02 | Flexible intermediate bulk bags of textile materials. |
| Acutek, Inc | 777 Action Avenue, Odessa, MO 64076 | 04/01/02 | Sealed beam lamps and plastic warning lamp reflectors used in recreational, automotive and commercial applications. |
| Advantage Control, Inc | 4700 Haroll Abitz Drive, Muskogee, OK 74403. | 04/02/02 | Controllers and pumps used for industrial water treatment. |
| Heartfelt Connections, Inc | 2415 7th Avenue West, Seattle, WA 98119. | 04/02/02 | Gift items—pillows, sachets, scarves, pins, blankets, bibs, etc. |
| General Die Finishing, Inc | 1504A Quarry Drive, Edgewood, MD 21040. | 04/18/02 | Metal finishing and conversion coating for the aerospace industry. |
| Pace Precision Products, Inc | Ohio Avenue, DeBois, PA 15801 | 04/02/02 | Metal stampings and dies use in the automotive industry. |
| Herkules Equipment Corporation | 2760 Ridgeway Court, Walled Lake, MI 48390. | 04/02/02 | Paint gun washers, pneumatic lifts, crushers, infra-red systems, air jacks, dust retention systems, and their parts. |
| Koester Metals, Inc | 1441 Quality Drive, Defiance, OH 43512 | 04/02/02 | Fabricated steel enclosures for the housing of control devices. |
| Biovance Technologies, Inc | 14050 N. 78th Street, Omaha, NE 68122 | 04/03/02 | Cattle feed. |
| Procedyne Corp | 11 Industrial Drive, New Brunswick, NJ 08901. | 04/09/02 | Fluid bed furnaces. |
| Precision Machine and Manufacturing Co | 500 Industrial Road, Grove, OK 74344 | 04/18/02 | Aircraft fuselage components, including ribs, tracks, beams, supports and bulkheads. |
| Mel-Co-Ed, Inc | 381 Roosevelt Avenue, Pawtucket, RI 02860. | 04/18/02 | Jewelry findings. |
| J. C., Ltd | 40 John Williams Street, Attleboro, MA 02703. | 04/18/02 | Jewelry findings. |

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: April 22, 2002.

**Anthony J. Meyer,**

*Coordinator, Trade Adjustment and Technical Assistance.*

[FR Doc. 02–10679 Filed 4–30–02; 8:45 am]

BILLING CODE 3510–24–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Notice of Initiation of Five-Year (''Sunset'') Review of Antidumping Duty Order on Engineered Process Gas Turbo-Compressor Systems, Whether Assembled, and Whether Complete or Incomplete, From Japan

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

**SUMMARY:** In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating a five-year (''sunset'') review of the antidumping duty order listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notice of *Institution of Five-Year Review* covering this same antidumping duty order.

**FOR FURTHER INFORMATION CONTACT:** James P. Maeder or Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482–3330 or (202) 482–5050, respectively, or Mary Messer, Office of Investigations, U.S. International Trade Commission, at (202) 205–3193.

**SUPPLEMENTARY INFORMATION:**

### The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the ''Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department regulations are to 19 CFR part 351 (2001). Pursuant to sections 751(c) and 752 of the Act, an antidumping (''AD'') or countervailing duty (''CVD'') order will be revoked, or the suspended investigation will be terminated, unless revocation or termination would be likely to lead to continuation or recurrence of (1) dumping or a countervailable subsidy,

and (2) material injury to the domestic industry.

The Department's procedures for the conduct of sunset reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

**Background**

*Initiation of Review*

In accordance with 19 CFR 351.218, we are initiating a sunset review of the following antidumping duty order:

| DOC Case No. | ITC Case No. | Country | Product |
|---|---|---|---|
| A–588–840 | 731–TA–748 | Japan | Gas Turbo-Compressor Systems |

*Filing Information*

As a courtesy, we are making information related to sunset proceedings, including copies of the *Sunset Regulations* (19 CFR 351.218) and *Sunset Policy Bulletin*, the Department's schedule of sunset reviews, case history information (*i.e.*, previous margins, duty absorption determinations, scope language, import volumes), and service lists, available to the public on the Department's sunset Internet website at the following address: ''http://ia.ita.doc.gov/sunset/''.

All submissions in this sunset review must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303. Also, we suggest that parties check the Department's sunset website for any updates to the service list before filing any submissions. The Department will make additions to and/or deletions from the service list provided on the sunset website based on notifications from parties and participation in this review. Specifically, the Department will delete from the service list all parties that do not submit a substantive response to the notice of initiation.

Because deadlines in a sunset review are, in many instances, very short, we urge interested parties to apply for access to proprietary information under administrative protective order (''APO'') immediately following publication in the **Federal Register** of the notice of initiation of the sunset review. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

*Information Required From Interested Parties*

Domestic interested parties (defined in 19 CFR 351.102) wishing to participate in this sunset review must respond not later than 15 days after the date of publication in the **Federal Register** of the notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review.

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in the sunset review must file substantive responses not later than 30 days after the date of publication in the **Federal Register** of the notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for foreign and domestic parties. Also, note that the Department's information requirements are distinct from the International Trade Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of sunset reviews.[1] Please consult the Department's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

[1] A number of parties commented that these interim-final regulations provided insufficient time for rebuttals to substantive responses to a notice of initiation, 19 CFR 351.218(d)(4)). As provided in 19 CFR 351.302(b), the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

Dated: April 25, 2002.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

[FR Doc. 02–10767 Filed 4–30–02; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–570–855]**

## Certain Non-frozen Apple Juice Concentrate from the People's Republic of China: Notice of Extension of Time Limit for the Preliminary Results of the First Administrative Review

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

**ACTION:** Notice of Extension of Time Limit.

**SUMMARY:** The Department of Commerce is extending the time limit for the preliminary results of the first administrative review of the antidumping duty order on certain non-frozen apple juice concentrate from the People's Republic of China. The period of review is November 23, 1999 through May 31, 2001. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Rounds Agreement Act.

**EFFECTIVE DATE:** May 1, 2002.

**FOR FURTHER INFORMATION CONTACT:** Jarrod Goldfeder or Andrew McAllister, Office of AD/CVD Enforcement I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone numbers: (202) 482–0189 or (202) 482–1174, respectively.

**SUPPLEMENTARY INFORMATION:**

**Applicable Statutes and Regulations**

Unless otherwise indicated, all citations to the statute are references to provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, (the Act) by the Uruguay Round Agreements Act, and all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (2001).

**Statutory Time Limits**

Section 751(a)(3)(A) of the Act requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

**Background**

On July 23, 2001, the Department published the notice of initiation of the antidumping administrative review on certain non-frozen apple juice concentrate from the People's Republic of China (PRC) covering the period from November 23, 1999 through May 31, 2001. (*See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 66 FR 38252 (July 23, 2001)). On February 1, 2002, the Department postponed the preliminary results of this review by 60 days. (*See Certain Non-frozen Apple Juice Concentrate from the People's Republic of China: Notice of Extension of Time Limit for the Preliminary Results of the First Administrative Review*, 67 FR 5788 (February 7, 2002)). Accordingly, the preliminary results are currently due not later than May 1, 2002.

**Extension of Time Limits for Preliminary Results**

Due to the number of companies and the complexity of the issues, including the collection of surrogate value information, it is not practicable to issue the preliminary results within the originally anticipated time limit (*i.e.*, May 1, 2002). (*See Memorandum from Team to Richard W. Moreland, ''Extension of Time Limit for Preliminary Results*,'' dated, April 26, 2002. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for the completion of preliminary results in this case by an additional 60 days, (i.e., until not later than July 1, 2002).

This notice is published pursuant to sections 751(a)(1) and 777(i)(1) of the Act.

April 25, 2002

**Richard W. Moreland,**

*Deputy Assistant Secretaryfor AD/CVD Enforcement.*

[FR Doc. 02–10766 Filed 4–30–02; 8:45 am]

BILLING CODE 3510–DS–S

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–489–807]**

### Certain Steel Concrete Reinforcing Bars From Turkey; Preliminary Results of Antidumping Duty Administrative Review

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

**SUMMARY:** In response to a request by the petitioner and two producers/exporters of the subject merchandise, the Department of Commerce is conducting an administrative review of the antidumping duty order on certain steel concrete reinforcing bars from Turkey. This review covers three manufacturers/exporters of the subject merchandise to the United States. This is the fourth period of review, covering April 1, 2000, through March 31, 2001.

We have preliminarily determined that sales have been made below the normal value by certain of the companies subject to this review. In addition, we have preliminarily determined to rescind the review with respect to Diler Demir Celik Endustrisi ve Ticaret A.S., Yazici Demir Celik Sanayi ve Ticaret A.S., and Diler Dis Ticaret A.S., and ICDAS Celik Enerji Tersane ve Ulasim Sanayi, A.S. because these companies had no shipments of subject merchandise during the period of review. If these preliminary results are adopted in the final results of this review, we will instruct the Customs Service to assess antidumping duties on all appropriate entries.

We invite interested parties to comment on these preliminary results. Parties who wish to submit comments in this proceeding are requested to submit with each argument: (1) A statement of the issue; and (2) a brief summary of the argument.

**EFFECTIVE DATE:** May 1, 2002.

**FOR FURTHER INFORMATION CONTACT:** Irina Itkin or Elizabeth Eastwood, Office of AD/CVD Enforcement, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone (202) 482–0656 or (202) 482–3874, respectively.

**Applicable Statue 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 (2001).

**Background**

On April 2, 2001, the Department published in the **Federal Register** a notice of ''Opportunity to Request an Administrative Review'' of the antidumping duty order on certain steel concrete reinforcing bars (rebar) from Turkey (66 FR 17523).

In accordance with 19 CFR 351.213(b)(2), in April 2001, the Department received requests from HABAS Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas) and ICDAS Celik Enerji Tersane ve Ulasim Sanayi, A.S. (ICDAS) to conduct an administrative review of the antidumping duty order on rebar from Turkey. In accordance with 19 CFR 351.213(b)(1), on April 30, 2001, the Department also received a request for an administrative review from the petitioner, AmeriSteel, for the following four producers/exporters of rebar: Colakoglu Metalurji A.S. (Colakoglu); Diler Demir Celik Endustrisi ve Ticaret A.S., Yazici Demir Celik Sanayi ve Ticaret A.S., and Diler Dis Ticaret A.S. (collectively ''Diler''); Ekinciler Holding, A.S. and Ekinciler Demir Celik A.S. (collectively ''Ekinciler''); and ICDAS.

In May 2001, the Department initiated an administrative review for Colakoglu, Diler, Ekinciler, Habas, and ICDAS (66 FR 28421 (May 17, 2001)) and issued questionnaires to them.

In May 2001, Diler informed the Department that it had no shipments of subject merchandise to the United States during the period of review (POR). We reviewed Customs Service data to confirm that Diler had no shipments of subject merchandise during the POR. Consequently, in accordance with 19 CFR 351.213(d)(3) and consistent with our practice, we are preliminarily rescinding our review for Diler. For further discussion, see the ''Partial Rescission of Review'' section of this notice, below.

In August and September, 2001, we received responses to sections A through C of the questionnaire (*i.e.,* the sections regarding sales to the home market and the United States) and a response to Section D of the questionnaire (*i.e.,* the section regarding cost of production (COP) and constructed value (CV)) from Colakoglu, Ekinciler, Habas, and ICDAS.

Regarding ICDAS, in its Section A response, this company informed the Department that it had a single sale of subject merchandise that entered the United States after the POR. Accordingly, ICDAS requested that the Department extend the POR to capture this sale. We have determined that it is not appropriate to expand the POR to capture this one sale and we are rescinding the review with respect to ICDAS because it did not have entries of subject merchandise during the POR. For further discussion, see the ''Partial Rescission of Review'' section of this notice, below.

In September 2001, we issued a supplemental questionnaire regarding sections A through C to Habas. We received a response to this questionnaire in October 2001.

In November and December 2001, we issued supplemental questionnaires regarding sections A through C to Colakoglu and sections A through D to Ekinciler.

On November 29, 2001, the Department postponed the preliminary results of this review until no later than April 30, 2002. *See Certain Steel Concrete Reinforcing Bars From Turkey; Notice of Extension of Time Limit for Preliminary Results in Antidumping Duty Administrative Review,* 66 FR 63218 (Dec. 5, 2001).

In January and February 2002, we issued section D supplemental questionnaires to Colakoglu and Habas. We received responses to these questionnaires in February and March 2002.

**Scope of the Review**

The product covered by this review is all stock deformed steel concrete reinforcing bars sold in straight lengths and coils. This includes all hot-rolled deformed rebar rolled from billet steel, rail steel, axle steel, or low-alloy steel. It excludes (i) plain round rebar, (ii) rebar that a processor has further worked or fabricated, and (iii) all coated rebar. Deformed rebar is currently classifiable in the *Harmonized Tariff Schedule of the United States* (HTSUS) under item numbers 7213.10.000 and 7214.20.000. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

**Period of Review**

The POR is April 1, 2000, through March 31, 2001.

**Partial Rescission of Review**

As noted above, Diler informed the Department that it had no shipments of subject merchandise to the United States during the POR. We have confirmed this with the Customs Service. Additionally, as noted above, ICDAS did not have entries of subject merchandise during the POR and requested that the Department extend the POR to capture one sale of subject merchandise that entered the United States after the POR. However, we have determined that it is not appropriate to expand the POR to capture this sale. For further discussion, see the memorandum entitled ''Status of Review for ICDAS Celik Enerji Tersane ve Ulasim Sanayi A.S. in the 2000–2001 Antidumping Duty Administrative Review on Certain Steel Concrete Reinforcing Bars from Turkey,'' dated August 28, 2001. Therefore, in accordance with 19 CFR 351.213(d)(3) and consistent with the Department's practice, we are preliminarily rescinding our review with respect to Diler and ICDAS. (*See e.g., Certain Welded Carbon Steel Pipe and Tube from Turkey; Final Results and Partial Rescission of Antidumping Administrative Review,* 63 FR 35190, 35191 (June 29, 1998); and *Certain Fresh Cut Flowers from Colombia; Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 62 FR 53287 (Oct. 14, 1997).)

**Level of Trade**

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine normal value (NV) based on sales in the comparison market at the same level of trade as export price (EP). The NV level of trade is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses (SG&A) and profit. For EP, the U.S. level of trade is also the level of the starting-price sale, which is usually from the exporter to the unaffiliated U.S. customer.

To determine whether NV sales are at a different level of trade than EP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act.

Colakoglu claimed that it made home market sales at more than one level of trade, while the remaining respondents claimed that they made home market sales at only one level of trade. We analyzed the information on the record for each company and found that each respondent, including Colakoglu, performed essentially the same marketing functions in selling to all of its home market and U.S. customers, regardless of customer category (*e.g.,* end user, distributor). Therefore, we determine that these sales are at the same level of trade. We further determine that no level-of-trade adjustment is warranted for any of the respondents. For a detailed explanation of this analysis, see the memorandum entitled ''Concurrence Memorandum for the Preliminary Results of the 2000–2001 Antidumping Duty Administrative Review on Certain Steel Concrete Reinforcing Bars from Turkey,'' dated April 25, 2002 (the ''concurrence memo'').

**Comparisons to Normal Value**

To determine whether sales of rebar from Turkey were made in the United States at less than normal value, we compared the EP to the NV. Because Turkey's economy experienced significant inflation during the POR, as is Department practice, we limited our comparisons to home market sales made during the same month in which the U.S. sale occurred and did not apply our ''90/60'' contemporaneity rule (*see, e.g., Certain Porcelain on Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review,* 62 FR 42496, 42503 (Aug. 7, 1997)). This methodology minimizes the extent to which calculated dumping margins are overstated or understated due solely to price inflation that occurred in the intervening time period between the U.S. and home market sales.

In all previous segments of this proceeding, we compared products sold in the United States to products sold in the home market in the ordinary course of trade that were identical with respect to the following characteristics: grade, size, ASTM specification, and form. In this segment, however, we have reconsidered this hierarchy and are now treating form as the most important physical characteristic, based on

comments received by one of the respondents in this review. Where there were no home market sales of merchandise that was identical in these respects to the merchandise sold in the United States, we compared U.S. products with the most similar merchandise sold in the home market based on the characteristics listed above, in that order of priority. For further discussion, see the concurrence memo. In making the above change, we considered comments filed by all interested parties. We invite interested parties to comment on our revision of the matching hierarchy in their case briefs.

**Export Price**

For all U.S. sales we used EP, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and constructed export price methodology was not otherwise warranted based on the facts of record.

*A. Colakoglu*

We based EP on packed prices to the first unaffiliated purchaser in the United States. We made deductions for ocean freight expenses, marine insurance expenses, inspection fees, lashing and loading expenses, demurrage expenses, and exporter association fees (offset by freight commission revenue, wharfage revenue, despatch revenue, demurrage commission revenue, agency fee revenue, attendance fee revenue, and other freight-related revenue), where appropriate, in accordance with section 772(c)(2)(A) of the Act.

*B. Ekinciler*

We based EP on packed prices to the first unaffiliated purchaser in the United States. We made deductions for inspection expenses, exporter association fees, surveying expenses, dunnage expenses, brokerage and handling expenses, marine insurance, international freight expenses, and customs clearance fees, where appropriate, in accordance with section 772(c)(2)(A) of the Act.

*C. Habas*

We based EP on packed prices to the first unaffiliated purchaser in the United States. We made deductions for foreign inland freight expenses, exporter association fees, surveying expenses, brokerage and handling expenses, and international freight expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act.

**Normal Value**

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.,* the aggregate volume of home market sales of the foreign like product is five percent or more of the aggregate volume of U.S. sales), we compared the volume of each respondent's home market sales of the foreign like product to the volume of U.S. sales of subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Based on this comparison, we determined that each respondent had a viable home market during the POR. Consequently, we based NV on home market sales.

For each respondent, in accordance with our practice, we excluded home market sales of non-prime merchandise made during the POR from our preliminary analysis based on the limited quantity of such sales in the home market and the fact that no such sales were made to the United States during the POR. (*See, e.g., Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Korea,* 58 FR 37176, 37180 (July 9, 1993).) For further discussion, see the concurrence memo.

Colakoglu and Ekinciler made sales of rebar to affiliated parties in the home market during the POR. Consequently, we tested these sales to ensure that they were made at ''arm's-length'' prices, in accordance with 19 CFR 351.403(c). To conduct this test, we compared the unit prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and packing. Where prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that these sales were made at arm's length (*see Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27295, 27355 (May 19, 1997) (''Preamble'')). In accordance with the Department's practice, we only included in our margin analysis those sales to the affiliated party that were made at arm's length.

Pursuant to section 773(b)(2)(A)(ii) of the Act, for Colakoglu, Ekinciler, and Habas there were reasonable grounds to believe or suspect that these respondents had made home market sales at prices below their COPs in this review because the Department had disregarded sales that failed the cost test for these companies in the most recently completed segment of this proceeding in which these companies participated (*i.e.,* the less-than-fair-value (LTFV) investigation for Habas and Colakoglu and the 1996–1998 administrative review for Ekinciler). As a result, the Department initiated an investigation to determine whether these companies had made home market sales during the POR at prices below their COP. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey,* 62 FR 9737, 9740 (Mar. 4, 1997). *See also Certain Steel Concrete Reinforcing Bars From Turkey; Final Results of Antidumping Duty Administrative Review and New Shipper Review,* 64 FR 49150 (Sept. 10, 1999).

We calculated the COP based on the sum of each respondent's cost of materials and fabrication for the foreign like product, plus amounts for general and administrative and financing expenses, in accordance with section 773(b)(3) of the Act, except as follows. For Habas, we increased the reported materials costs for all products to account for yield loss related to certain billet production because the reported costs did not include an amount for this loss. We based the amount of the adjustment on non-adverse facts available. As facts available, we used the yield loss percentage reported by Habas in its supplemental questionnaire response. For further discussion, see the memorandum entitled ''Calculations Performed for Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. for the Preliminary Results in the 2000–2001 Antidumping Duty Administrative Review on Steel Concrete Reinforcing Bars from Turkey,'' dated April 25, 2002. We have requested further information regarding the company's actual yield loss, and we will consider this information for purposes of the final results.

As noted above, we determined that the Turkish economy experienced significant inflation during the POR. Therefore, in order to avoid the distortive effect of inflation on our comparison of costs and prices, we requested that each respondent submit the product-specific cost of manufacturing (COM) incurred during each month of the reporting period. We calculated a period-average COM for each product after indexing the reported monthly costs during the reporting period to an equivalent currency level using the Turkish Wholesale Price Index from the *International Financial Statistics* published by the International Monetary Fund. We then restated the period-average COMs in the currency values of each respective month.

We compared the weighted-average COP figures to home market prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. On a product-specific basis, we compared the COP to home market prices, less any applicable movement charge, selling expenses, and packing expenses.

In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made: 1) In substantial quantities within an extended period of time; and 2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. *See* sections 773(b)(2)(B), (C), and (D) of the Act.

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product were at prices below the COP, we found that sales of that model were made in ''substantial quantities'' within an extended period of time (as defined in section 773(b)(2)(B) of the Act), in accordance with section 773(b)(2)(C)(i) of the Act. In such cases, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, for purposes of this administrative review, we disregarded these below-cost sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product.

*A. Colakoglu*

We based NV on ex-factory or delivered prices to home market customers. For those home market sales which were negotiated in U.S. dollars, we used the U.S.-dollar price, rather than the Turkish lira (TL) price adjusted for kur farki (*i.e.,* an adjustment to the TL invoice price to account for the difference between the estimated and actual TL value on the date of payment), because the only price agreed upon was a U.S.-dollar price, and this price remained unchanged; the buyer merely paid the TL-equivalent amount at the time of payment. Where appropriate, we made deductions from the starting price for foreign inland freight expenses, in accordance with section 773(a)(6)(B) of the Act.

Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c), we made circumstance-of-sale adjustments for credit expenses (offset by interest revenue), bank charges, and exporter association fees.

We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act.

Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable costs of manufacturing for the foreign like product and subject merchandise, using POR-average costs as adjusted for inflation for each month of the POR, as described above.

*B. Ekinciler*

We based NV on ex-factory, ex-warehouse or delivered prices to home market customers, adjusted for billing errors. We excluded from our analysis home market re-sales by Ekinciler of merchandise produced by unaffiliated companies. Where appropriate, we made deductions from the starting price for foreign inland freight (offset by freight revenue) and warehousing expenses, in accordance with section 773(a)(6)(B) of the Act.

Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c), we made circumstance-of-sale adjustments for bank charges and exporter association fees. Where applicable, in accordance with 19 CFR 351.410(e), we offset any commission paid on a U.S. sale by reducing the NV by home market indirect selling expenses, up to the amount of the U.S. commission.

We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act.

Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable costs of manufacturing for the foreign like product and subject merchandise, using period-average costs as adjusted for inflation for each month of the reporting period, as described above.

*C. Habas*

We based NV on the starting prices to home market customers. Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c), we made circumstance-of-sale adjustments for credit expenses and exporter association fees.

We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act.

Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable costs of manufacturing for the foreign like product and subject merchandise, using POR-average costs as adjusted for inflation for each month of the POR, as described above.

**Currency Conversion**

The Department's preferred source for daily exchange rates is the Federal Reserve Bank. However, the Federal Reserve Bank does not track or publish exchange rates for Turkish Lira. Therefore, we made currency conversions based on the daily exchange rates from the Dow Jones News/Retrieval Service.

**Preliminary Results of the Review**

We preliminarily determine that the following margins exist for the respondents during the period April 1, 2000, through March 31, 2001:

| Manufacturer/producer/exporter | Margin percentage |
|---|---|
| Colakoglu Metalurji A.S | 6.74 |
| Ekinciler Holding A.S./Ekinciler Demir Celik A.S | 0.00 |
| Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S | 0.27 |

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. Interested parties may request a hearing within 30 days of publication. Any hearing, if requested, will be held two days after the date rebuttal briefs are filed. Pursuant to 19 CFR 351.309, interested parties may submit cases briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication of this notice. The Department will issue the final results of the administrative review, including the results of its analysis of issues raised in any such written comments, within 120 days of publication of these preliminary results.

Upon completion of the administrative review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), for Habas, we have calculated importer-specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales. Regarding Colakoglu and Ekinciler, for assessment purposes, we do not have the information to calculate entered value because these companies are not the importers of record for the subject merchandise. Accordingly, we have calculated importer-specific assessment rates for the merchandise in question by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of those sales. The assessment rate will be assessed uniformly on all entries of that particular importer made during the POR. Pursuant to 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties any of Habas's entries for which the assessment rate is *de minimis* (*i.e.,* less than 0.50 percent). The Department will issue appraisement instructions directly to the Customs Service.

Further, the following deposit requirements will be effective for all shipments of rebar from Turkey entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates established in the final results of this review; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 16.06 percent, the all others rate established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 25, 2002.

**Faryar Shirzad,**

*Assistant Secretary, Import Administration.*

[FR Doc. 02–10769 Filed 4–30–02; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–580–841]**

## Structural Steel Beams from Korea: Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Review

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

**ACTION:** Notice of Extension of Time Limits for the Preliminary Results of Antidumping Duty Administrative Review.

**SUMMARY:** The Department of Commerce (''the Department'') is extending the time limit for the preliminary results of the antidumping duty administrative review of structural steel beams (''SSB'') from Korea.

**DATES:** May 1, 2002.

**FOR FURTHER INFORMATION CONTACT:** Brandon Farlander, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0182.

**SUPPLEMENTARY INFORMATION:**

### BACKGROUND:

On October 1, 2001, we published a notice of initiation of a review of SSB from Korea covering the period February 11, 2000 through July 31, 2001. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, October 1, 2001 (66 FR 49924). The Department's preliminary results are currently due on May 3, 2002.

### EXTENSION OF TIME LIMITS FOR PRELIMINARY RESULTS

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act) states that if it is not practicable to complete the review within the time specified, the administering authority may extend the 245–day period to issue its preliminary results by up to 120 days. Completion of the preliminary results of this review within the 245–day period is not practicable because the review involves complex affiliation issues, including respondent INI Steel Company's (''INI'') merger with Kangwon and additional issues regarding INI's corporate affiliations.

Therefore, in accordance with section 751(a)(3)(A) of the Act, we are extending the time period for issuing the preliminary results of review by 120 days until August 31, 2002. However, due to a Federal holiday, the signature date will be Tuesday, September 3, 2002. The final results continue to be due 120 days after the publication of the preliminary results.

Dated: April 25, 2002.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary for Import Administration, Group III.*

[FR Doc. 02–10770 Filed 4–30–02; 8:45 am]

BILLING CODE 3510–DS–S

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## DEPARTMENT OF COMMERCE

## International Trade Administration

## Overseas Trade Missions

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

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce invites U.S. companies to participate in the below listed overseas trade missions. For a more complete description of each trade mission, obtain a copy of the mission statement from the Project Officer indicated for each mission below. Recruitment and selection of private sector participants for these missions will be conducted according to the Statement of Policy Governing Department of Commerce Overseas Trade Missions, dated March 3, 1997.

### Franchising Matchmaker Trade Delegation

Kuala Lumpur, Malaysia; Jakarta, Indonesia; Bangkok, Thailand; and Singapore.

September 9–20, 2002.

Recruitment closes on July 19, 2002.

For further information contact: Mr. Sam Dhir, U.S. Department of Commerce.

Telephone 202–482–4756, or e-mail: *Sam.Dhir@mail.doc.gov.*

**Environmental Technologies Matchmaker Trade Delegation**

Prague, Czech Republic; Bratislava, Slovakia; and Vienna, Austria.
September 23–27, 2002.

Recruitment closes on July 22, 2002.

For further information contact: Ms. Yvonne Jackson, U.S. Department of Commerce.

Telephone 202–482–2675, or e-mail: *Yvonne.Jackson@mail.doc.gov.*

**Corporate Executive Office Mission at ExpoPharm 02**

Berlin, Germany.
October 10–13, 2002.

For further information contact: Ms. Anette Salama, U.S. Department of Commerce, U.S. Consulate General, Dusseldorf, Germany.

Telephone 011–49–211–737–767–60, or e-mail: *Anette.Salama@mail.doc.gov.*

**Aerospace Business Development Mission to South Africa**

Johannesburg and Durban.
October 14–18, 2002.
Recruitment closes on September 9, 2002.

For further information contact: Ms. Karen Dubin, U.S. Department of Commerce.

Telephone 202–482–6236, or e-mail: *Karen_Dubin@ita.doc.gov.*

**Laboratory, Analytical and Scientific Instruments Matchmaker Trade Delegation**

Brussels, Belgium and Utrecht, The Netherlands.
November 4–8, 2002.
Recruitment closes on September 20, 2002.

For further information contact: Mr. Bill Kutson, U.S. Department of Commerce.

Telephone 202–482–2839, or e-mail: *William.Kutson@mail.doc.gov.*

**Corporate Executive Office Mission at Medica**

Dusseldorf, Germany.
November 20–23, 2002.

For further information contact: Mr. George Martinez, U.S. Department of Commerce.

Telephone 727–893–3738, or e-mail: *Geroge.Martinez@mail.doc.gov.*

For further information contact Mr. Thomas Nisbet, U.S. Department of Commerce.

Telephone 202–482–5657, or e-mail *Tom_Nisbet@ita.doc.gov.*

Dated: April 25, 2002.

**Thomas H. Nisbet,**

*Director, Export Promotion Coordination, Office of Planning, Coordination and Management.*

[FR Doc. 02–10665 Filed 4–30–02; 8:45 am]

BILLING CODE 3510–DR–P

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 042602E]**

### Magnuson Stevens Act Provisions; Essential Fish Habitat; Public Meeting

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

**ACTION:** Notification of public meeting.

**SUMMARY:** The NPFMC will hold an essential fish habitat (EFH) Steering Committee (EFH Committee) meeting May 15–17, 2002. The EFH Committee will discuss the following: fishery descriptions, EFH alternatives, habitat areas of particular concern (HAPC) alternatives, specific HAPC sites and HAPC types. HAPC criteria, mitigation tools, research needs and adaptive management, and key terms in the EFH final rule including: ''to the extent practicable'' and ''minimal and temporary.''

**DATES:** The EFH Committee meeting will be held on Wednesday, May 15, 2002, from 1 to 5:30 p.m.; on Thursday, May 16, 2002, from 8:30 a.m. to 5:30 p.m.; on Friday, May 17, 2002, from 8:30 a.m. to 4 p.m.

**ADDRESSES:** The EFH Committee meeting will be in Sitka, Alaska at the Northern Southeast Regional Aquaculture Association (NSRAA), 1308 Sawmill Creek Road. For directions call NSRAA at 907–747–6850.

**FOR FURTHER INFORMATION CONTACT:** Cindy Hartmann, NMFS, Habitat Conservation Division, 709 West 9th, Suite 801, P.O. Box 21668, Juneau, Alaska, 99802–1668, 907–586–7585 e-mail: *Cindy.Hartmann@noaa.gov*; or Cathy Coon, NPFMC, 605 West 4th Avenue, Suite 306, Anchorage, Alaska, 99501–2252, 907–271–2809, e-mail: *Cathy.Coon@noaa.gov*.

**SUPPLEMENTARY INFORMATION:**

#### Background

The EFH Committee was formally established by the Chair of the NPFMC in May 2001. The EFH Committee was established in response to the need to prepare a supplemental environmental impact statement (SEIS) for the EFH fishery management plan amendments. The function of the EFH Committee is to serve as a steering committee in facilitating input to NMFS on the SEIS for EFH. The EFH Committee will provide input to NMFS and the Council from industry, the conservation community, and general public as appropriate. The EFH Committee also will submit periodic updates to the Council on the SEIS for EFH. Further information on the EFH Committee can be found on the NPFMC website at: *http://www.fakr.noaa.gov/npfmc/Committees/EFH/efh.htm.*

Agenda items for the May 2002 EFH Committee meeting include: finalizing fishery descriptions; review and discussion of revised EFH and HAPC alternatives; discussion of gear impacts on habitat; discussion of potential mitigation tools for each fishery; discussion of HAPC criteria and possible nomination of HAPC sites and types or a development of a nomination and evaluation process for HAPC sites and types; research needs; adaptive management; effects of rationalization; and key terms in the EFH final rule will be discussed including the terms'' ''to the extent practicable'' and ''minimal and temporary.'' The EFH Committee will develop recommendations for the June NPFMC meeting on some or all of the agenda items listed above. The EFH Committee also will discuss plans for future tasks and meetings.

For further information about the EFH SEIS, see the Notice of Intent to prepare an SEIS published to the Proposed Rules section of the **Federal Register** (66 FR 30396, June 6, 2001). For further information on the preliminary alternative approaches for the designation of EFH and habitat areas of particular concern (HAPC) see 67 FR 1325, January 10, 2002.

Although other issues not contained in this agenda may come before the EFH Committee for discussion, those issues will not be the subject of formal action during this meeting. Formal action will be restricted to those issues specifically identified in this notice and any issues arising after publication of the notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Committee's intent to take final action to address the emergency.

#### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other

auxiliary aids should be directed to Cindy Hartmann, 907–586–7235, at least 5 working days prior to the meeting date.

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

Dated: April 26, 2002.

**Matteo Milazzo,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 02–10774 Filed 4–30–02; 8:45 am]

BILLING CODE 3510–22–S

## CONSUMER PRODUCT SAFETY COMMISSION

### Petition Requesting Standard for Hunting Tree Stands and Ban of Waist Belt Restraints Used With Hunting Tree Stands

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission has received a petition (CP 02–3) requesting that the Commission issue a consumer product safety standard for hunting tree stands and ban waist belt restraints used with the stands. The Commission solicits written comments concerning the petition.

**DATES:** The Office of the Secretary must receive comments on the petition by July 1, 2002.

**ADDRESSES:** Comments, preferably in five copies, on the petition should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504–0800, or delivered to the Office of the Secretary, Room 501, 4330 East-West Highway, Bethesda, Maryland 20814. Comments may also be filed by telefacsimile to (301) 504–0127 or by email to *cpsc-os@cpsc.gov.* Comments should be captioned ''Petition CP 02–3, Petition on Hunting Tree Stands.'' A copy of the petition is available for inspection at the Commission's Public Reading Room, Room 419, 4330 East-West Highway, Bethesda, Maryland, or from the library/electronic reading room section of the Commission's website at *www.cpsc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800, ext. 1232.

**SUPPLEMENTARY INFORMATION:** The Commission has received correspondence from Carol Pollack-Nelson, Ph.D., requesting that the Commission issue regulations that would establish a mandatory standard for hunting tree stands to address the risk of falling, and ban waist belt restraints used with the tree stands. The Commission is docketing this request as a petition under the Consumer Product Safety Act. 15 U.S.C. §§ 2056 and 2058. The petitioner states that incident reports and medical literature show that serious injuries and death are associated with hunting tree stands and waist belt restraints. She states that ''regulation is needed to ensure that stands are designed with optimal materials and instructions in order to reduce the likelihood of a fall.'' She also states that, although waist belts are intended to prevent injury, they have been involved in four fatalities where hunters were asphyxiated by them.

Interested parties may obtain a copy of the petition by writing or calling the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800. Copies of the petition are also available for inspection from 8:30 a.m. to 5 p.m., Monday through Friday, in the Commission's Public Reading Room, Room 419, 4330 East-West Highway, Bethesda, Maryland, or from the library/electronic reading room section of the Commission's website at *www.cpsc.gov.*

Dated: April 25, 2002.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 02–10784 Filed 4–30–02; 8:45 am]

BILLING CODE 6355–01–P

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before July 1, 2002.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 25, 2002.

**John Tressler,**

*Leader, Regulatory Information Management, Office of the Chief Information Officer.*

### Office of Special Education and Rehabilitative Services

*Type of Review:* Extension.

*Title:* Protection and Advocacy of Individual Rights (PAIR) Program Assurances.

*Frequency:* Annually.

*Affected Public:* Not-for-profit institutions.

*Reporting and Recordkeeping Hour Burden:* Responses: 57. Burden Hours: 9.

*Abstract:* Section 509 of the Rehabilitation Act of 1973 as amended (Act), and its implementing Federal Regulations at 34 CFR part 381, require the PAIR grantees to submit an application to the Rehabilitation Services Administration (RSA) Commissioner in order to receive assistance under Section 509 of the Act. The Act requires that the application contain Assurances to which the grantee must comply. Section 509(f) of the Act specifies the Assurances. There are 57 PAIR grantees. All 57 grantees are required to be part of the protection and advocacy system in each State established under the Developmental

Disabilities Assistance and Bill of Rights Act of 2000 (42 USC 6041 *et seq.*)

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2026. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651 or to the e-mail address *vivian_reese@ed.gov.* 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 Sheila Carey at (202) 708–6287 or via her internet address Sheila.Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–10750 Filed 4–30–02; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests; Correction

**AGENCY:** Department of Education.

**ACTION:** Correction notice.

**SUMMARY:** On April 25, 2002, a notice inviting comment from the public, was published for ''Community Technology Centers Program Grant Notice Inviting Project Applications for One-Year Awards for Fiscal Year (FY) 2002'' in the **Federal Register** (67 FR 20498). This notice was published erroneously and should be disregarded. The Leader, Regulatory Information Management, Office of the Chief Information Officer, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

Dated: April 26, 2002.

**John D. Tressler,**

*Leader, Regulatory Information Management Group, Office of the Chief Information Officer.*

[FR Doc. 02–10751 Filed 4–30–02; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Information Quality Guidelines

**AGENCY:** Office of the Chief Information Officer, Department of Education.

**ACTION:** Notice of availability.

**SUMMARY:** Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106–554) requires all Federal agencies covered by the Paperwork Reduction Act (44 U.S.C. Chapter 35), including the Department of Education, to issue guidelines by October 1, 2002, for the purpose of ''ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by the agency.'' (Public Law 106–554). The agency guidelines must be consistent with government-wide guidelines published by the Office of Management and Budget (66 FR 49718, September 28, 2001; 67 FR 8452, February 22, 2002) and must include ''administrative mechanisms allowing affected persons to seek and obtain correction of information'' that the agency maintains and disseminates, and that does not comply with the OMB or agency guidelines.

This Notice of Availability informs the public that the Department of Education has written draft guidelines, which are available for public information and comment as described in this notice.

**DATES:** We must receive your comments on or before May 31, 2002.

**ADDRESSES:** Address all comments about the guidelines to the Office of the Chief Information Officer, U.S. Department of Education, 7th and D Streets, SW., room 4082, Washington, DC 20202–4580. If you prefer to send your comments through the Internet, use the following address: *ocio.section515@ed.gov.*

You must include the term ''Section 515 Information Quality Guidelines'' in the subject line of your electronic message.

**FOR FURTHER INFORMATION CONTACT:** For a Copy of the Guidelines and Further Information: The guidelines are available through the Internet at the following site: *www.ed.gov/offices/ocio/section515/index.html.*

Alternatively, you may contact Arthur Graham, U.S. Department of Education, 7th and D Streets, SW., room 4060A, Washington, DC 20202–4651. Telephone: (202) 260–0710.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under For a Copy of the Guidelines and Further Information.

**SUPPLEMENTARY INFORMATION:**

#### Invitation to Comment

We invite you to submit comments regarding the guidelines. During and after the comment period, you may view all public comments about these guidelines at the following site: *www.ed.gov/offices/ocio/section515/index.html.*

#### Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public record for these guidelines. If you want to schedule an appointment for this type of aid, please contact the person listed under For a Copy of the Guidelines and Further Information.

#### Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, D.C., area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Dated: April 26, 2002.

**Craig B. Luigart,**

*Chief Information Officer.*

[FR Doc. 02–10771 Filed 4–30–02; 8:45 am]

BILLING CODE 4001–01–P

## DEPARTMENT OF EDUCATION

**[CFDA No. 84.336A]**

### Teacher Quality Enhancement Grants Program—State Grants; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

*Purpose of Program:* The program provides grants to States to promote improvements in the quality of new teachers with the ultimate goal of increasing student achievement in the nation's pre-K–12 classrooms. For FY 2002, a new competition will be conducted under the State Grants program (State program). The purpose of the State Grants Program is to improve the quality of a State's teaching force by supporting the implementation of comprehensive statewide reform activities in areas such as teacher licensing and certification, accountability for high-quality teacher preparation, and recruitment.

*Eligible Applicants:* State Grants (including the District of Columbia, Puerto Rico and the insular areas)—States that did not receive an FY 1999 grant or FY 2000 initial year under the State Grants program.

*Applications Available:* May 1, 2002.

*Deadline for Transmittal of Applications:* July 1, 2002.

*Deadline for Intergovernmental Review:* August 29, 2002.

*Available Funds:* $33.8 million.

*Estimated Range of Awards:* Up to $5,000,000.

*Estimated Average Size of Awards:* $3.4 million per year.

*Estimated Number of Awards:* 10–26.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 36 months.

*Page Limit:* The application narrative is where you, the applicant, address the selection criteria reviewers use to evaluate your application.

If you are submitting an application for a State grant, you must limit your narrative to the equivalent of no more than 50 pages and your accompanying work plan to the equivalent of no more than 10 pages. Submit the work plan as an appendix. In addition, you must limit your budget narrative to the equivalent of no more than 10 pages and your evaluation plan to the equivalent of no more than 5 pages.

For the application narrative, work plan, budget narrative, and evaluation plan, the following standards apply:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text, including titles, headings, quotations, references, and captions.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).
- For tables, charts, or graphs also use a font that is either 12-point or larger or no smaller than 10 pitch.

Our reviewers will not read any of the specified sections of your application that—

- Exceed the page limit if you apply these standards; or
- Exceed the equivalent of the page limit if you apply other standards.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 82, 85, 86, 97, 98 and 99. (b) The regulations for this program in 34 CFR part 611.

**FOR APPLICATIONS AND FURTHER INFORMATION CONTACT:** Brenda Shade, Teacher Quality Program, Office of Postsecondary Education, U.S. Department of Education, 1990 K Street NW, Room 6152, Washington, DC 20006–8525. Telephone: (202) 502–7878, FAX: (202) 502–7699 or via Internet: *Brenda.Shade@ed.gov.* If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR APPLICATIONS AND FURTHER INFORMATION CONTACT.** However, the Department is not able to reproduce in an alternative format the standard forms included in the application process.

#### Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use the PDF you must have the Adobe Acrobat Reader, which is available free at this site. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

**Program Authority:** 20 U.S.C. 1021 *et seq.*

Dated: April 26, 2002.

**Sally L. Stroup,**

*Assistant Secretary, Office of Postsecondary Education.*

[FR Doc. 02–10710 Filed 4–30–02; 8:45 am]

**BILLING CODE 4000–01–P**

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## DEPARTMENT OF EDUCATION

### Office of Postsecondary Education

**[CFDA No. 84.031T]**

### American Indian Tribally Controlled Colleges and Universities (TCCU) Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

*Purpose of Program:* The TCCU Program is authorized under title III, part A, section 316 of the Higher Education Act of 1965, as amended (HEA). The program provides grants to eligible institutions of higher education to enable them to improve their academic quality, institutional management, and fiscal stability, and increase their self-sufficiency.

*Eligible Applicants:* To qualify as an eligible institution under the program, a tribal college or university must meet the definition of the term ''tribally controlled college or university'' in section 2 of the Tribally Controlled College or University Assistance Act of 1978, or it must be listed in the Equity in Educational Land Grant Status Act of 1994. In addition, it must be an accredited or preaccredited institution and must, among other requirements, have a high enrollment of needy students, and its Educational and General (E&G) expenditures per full-time equivalent (FTE) undergraduate student must be low in comparison with the average E&G expenditures per FTE undergraduate student of institutions that offer similar instruction. The complete eligibility requirements are found in 34 CFR 607.2–607.5. The regulations may also be accessed by visiting the following Department of Education web site: *http://www.ed.gov/legislation/FedRegister.*

*Applications Available:* May 1, 2002.

*Deadline for Transmittal of Applications:* June 10, 2002.

*Estimated Available Funds:* $17.5 million.

**SUPPLEMENTARY INFORMATION:** Approximately $400,000 of the $17.5 million appropriated for the TCCU Program will be available for one new individual or cooperative arrangement development grant, and approximately $7.1 million will be available for new construction. The remaining funds will

be used to fund continuing awards. Development grant monies may be used for a variety of allowable activities. Construction funds may be used solely for construction, maintenance, renovation and improvement in classrooms, libraries, laboratories, and other instructional facilities, including purchase or rental of telecommunications technology equipment or services. We will refer to grants to carry out construction as construction grants.

A TCCU that does not have a current development grant under either the TCCU Program or the Strengthening Institutions Program may apply for both a TCCU Program development grant and a TCCU Program construction grant. A TCCU that currently has a development grant awarded under the TCCU Program may apply for a TCCU Program construction grant. However, a TCCU that has a current grant under the Strengthening Institutions Program may not receive a TCCU Program construction or development grant in FY 2002. A TCCU seeking both a TCCU Program development grant and construction grant must submit a separate application for each type of grant. Applicants for construction grants will use the same application as applicants for development grants.

*Estimated Range of Awards:* $365,000–$400,000 per year for the 5-year development grant; and $800,000–$1,200,000 for 1-year construction grants.

*Estimated Average Size of Awards:* $400,000 per year for 5-year development grant and $1 million for 1-year construction grants.

*Estimated Number of Awards:* 1 development grant and 6 construction grants.

*Project Period:* 60 months for development grants and 12 months for construction grants.

**Note:** The Department is not bound by any estimates in this notice. Applicants should periodically check the title III, part A web site for further information on this program. The address is: *http://www.ed.gov/offices/OPE/HEP/idues/title3a.html.*

*Page Limit:* We have established mandatory page limits for the individual development grant, the cooperative arrangement development grant, and the construction grant applications. You must limit the application narrative to the equivalent of no more than 100 pages for the individual development grant or the individual construction grant and 140 pages for the cooperative arrangement development grant, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles and headings. However, you may single space footnotes, quotations, references, captions, charts, forms, tables, figures and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to the application cover sheet (ED 424) or the assurances and certifications. However, the page limitation applies to all other parts of the application.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

**Special Funding Considerations**

1. An applicant that does not have a development or construction grant will have a priority over those applicants that have one or both grants.

2. In tie-breaking situations described in 34 CFR 607.23, we will award one additional point to an applicant institution that has an endowment fund for which the 1998–1999 market value per full-time equivalent (FTE) student was less than the comparable average per FTE student at a similar type institution. We will also award one additional point to an applicant institution that had 1998–1999 expenditures for library materials per FTE student that were less than the comparable average per FTE student at similar type institutions.

For the purpose of these funding considerations, an applicant must demonstrate that the market value of its endowment fund per FTE student, and library expenditures per FTE student, were less than the national averages for the year 1998–1999.

If a tie remains, after applying the additional point or points, we will determine the ranking of applicants based on the lowest combined library expenditures per FTE student and endowment values per FTE student.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 82, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR part 607.

*Applicability of Executive Order 13202:* Applicants that apply for construction funds under these programs must comply with the Executive Order 13202 signed by President Bush on February 17, 2001 and amended on April 26, 2001. This Executive order provides that recipients of Federal construction funds may not ''require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or other related construction project(s)'' or ''otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one or more labor organizations, on the same or other construction project(s).'' However, the Executive order does not prohibit contractors or subcontractors from voluntarily entering into these agreements.

Projects funded under this program that include construction activity will be provided a copy of this Executive Order and will be asked to certify that they will adhere to it.

**Instructions for Transmittal of Applications**

**Note:** Some of the procedures in these instructions for transmitting applications differ from those in the EDGAR (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

*Pilot Project for Electronic Submission of Applications*

In FY 2002, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Title III, Part A Programs (CFDA Nos. 84.031A, 84.031N, 84.031T, and 84.031W) are included in the pilot project. If you are an applicant under a Title III, Part A Program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in this pilot project. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in this e-APPLICATION pilot, please note the following:

- Your participation is strictly voluntary.

• You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.

• You can submit all grant documents electronically, including the Application for Federal Assistance (ED 424), Budget Information-Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• Within three working days of submitting your electronic application fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from the e-APPLICATION system.

2. Make sure that the institution's Authorizing Representative signs this form.

3. Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).

4. Place the PR/Award number in the upper right hand corner of ED 424.

5. Fax ED 424 to the Application Control Center at (202) 260–1349.

• We may request that you give us original signatures on all other forms at a later date.

You may access the electronic grant application for the Title III, Part A Programs at: *http://e-grants.ed.gov.*

We have included additional information about the e-application pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

*For Applications or Further Information Contact:* Darlene B. Collins, U.S. Department of Education, 1990 K Street, NW, 6th Floor, Washington, DC 20202–8513. Telephone: (202) 502–7777 or via Internet: *darlene.collins@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR APPLICATIONS OR FURTHER INFORMATION CONTACT.**

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

**Electronic Access to This Document**

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*

**Program Authority:** 20 U.S.C. 1057–1059d.

Dated: April 26, 2002.

**Sally L. Stroup,**

*Assistant Secretary, Office of Postsecondary Education.*

[FR Doc. 02–10711 Filed 4–30–02; 8:45 am]

BILLING CODE 4000–01–U

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## DEPARTMENT OF EDUCATION

**[CFDA No. 84.335A]**

## Child Care Access Means Parents in School Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

*Purpose of Program*: The Child Care Access Means Parents In School (CCAMPIS) Program supports the participation of low-income parents in postsecondary education through the provision of campus-based childcare services.

*Eligible Applicants*: Institutions of higher education that awarded during the preceding fiscal year, $350,000 or more of Federal Pell Grant funds to students enrolled at the institution.

*Applications Available:* May 1, 2002.

*Deadline for Transmittal of Applications:* June 3, 2002.

*Deadline for Intergovernmental Review:* August 5, 2002.

*Available Funds:* $8.4 million.

*Estimated Range of Awards*: $10,000—$300,000. An institution will be eligible for a maximum grant award equal to one (1) percent of its Federal Pell Grant disbursement with no grant being less than $10,000.

*Estimated Average Size of Awards:* $84,000.

*Estimated Number of Awards:* 100.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period*: 48 months.

*Page Limit*: The application narrative (Part C of the application in which the selection criteria are addressed) must be limited to the equivalent of no more than 50 pages using the following standards:

• A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to the cover sheet, the budget section, including the narrative budget justification, the assurances and certifications, the three-page abstract, the resumes, or the letters of support. However, you must include all of the application narrative in Part C.

We will reject your application if—

• You apply these standards and exceed the page limit; or

• You apply other standards and exceed the equivalent of the page limit.

*Applicable Regulations*: EDGAR in 34 CFR parts 74, 75, 77, 79, 82, 85, 86, 97, 98 and 99.

In preparing applications, applicants should pay particular attention to the requirements in section 427 of the General Education Provisions Act (GEPA), as detailed later in this notice. Applicants must address the requirements in section 427 in order to receive funding under this competition. Section 427 requires each applicant to describe the steps it proposes to take for addressing one or more barriers (i.e., gender, race, national origin, color, disability, or age) that can impede equitable access to, or participation in, the program. A restatement of compliance with civil rights requirements is not sufficient to meet the requirements in section 427 of GEPA. Because there are no program-specific regulations for the Child Care Access Means Parents In School Program, applicants are encouraged to read the authorizing statute in section 419N of the Higher Education Act of 1965, as amended (HEA).

*Priority: Competitive Priority:* Under 34 CFR 75.105 (c)(2)(i) and 20 U.S.C. 1070e(d) the Secretary gives preference to applications that leverage significant local or institutional resources, including in-kind contributions to support the activities, and use a sliding fee scale for childcare services provided

by a facility assisted under this grant in order to support a high number of low-income parents pursuing postsecondary education at the institution.

The Secretary awards up to 10 points to an application that meets this competitive priority. These points are in addition to any points the application earns under the selection criteria.

*Selection Criteria:* In evaluating an application for a new grant under this competition, the Secretary uses selection criteria under 34 CFR 75.209 and 75.210 of the Education Department General Administrative Regulations (EDGAR). The Secretary informs applicants in the application package of the selection criteria and factors, if any, to be used for this competition and of the maximum weight assigned to each criterion.

*Application Procedures:*

**Note:** Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

**Pilot Project for Electronic Submission of Applications**

In Fiscal Year 2002, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Child Care Access Means Parents In School Program, CFDA No. 84.335A, is one of the programs included in the pilot project. If you are an applicant under the CCAMPIS Program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in this pilot project. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in this e-APPLICATION pilot, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.
- You can submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Within three working days of submitting your electronic application fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from the e-APPLICATION system.
2. Make sure that the institution's Authorizing Representative signs this form.
3. Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
4. Place the PR/Award number in the upper right hand corner of ED 424.
5. Fax ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.

You may access the electronic grant application for the Child Care Access Means Parents In School Program at: *http://e-grants.ed.gov.*

We have included additional information about the e-APPLICATION pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

*For Applications Contact:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html.*

Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA No. 84.335A.

**FOR FURTHER INFORMATION CONTACT:** Karen W. Johnson, U.S. Department of Education, 1990 K Street, NW, Room 7018, Washington, DC 20006. Telephone: (202) 502–7525. FAX: (202) 502–7864.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

**Electronic Access to This Document:**

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF you must have the Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*

**Program Authority:** 20 U.S.C. 1070e.

Dated: April 26, 2002.

**Sally L. Stroup,**

*Assistant Secretary, Office of Postsecondary Education.*

[FR Doc. 02–10712 Filed 4–30–02; 8:45 am]

BILLING CODE 4000–01–U

## DEPARTMENT OF EDUCATION

### National Assessment Governing Board; Meeting

**AGENCY:** National Assessment Governing Board; Education.

**ACTION:** Notice of open meeting and partially closed meetings.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend. Individuals who will need

accommodations for a disability in order to attend the meeting (i.e. interpreting services, assistive listening devices, materials in alternative format) should notify Munira Mwalimu at 202–357–6938 or at *Munira.Mwalimu@ed.gov* no later than May 3, 2002. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

**DATES:** May 16–May 18, 2002.

**TIMES:** May 16: Executive Committee Meeting: Open Session 4:30 p.m.–6:30 p.m.; Closed Session 6:30 p.m. to 7 p.m.

May 17: Full Board Meeting: Open Session 8:30 a.m.–10:30 a.m.; Committee Meetings: Assessment Development Committee 10:30 a.m.–12:30 p.m.; Committee on Standards, Design and Methodology, 10:30 a.m.–12:30 p.m.; Reporting and Dissemination Committee, 10:30 a.m.–12:30 p.m.; Full Board—Closed Meeting 12:30 p.m.–1:30 p.m.; Open Meeting 1:30 p.m.–2:45 p.m.; Closed Meeting, 3 p.m.–4:30 p.m.

May 18: Nominations Committee: Closed Meeting—8 a.m.–8:45 a.m.; Full Board Open Meeting, 9 a.m.–11:40 a.m.; Closed Meeting 11:40 a.m.–12 p.m.

*Location:* The Westin Embassy Row, 2100 Massachusetts Avenue, NW., Washington, DC 20008.

**FOR FURTHER INFORMATION CONTACT:** Munira Mwalimu, Operations Office, National Assessment Governing Board, 800 North Capitol Street, NW., Suite 825, Washington, DC, 20002–4233, Telephone: (202) 357–6938.

**SUPPLEMENTARY INFORMATION:** The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994, as amended by the No Child Left Behind Act of 2002) (Public Law 103–382).

The Board is established to formulate policy guidelines for the National Assessment of Education Progress (NAEP). The Board's responsibilities include selecting subject areas to be assessed, developing assessment objectives, developing appropriate student achievement levels for each grade and subject tested, developing guidelines for reporting and disseminating results, and developing standards and procedures for interstate and national comparisons.

On May 17, 2002 the full Board will convene in open session from 8:30 a.m.–10:30 a.m. The Board will approve the agenda; receive the Executive Director's report and a NAEP Update from the Deputy Commissioner of NCES, Gary Phillips. The Board will then preview proposed policies on the NAEP program. From 10:30 a.m. to 12:30 p.m., the Board's standing committees—the Assessment Development Committee, the Committee on Standards, Design, and Methodology, and the Reporting and Dissemination Committee will meet in open session.

The full Board will reconvene in closed session on May 17, 2002 from 12:30 p.m.–1:30 p.m. to receive results of the NAEP 2001 Geography Assessment. This meeting must be closed because the Commissioner of Education has not officially released results of the NAEP Geography Assessment to the public and premature disclosure of the information presented for review would be likely to significantly frustrate implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

The full Board will reconvene in open session on May 17, from 1:30 p.m. to 2:45 p.m. to receive an update on the NAEP Economics Framework and to receive a report on NAEP/NAGB reauthorization. From 3 p.m. to 4:30 p.m. the full Board will meet in closed session from 3 p.m. to 4:30 p.m. to review and discuss test items from the main NAEP Science Assessment. Disclosure of the specific test items for a test that has not yet been administered would significantly frustrate implementation of the NAEP program, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

On May 18, 2002, the Nominations Committee will meet in closed session from 8 a.m. to 8:45 a.m. to review nominations received for vacant positions on the Board. On May 18, 2002 the full Board will meet in open session from 9 a.m. to 11:40 a.m. to receive recommendations and take action on the NAEP Reading Framework Revisit. The Board will then hear and take action on Committee reports from 9:45 a.m. to 11:40 a.m. Subsequently, from 11:40 a.m. to 12 noon, the full Board will meet in closed session to review nominations for Board vacancies. This discussion pertains solely to internal personnel rules and practices of an agency and will disclose information of a personal nature where disclosure would constitute an unwarranted invasion of personal privacy. As such, the discussions are protected by exemptions (2) and (6) of section 552b(c) of Title 5 U.S.C. The May 18, 2002 Board meeting will adjourn at 12 noon.

Summaries of the activities of the closed sessions and related matters, which are informative to the public and consistent with the policy of section 5 U.S.C. 552b(c), will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite #825, 800 North Capitol Street, NW., Washington, DC, from 9 a.m. to 5 p.m. Eastern Standard Time.

Dated: March 26, 2002.

**Roy Truby,**

*Executive Director, National Assessment Governing Board.*

[FR Doc. 02–10688 Filed 4–30–02; 8:45 am]

**BILLING CODE 4000–01–M**

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## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Idaho National Engineering and Environmental Laboratory

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho National Engineering and Environmental Laboratory. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Tuesday, May 21, 2002, 8 a.m.–6 p.m.; Wednesday, May 22, 2002, 8 a.m.–5 p.m.

Public participation sessions will be held on: Tuesday, May 21, 2002, 12:15–12:30 p.m. 5:45–6 p.m.; Wednesday, May 22, 2002, 11:45–12 noon, 4–4:15 p.m.

These times are subject to change as the meeting progresses. Please check with the meeting facilitator to confirm these times.

**ADDRESSES:** Ameritel Inn, 645 Lindsay Boulevard, Idaho Falls, Idaho.

**FOR FURTHER INFORMATION CONTACT:** Ms. Wendy Lowe, Idaho National Engineering and Environmental Laboratory (INEEL) Citizens' Advisory Board (CAB) Facilitator, Jason Associates Corporation, 477 Shoup Avenue, Suite 205, Idaho Falls, ID 83402, Phone (208) 522–1662 or visit the Board's Internet home page at *http://www.ida.net/users/cab*.

**SUPPLEMENTARY INFORMATION:**

**Purpose of the Board**

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities at the INEEL.

**Tentative Agenda Topics**

(Agenda topics may change up to the day of the meeting. Please contact Jason Associates for the most current agenda or visit the CAB's Internet site at *www.ida.net/users/cab/*.)

- Overall Orientation for Newly Appointed Members to the INEEL Citizens Advisory Board.
- Election of New Chair and Vice Chair for the Citizens Advisory Board.
- INEEL Site Monitoring.
- Remedial Investigation and Baseline Risk Assessment for Waste Area Group 7.
- Dispute Resolution for Pit 9 at the Radioactive Waste Management Complex.
- Status of Construction of the Advanced Mixed Waste Treatment Project.
- Status of the Geologic Repository for Spent Nuclear Fuel and High-level Waste.
- Status of INEEL's Application for Funding under the Accelerated Cleanup Program.
- Stakeholder Involvement Plan for the Water Integration Project.

**Public Participation**

This meeting is open to the public. Written statements may be filed with the Board facilitator either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact the Board Chair at the address or telephone number listed above. Request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Jerry Bowman, Assistant Manager for Laboratory Development, Idaho Operations Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Every individual wishing to make public comment will be provided equal time to present their comments. Additional time may be made available for public comment during the presentations.

**Minutes**

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday except Federal holidays. Minutes will also be available by writing to Ms. Wendy Lowe, INEEL CAB Facilitator, Jason Associates Corporation, 477 Shoup Avenue, Suite 205, Idaho Falls, ID 83402 or by calling (208) 522–1662.

Issued at Washington, DC, on April 25, 2002.

**Belinda G. Hood,**

*Acting Deputy Advisory Committee Management Officer.*

[FR Doc. 02–10696 Filed 4–30–02; 8:45 am]

BILLING CODE 6450–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP02–230–000]**

### Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tarriff

April 25, 2002.

Take notice that on April 22, 2002, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective May 23, 2002:

Ninth Revised Sheet No. 229A
Eighth Revised Sheet No. 229B
Sixth Revised Sheet No. 281A
Eighth Revised Sheet No. 281C

CIG states that the tendered tariff sheets clarify that previously scheduled firm service quantities must be rescheduled in an intraday nomination cycle when a rate discount is granted after the scheduling of such quantities.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, 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.,**

*Deputy Secretary.*

[FR Doc. 02–10749 Filed 4–30–02; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP96–389–047]**

### Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

April 25, 2002.

Take notice that on April 18, 2002, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing the following contract for disclosure of a negotiated rate trans

PAL Service Agreement No. 72640 between Columbia Gulf Transmission Company and Duke Energy Trading and Marketing, L.L.C. dated April 17, 2002

Transportation service is to commence May 1, 2002 and end May 31, 2002 under the agreement.

Columbia Gulf states 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.,**

*Deputy Secretary.*

[FR Doc. 02–10747 Filed 4–30–02; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP02–188–000]**

### Copper Eagle Gas Storage, L.L.C.; Notice of Petition

April 25, 2002.

Take notice that on April 19, 2002, Copper Eagle Gas Storage, L.L.C. (Copper Eagle), Phoenix, Arizona, filed a petition for Exemption of Temporary Acts and Operations from Certificate Requirements, pursuant to Rule 207 (a)(5) of the Commission's Rules of Practice and Procedure (18 CFR 385.207(a)(5)), and section 7(c)(1)(B) of the Natural Gas Act (15 U.S.C. 717(c)(1)(B)), seeking approval of an exemption from certificate requirements to perform temporary activities related to drilling three stratigraphic test wells to determine the technical, environmental, and economic feasibility of developing a natural gas storage facility in Maricopa County, Arizona. 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).

Any questions regarding the application should be directed to J. Gordon Pennington, Senior Counsel, El Paso Corporation, 555 11th St. NW., Suite 750, Washington, DC 20004, telephone (202) 637–3544.

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 May 6, 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.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

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.,**

*Deputy Secretary.*

[FR Doc. 02–10741 Filed 4–30–02; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER02–1600–000]**

### Green Mountain Energy Company; Notice of Filing

April 24, 2002.

Take notice that on April 10, 2002, GreenMountain.com Company tendered for filing that it has formally changed its name to Green Mountain Energy Company on October 4, 2000. The company's ownership, affiliate status, operations, and assets were unaffected by the name change.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the

Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

*Comment Date:* May 1, 2002.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02–10659 Filed 4–30–02; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. ER02–1214–000]**

### Invenergy Energy Marketing LLC; Notice of Issuance of Order

April 25, 2002.

Invenergy Energy Marketing LLC (Invenergy Marketing) submitted for filing an initial rate schedule under which Invenergy Marketing will engage in the sale of capacity, energy, replacement reserves, and ancillary services at market-based rates, and for the authority to reassign transmission rights and to resell firm transmission rights. Invenergy Marketing also requested waiver of various Commission regulations. In particular, Invenergy Marketing requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Invenergy Marketing.

On April 16, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-Central, granted requests for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Invenergy Marketing 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).

Absent a request to be heard in opposition within this period, Invenergy Marketing is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Invenergy Marketing, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Invenergy Marketing's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 16, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (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 at *http://www.ferc.fed.us/efi/doorbell.htm*.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02–10742 Filed 4–30–02; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. EL00–95–000 and EL00–98–000]**

### San Diego Gas & Electric Company, Complainant, v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents; Investigation of Practices of the California Independent System Operator and the California Power Exchange; Notice of Technical Conference

April 24, 2002.

The Federal Energy Regulatory Commission Staff is convening a technical conference to facilitate continued discussions between the California Independent System Operator Corporation (CAISO), market participants, state agencies and other interested participants on the development of a revised market design for the CAISO. Staff will issue an agenda the week of May 6, 2002. The conference will held in San Francisco, California, at the Renaissance Parc 55 Hotel, 55 Cyril Magnin Street, San Francisco, CA, on May 9 and 10, 2002, beginning at 9 a.m.

For additional information concerning the conference, interested persons may contact Robert Pease at (202) 208–0131 or by electronic mail at ''*robert.pease@ferc.gov*.'' No telephone communication bridge will be provided at this technical conference.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02–10657 Filed 4–30–02; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP02–229–000]**

### Texas Eastern Transmission, L.P.; Notice of Refund Report

April 25, 2002.

Take notice that on April 17, 2002 Texas Eastern Transmission, LP (Texas Eastern) tendered for filing a refund report of a flow through refund from Dominion Transmission, Inc. (DTI) of a Take-or-Pay Refund, in Docket No. RP88–217–000, et al. reported on March 31,1997, as credits to Customers' invoices on their April 10, 2002 invoices.

Texas Eastern states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before May 2, 2002. 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.,**

*Deputy Secretary.*

[FR Doc. 02–10748 Filed 4–30–02; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. ER02–1336–000]**

### Vandolah Power Company, L.L.C.; Notice of Issuance of Order

April 25, 2002.

Vandolah Power Company, L.L.C. (Vandolah) submitted for filing an application to sell capacity, energy, and ancillary services at market-based rates. Vandolah also requested waiver of various Commission regulations. In particular, Vandolah requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Vandolah.

On April 17, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-Central, granted requests for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Vandolah 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).

Absent a request to be heard in opposition within this period, Vandolah is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Vandolah, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Vandolah's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 17, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (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 at *http://www.ferc.fed.us/efi/doorbell.htm*.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02–10743 Filed 4–30–02; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER02–1447–001]**

### Central Illinois Light Company; Notice of Filing

April 24, 2002.

Take notice that on April 18, 2002, Central Illinois Light Company (CILCO) filed a Substitute Interconnection Agreement with the Village of Riverton.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

*Comment Date:* May 9, 2002.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02–10658 Filed 4–30–02; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER02–1578–000, et al.]**

### Public Service Company of New Mexico, et al.; Electric Rate and Corporate Regulation Filings

April 23, 2002

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

**1. Public Service Company of New Mexico**

[Docket No. ER02–1578–000]

Take notice that on April 17, 2002, Public Service Company of New Mexico (PNM) submitted for filing an executed service agreement, dated December 28, 2001, for firm point-to-point transmission service and certain ancillary services, between PNM Transmission Development and Contracts (Transmission Provider) and PNM International Business Development (Transmission Customer), under the terms of PNM's Open Access Transmission Tariff. The agreement is for 28 MW of reserved transmission capacity (and certain ancillary services) from the San Juan Generating Station 345kV Switchyard to the Luna 345kV Switching Station and represents the Transmission Customer's exercise of its Right of First Refusal to extend service under a predecessor (now expired) agreement for one year (through calendar year 2002). PNM requests January 1, 2002, as the effective date for each agreement. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Copies of the filing have been sent to PNM International Business Development, PNM Transmission Development and Contracts, the New Mexico Public Regulation Commission and the New Mexico Attorney General.

*Comment Date*: May 8, 2002.

**2. Public Service Company of New Mexico**

[Docket No. ER02–1579–000]

Take notice that on April 17, 2002, Public Service Company of New Mexico (PNM) submitted for filing two executed service agreements for firm point-to-point transmission service with Texas-New Mexico Power Company (TNMP), under the terms of PNM's Open Access Transmission Tariff. The agreements are for 6 MW and 15 MW (respectively) of reserved transmission capacity from the Four Corners 345kV Switchyard to the

Hidalgo 345kV Switching Station and represent TNMP's exercise of Right of First Refusal to continue service under two predecessor (now expired) agreements through calendar year 2002.

PNM requests January 1, 2002, as the effective date for the agreements. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico. Copies of the filing have been sent to TNMP, the New Mexico Public Regulation Commission and the New Mexico Attorney General.

*Comment Date*: May 8, 2002.

**3. PJM Interconnection, L.L.C.**

[Docket No. ER02–1580–000]

Take notice that on April 17, 2002, PJM Interconnection, L.L.C. (PJM), filed with the Federal Energy Regulatory Commission (Commission) amendments to the PJM Open Access Transmission Tariff and the Amended and Restated PJM Operating Agreement to allocate more equitably charges and credits relating to PJM's purchase or sale of emergency energy

Copies of this filing were served upon all PJM members and each state electric utility regulatory commission in the PJM region. PJM requests waiver of the Commission's notice requirements to permit an effective date of June 1, 2002 for the amendments.

*Comment Date*: May 8, 2002.

**4. Idaho Power Company**

[Docket No. ER02–1581–000]

Take notice that on April 17, 2002, Idaho Power Company filed a Service Agreement for Firm Point-to-Point Transmission Service between Idaho Power Company and Dynegy Power Marketing, Inc., under its open access transmission tariff in the above-captioned proceeding.

*Comment Date*: May 8, 2002.

**5. Idaho Power Company**

[Docket No. ER02–1583–000]

Take notice that on April 17, 2002, Idaho Power Company filed a Service Agreement for Non-Firm Point-to-Point Transmission Service between Idaho Power Company and Dynegy Power Marketing, Inc., under its open access transmission tariff in the above-captioned proceeding.

*Comment Date*: May 8, 2002.

**6. Cinergy Services, Inc.**

[Docket No. ER02–1584–000]

Take notice that on April 18, 2002, Cinergy Services, Inc. (Cinergy) on behalf of the Cincinnati Gas and Electric Company tendered for filing a Wholesale Market-Based Service Agreement under its Wholesale Market-Based Power Sales Standard Tariff, No. 9 -MB (the Tariff) entered into with Dynegy Power Marketing, Inc.

Cinergy and Dynegy Power Marketing, Inc. are requesting an effective date of April 1, 2002.

*Comment Date*: May 9, 2002.

**7. Celerity Energy of Colorado, LLC**

[Docket No. ER02–1585–000]

Take notice that on April 18, Celerity Energy of Colorado, LLC (Celerity) petitioned the Federal Energy Regulatory Commission (Commission) for acceptance of Celerity Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Celerity intends to engage in wholesale electric power and energy purchases and sales as a marketer. Celerity is 85 percent owned by Caterpillar Power Systems, Inc., which produces electric power generation equipment, and 15 percent owned by Celerity Energy, an Oregon LLC, which engages in the business of distributed generation products and services.

*Comment Date*: May 9, 2002.

**8. Cinergy Services, Inc.**

[Docket No. ER02–1586–000]

Take notice that on April 18, 2002, Cinergy Services, Inc. (Cinergy) and Federal Energy Sales, Inc. are requesting a cancellation of Service Agreement No.108, under Cinergy Operating Companies, FERC Electric Cost-Based Power Sales Tariff, FERC Electric Tariff Original Volume No. 6.

Cinergy requests an effective date of April 19, 2002.

*Comment Date*: May 9, 2002.

**9. Cinergy Services, Inc.**

[Docket No. ER02–1587–000]

Take notice that on April 18, 2002, Cinergy Services, Inc., (Cinergy) and Federal Energy sales, Inc., are requesting a cancellation of Service Agreement No. 108 under Cinergy operating Companies, FERC Electric Market-based Power Sales tariff, FERC Electric tariff original Volume No. 7.

Cinergy requests an effective date of April 19, 2002.

*Comment Date*: May 9, 2002.

**10. Duke Electric Transmission**

[Docket No. ER02–1588–000]

Take notice that on April 18, 2002, Duke Electric Transmission (Duke), a division of Duke Energy Corporation, 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 May 1, 2002. Duke states that this filing is in accordance with Part 35 of the Commission's Regulations, 18 CFR 35, and that a copy has been served on the North Carolina Utilities Commission.

*Comment Date*: May 9, 2002.

**11. Michigan Electric Transmission Company**

[Docket No. ER02–1589–000]

Take notice that on April 18, 2002, Michigan Electric Transmission Company (Michigan Transco) tendered for filing an executed revised Service Agreement for Network Transmission Service with Wolverine Power Marketing Cooperative (Customer) pursuant to the Joint Open Access Transmission Service Tariff originally filed on February 22, 2001 by Michigan Transco and International Transmission Company (ITC).

Michigan Transco is requesting an effective date of April 1, 2001. Customer is taking service under the Service Agreement in connection with Consumers Energy Company's (Consumers) Electric Customer Choice program.

Copies of the filed agreement were served upon the Michigan Public Service Commission, ITC, and the Customer.

*Comment Date*: May 9, 2002.

**12. Michigan Electric Transmission Company**

[Docket No. ER02–1590–000]

Take notice that on April 18, 2002, Michigan Electric Transmission Company (Michigan Transco) tendered for filing an executed revised Service Agreement for Network and Firm and Non-Firm Point to Point Transmission Service with Quest Energy, L.L.C. (Customer) pursuant to the Joint Open Access Transmission Service Tariff filed on February 22, 2002 by Michigan Transco and International Transmission Company (ITC). Michigan Transco is requesting an effective date of April 1, 2002. Customer is taking service under the Service Agreement in connection with Consumers Energy Company's (Consumers) Electric Customer Choice program.

Copies of the filed agreement were served upon the Michigan Public Service Commission, ITC, and the Customer.

*Comment Date*: May 9, 2002.

**13. Wisconsin Electric Power Company**

[Docket No. ER02–1591–000]

Take notice that on April 19, 2002, Wisconsin Electric Power Company

(Wisconsin Electric) tendered for filing a fully executed Dynamic Interconnection Operations Coordination Agreement (Agreement) between Wisconsin Electric and the Board of Light and Power City of Marquette.

Wisconsin Electric respectfully requests an effective date of October 30, 2001.

*Comment Date*: May 10, 2002.

**14. Southern Company Services, Inc.**

[Docket No. ER02–1592–000]

Take notice that on April 19, 2002, 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 four transmission service agreements under the Open Access Transmission Tariff of Southern Companies (FERC Electric Tariff, Fourth Revised Volume No. 5) (Tariff). Specifically, these agreements are as follows: (1) One firm point-to-point transmission service agreement executed by SCS, as agent for Southern Companies, and UBS AG, London Branch (Service Agreement No. 448); (2) One non-firm point-to-point transmission service agreement executed by SCS, as agent for Southern Companies, and UBS AG, London Branch (Service Agreement No. 449); (3) One firm point-to-point transmission service agreement executed by SCS, as agent for Southern Companies, and Dynegy Power Marketing, Inc. to reflect the continuation of service under an agreement with its predecessor company, Electric Clearinghouse, Inc. (First Revised Service Agreement No. 184); and (4) One non-firm point-to-point transmission service agreement executed by SCS, as agent for Southern Companies, and Dynegy Power Marketing, Inc. to reflect the continuation of service under an agreement with its predecessor company, Electric Clearinghouse, Inc. (First Revised Service Agreement No. 5).

*Comment Date*: May 10, 2002.

**15. Southern Indiana Gas & Electric Company**

[Docket No. ER02–1593–000]

Take notice that on April 19, 2002, Southern Indiana Gas & Electric Company (SIGECO) and Alcoa Power Generating Inc. (APGI) tendered for filing pursuant to the provisions of Section 205 of the Federal Power Act and the Commission's Regulations, an extension of SIGECO's Rate Schedule FPC No. 29, which is APGI's Rate Schedule FPC No. 2 and is the two Parties' Electric Power Agreement.

SIGECO and APGI ask that the extension be made effective as of May 1, 2002. Copies of the filing were served upon APGI and the Indiana Utility Regulatory Commission.

*Comment Date*: May 10, 2002.

**16. Wisconsin Electric Power Company**

[Docket No. ER02–1594–000]

Take notice that on April 19, 2002, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing a fully executed Facilities Agreement (Agreement) between Wisconsin Electric and the City of Oconomowoc, Wisconsin. Wisconsin Electric respectfully requests an effective date of March 19, 2002.

*Comment Date*: May 10, 2002.

**17. TME Energy Services**

[Docket No. ER02–1595–000]

Take notice that on April 19, 2002, TME Energy Services tendered for filing a Petition for Blanket Authorizations, Certain Waivers, and Order Approving Rate Schedule Governing-Market Based Sales of Energy and Capacity.

*Comment Date*: May 10, 2002.

**18. The Detroit Edison Company**

[Docket No. ER02–1596–000]

Take notice that on April 19, 2002, The Detroit Edison Company (Detroit Edison) tendered for filing a Service Agreement for wholesale power sales transactions (the Service Agreements) under Detroit Edison's Wholesale Power Sales Tariff (WPS–2), FERC Electric Tariff No. 3 (the WPS–2 Tariff) between Detroit Edison and TXU Energy Trading Company, LP.

*Comment Date*: May 10, 2002.

**19. Deepwater Power, LLC**

[Docket No. ER02–1597–000]

Take notice that on April 19, 2002, Deepwater Power LLC (Deepwater) filed with the Federal Energy Regulatory Commission (Commission) a notice of cancellation of FERC Electric Tariff, Original Volume No. 1.

Notice of the proposed cancellation has not been served upon any party because such cancellation affects no purchasers under Deepwater's FERC Electric Tariff, Original Volume 1.

*Comment Date*: May 10, 2002.

**20. B.L. England Power, LLC**

[Docket No. ER02–1598–000]

Take notice that on April 19, 2002, B.L. England Power LLC (B.L. England) filed with the Federal Energy Regulatory Commission (Commission) a notice of cancellation of FERC Electric Tariff, Original Volume No. 1.

Notice of the proposed cancellation has not been served upon any party because such cancellation affects no purchasers under B.L. England's FERC Electric Tariff, Original Volume No. 1.

*Comment Date*: May 10, 2002.

**21. DTE East China, LLC**

[Docket No. ER02–1599–000]

Take notice that on April 19, 2002, DTE East China, LLC (DTE East China) submitted for filing, pursuant to Section 205 of the Federal Power Act, and Part 35 of the Federal Energy Regulatory Commission's (Commission) regulations, a Petition for authorization to make sales of electric capacity and energy at negotiated rates subject to a cost-based ceiling and for certain waivers of the Commission's regulations.

*Comment Date*: May 10, 2002.

**22. Wisconsin Electric Power Company**

[Docket No. OA01–8–002]

Take notice that on April 16, 2002, Wisconsin Electric Power Company (WEPCO) tendered for filing with the Federal Energy Regulatory Commission (Commission) its compliance filing pursuant to the Commission's March 27, 2002 order, FERC ¶ 61,329(2002).

*Comment Date*: May 16, 2002.

**Standard Paragraphs**

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions

on the Commission's web site under the ''e-Filing'' link.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02–10662 Filed 4–30–02; 8:45 am]

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER02–79–002, et al.]**

## Southern California Edison Company, et al.; Electric Rate and Corporate Regulation Filings

April 24, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

### 1. Southern California Edison Company

[Docket No. ER02–79–002]

Take notice that on April 17, 2002, Southern California Edison Company (SCE) submitted for filing with the Federal Energy Regulatory Commission (Commission) a compliance filing regarding letter agreements between SCE and Energy Unlimited, Inc (Energy Unlimited), Pegasus Power Partners, LLC (Pegasus) and High Desert Power Project, LLC (High Desert).

The purpose of this filing is to comply with the Commission's March 18, 2002 Order in Docket No. ER02–79–001, Southern California Edison Company, 98 FERC ¶ 61,304 (2002), Granting Request for Rehearing in Part and Denying Rehearing in Part.

Copies of this filing were served upon Public Utilities Commission of the State of California, Energy Unlimited, Pegasus, and High Desert.

*Comment Date*: May 8, 2002.

### 2. Duke Energy Sandersville, LLC

[Docket No. ER02–1024–002]

Take notice that on April 17, 2002, Duke Energy Sandersville, LLC filed a notice of status change with the Federal Energy Regulatory Commission (Commission) in connection with the Commission's Order authorizing a change in upstream control of Engage Energy America LLC and Frederickson Power L.P. resulting from a transaction involving Duke Energy Corporation and Westcoast Energy Inc. (Engage Energy America, LLC, Frederickson Power L.P., Duke Energy Corp., 98 FERC ¶ 61,207 (2002)).

Copies of the filing were served upon all parties on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission in this proceeding.

*Comment Date*: May 8, 2002.

### 3. Tucson Electric Power Company

[Docket No. ER02–1349–001]

Take notice that on April 17, 2002, Tucson Electric Power Company tendered for filing a Network Operating Agreement between Tucson Electric Power Company and the Navajo Tribal Utility Authority as Supplement No. 1 to the Amended Service Agreement for Network Integration Transmission Service filed on March 20, 2002.

*Comment Date*: May 8, 2002.

### 4. Central Illinois Light Company

[Docket No. ER02–1432–001]

Take notice that on April 18, 2002, Central Illinois Light Company (CILCO), filed a substitute executed Interconnection Agreement with Corn Belt Energy Corporation.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

*Comment Date*: May 9, 2002.

### 5. Central Illinois Light Company

[Docket No. ER02–1447–001]

Take notice that on April 18, 2002, Central Illinois Light Company (CILCO) filed a Substitute Interconnection Agreement with the Village of Riverton.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

*Comment Date*: May 9, 2002.

### 6. Mohawk River Funding IV, L.L.C.

[Docket No. ER02–1582–000]

Take notice that on April 17, 2002, Mohawk River Funding IV, L.L.C. submitted a Notice of Succession pursuant to 18 CFR 35.16 and 131.51 of the Federal Energy Regulatory Commission's (Commission) regulations. Poquonock River Funding, L.L.C. has changed its name to Mohawk River Funding IV, L.L.C. and effective March 18, 2002 succeeded to Poquonock's Rate Schedule FERC No. 1, Market-Based Rate Schedule filed in Docket No. ER01–2799–000, which was effective September 13, 2001.

*Comment Date*: May 8, 2002.

### Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02–10740 Filed 4–30–02; 8:45 am]

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EC02–63–000, et al.]**

## TECO Power Services Corporation, et al.; Electric Rate and Corporate Regulation Filings

April 22, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

### 1. TECO Power Services Corporation, Mosbacher Power Partners, L.P.

[Docket No. EC02–63–000]

Take notice that on April 15, 2002, TECO Power Services Corporation (TECO Power) and Mosbacher Power Partners, L.P. (MPP) tendered for filing an application requesting all necessary authorizations under Section 203 of the Federal Power Act for the sale by MPP to TECO Power of MPP's interest (indirectly through affiliates) in the Commonwealth Chesapeake Power Station, a 315 MW simple-cycle, oil-fired, combustion turbine electric generating peaking facility in Accomack County, Virginia.

*Comment Date*: May 6, 2002.

### 2. PacifiCorp

[Docket No. EC02–64–000]

Take notice that on April 16, 2002, PacifiCorp (PacifiCorp) filed with the Federal Energy Regulatory Commission

(Commission) an application pursuant to section 203 of the Federal Power Act and part 33 of the Regulations of the Commission for authorization of a disposition of jurisdictional facilities whereby PacifiCorp will transfer its electric distribution and transmission properties located within the county of Linn, Oregon to Emerald People's Utility District (EPUD). The transfer will be accomplished by payment in cash plus the assumption of liabilities by EPUD according to the Asset Transfer Agreement between PacifiCorp and EPUD.

The transfer shall become effective upon entry of the stipulated judgment filed in the Oregon state court action, Emerald People's Utility District v. PacifiCorp, et al., Linn County Circuit Court Case No. 99–2656. PacifiCorp filed no Section 205 rate proceeding in this application, and states that the transaction will have no impact on competition, rates or regulation.

Applicant requests waiver of any applicable filing requirements under the Commission's Rules and Regulations as may be necessary to approve the transfer. Applicant also has requested Commission approval of the transaction on or before May 31, 2002.

*Comment Date*: May 7, 2002.

**3. Puget Sound Energy, Inc.**

[Docket No. EL02–77–000]

Take notice that on April 17, 2002, Puget Sound Energy, Inc. (PSE), tendered for filing a Petition for Declaratory Order Regarding Reclassification of Facilities, pursuant to the Commission's Order in Docket ER02–605, dated February 15, 2002. Puget Sound Energy, Inc. 98 FERC ¶ 61,168. PSE requests an effective date of January 1, 2002 for the above-described reclassification.

Copies of the filing were served on the all persons on the Commission's Service list in ER02–605, PSE's jurisdictional customers, and the Washington State Utilities and Transportation Commission.

*Comment Date*: May 17, 2002.

**4. Big Cajun I Peaking Power LLC**

[Docket No. ER02–1571–000]

Take notice that on April 17, 2002, Big Cajun I Peaking Power LLC (Big Cajun I Peaking) filed with the Federal Energy Regulatory Commission (Commission), under section 205 of the Federal Power Act (FPA), an application requesting that the Commission (1) accept for filing its proposed market-based FERC Rate Schedule No. 1; (2) grant blanket authority to make market-based wholesale sales of capacity and energy under the FERC Rate Schedule No. 1; (3) grant authority to sell ancillary services at market-based rates; (4) accept for filing Service Agreement No. 1; and (5) grant such waivers and blanket authorizations as the Commission has granted in the past to other nonfranchised entities with market-based rate authority.

*Comment Date*: May 8, 2002.

**5. Bayou Cove Peaking Power, LLC**

[Docket No. ER02–1572–000]

Take notice that on April 17, 2002, Bayou Cove Peaking Power, LLC (Bayou Cove) filed, under section 205 of the Federal Power Act (FPA), an application requesting that the Commission (1) accept for filing its proposed market-based FERC Rate Schedule No. 1; (2) grant blanket authority to make market-based wholesale sales of capacity and energy under the FERC Rate Schedule No. 1; (3) grant authority to sell ancillary services at market-based rates; and (4) grant such waivers and blanket authorizations as the Commission has granted in the past to other nonfranchised entities with market-based rate authority.

*Comment Date*: May 8, 2002.

**6. KeySpan Port Jefferson Energy Center LLC**

[Docket No. ER02–1573–000]

Take notice that on April 17, 2002, KeySpan-Port Jefferson Energy Center LLC (Port Jefferson) tendered for filing pursuant to Section 205 of the Federal Power Act its proposed FERC Electric Tariff No. 1.

Port Jefferson seeks authority to sell energy and capacity, as well as ancillary services, at market-based rates, together with certain waivers and preapprovals. Port Jefferson also seeks authority to sell, assign, or transfer transmission rights that it may acquire in the course of its marketing activities.

Port Jefferson requests waiver of the Commission's 60-day notice requirement to allow an effective date of May 7, 2002 for its proposed rate schedule.

*Comment Date*: May 8, 2002.

**7. Southern Company Services, Inc.**

[Docket No. ER02–1574–000]

Take notice that on April 17, 2002, Southern Company Services, Inc., as agent for Georgia Power Company (Georgia Power), submitted for filing the First Revised Service Agreement No. 248, Revised and Restated Interconnection Agreement by and between MPC Generating, LLC (MPC Generating) and Georgia Power (the First Revised Service Agreement). The First Revised Service Agreement reflects the assignment of the rights and obligations of Service Agreement No. 248, Revised and Restated Interconnection Agreement by and between Monroe Power Company (Monroe) and Georgia Power dated as of February 29, 2000, to MPC Generating, pursuant to the Assignment and Assumption Agreement among Monroe, MPC Generating, and Georgia Power effective as of February 1, 2002.

*Comment Date*: May 8, 2002.

**8. American Electric Power Service Corporation**

[Docket No. ER02–1575–000]

Take notice that on April 17, 2002, American Electric Power Service Corporation submitted for filing an unexecuted Interconnection and Operation Agreement, dated March, 2002, between Appalachian Power Company (APCo) and Allegheny Energy Supply Company, LLC. The agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Second Revised Volume No. 6, effective June 15, 2000.

APCo requests an effective date of June 15, 2002. Copies of APCo's filing have been served upon Allegheny Energy Supply Company, LLC and upon Virginia State Corporation Commission.

*Comment Date*: May 8, 2002.

**9. International Transmission Company**

[Docket No. ER02–1576–000]

Take notice that on April 17, 2002, International Transmission Company (ITC) tendered for filing the Generator Interconnection and Operating Agreement between ITC and FirstEnergy Generation Corp. (FirstEnergy) (the Agreement), as a service agreement under ITC's Open Access Transmission Tariff (FERC Electric Tariff, Original Volume No. 1) and is designated as Service Agreement No. 131. The Agreement provides the general terms and conditions for the interconnection and parallel operation of FirstEnergy's electric generating facility located in Sumpter Township, Michigan. The Agreement shall continue from the effective date through the date on which the Facility permanently ceases commercial operations unless terminated earlier as permitted and provided for under the Agreement.

*Comment Date*: May 8, 2002.

**10. New England Power Pool**

[Docket No. ER02–1577–000]

Take notice that on April 17, 2002, the New England Power Pool (NEPOOL)

Participants Committee submitted the Eighty-Third Agreement Amending New England Power Pool Agreement (the Eighty-Third Agreement), which proposes changes to the Financial Assurance Policy for NEPOOL Members, which is Attachment L to the NEPOOL Tariff, and the Financial Assurance Policy for NEPOOL Non-Participant Transmission Customers, which is Attachment M to the NEPOOL Tariff, each as previously restated in the Eighty-Third Agreement Amending New England Power Pool Agreement, and to the New England Power Pool Billing Policy, which is Attachment N to the NEPOOL Tariff. The Eighty-Third Agreement also proposes minor, clarifying changes to Sections 21.2'' and 21.2(d) of the Restated NEPOOL Agreement.

The NEPOOL Participants Committee states that copies of these materials were sent to the NEPOOL Participants, Non-Participant Transmission Customers and the New England state governors and regulatory commissions.

*Comment Date*: May 8, 2002.

**Standard Paragraph**

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02–10661 Filed 4–29–02; 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

April 24, 2002.

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.:* 11915–000.

c. *Date filed:* March 21, 2001.

d. *Applicant:* Symbiotics, LLC.

e. *Name of Project:* Willamette Falls Project.

f. *Location:* On the Willamette River, in Clackamas County, Oregon. The project would utilize the existing U.S. Army Corps of Engineers Dam. The proposed development under this preliminary permit is for additional capacity at the already authorized Willamette Falls Project FERC No. 2233 licensed to Portland General Electric and Smurfit Newsprint Corp. This preliminary permit if issued will not prevent the current co-licensees from expanding their project at relicensing.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630.

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: Magalie R. Salas 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–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 using the U.S. Army Corps of Engineer's Willamette Falls Dam and impoundment would consist of: (1) A proposed intake structure, (2) three proposed 100-foot-long, 12-foot-diameter steel penstock, (3) a proposed powerhouse containing three generating units having a total installed capacity of 27 MW, (4) a proposed 0.25-mile-long, 15-kV transmission line, and (5) appurtenant facilities.

The project would have an annual generation of 89.1 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).

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.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02–10660 Filed 4–30–02; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application Accepted for Filing and Soliciting Motions to Intervene and Protests

April 25, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Application for new license.

b. *Project No.:* 2086–035.

c. *Date filed:* August 30, 2001.

d. *Applicant:* Southern California Edison.

e. *Name of Project:* Vermillion Valley Project.

f. *Location:* On Mono Creek in Fresno County, near Shaver Lake, California. The project affects federal lands in the Sierra National Forest, covering a total of 2,202 acres.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* Thomas J. McPheeters, Manager, Northern Hydro Region, Southern California Edison Company, 54205 Mountain Poplar Road, P.O. Box 100, Big Creek, California 93605 (559) 893–3646.

i. *FERC Contact:* Jim Fargo at (202) 219–2848; e-mail *james.fargo@ferc.gov.*

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, motions to intervene and protests 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.

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.

k. *The existing Vermillion Project consists of:* (1) A 4,234-foot-long earth-fill dam; (2) Lake Edison, with a 125,035 acre-foot storage capacity at 7,642 feet; (3) a service spillway at the left abutment with a single manually operated radial gate 15 feet wide by 8 feet high, and an auxiliary spillway at the right abutment with an ungated chute discharging into an ungated channel; (4) a man-made outlet channel extending 1,300 feet to Mono Creek; and (5) a 3-kW Pelton-wheel turbine located in the outlet structure used to recharge batteries in the valve house.

l. 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.

m. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (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. 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.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02–10744 Filed 4–30–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application for Surrender of Exemption and Lowering of Reservoir and Soliciting Comments, Motions to Intervene, and Protests

April 25, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Surrender of Exemption and Lowering of Reservoir.

b. *Project No.:* 5972–017.

c. *Date Filed:* March 15, 2002.

d. *Applicant:* Dundee Water Power and Land Company.

e. *Name of Project:* Dundee Hydroelectric Project.

f. *Location:* The project is located on the Passaic River near the Towns of Garfield and Clifton, Bergen and Passaic Counties, New Jersey. The project does not affect federal lands.

g. *Filed Pursuant to:* 18 CFR 4.102.

h. *Applicant Contact:* Emad Sidhom, P.E., Senior Project Engineer, United Water, 200 Lake Shore Drive, Haworth, NJ 07641, (201) 225–6804.

i. *FERC Contact:* Questions about this notice can be answered by Jack Hannula at (202) 219–0116. The Commission cannot accept comments, motions to intervene or protests sent by e-mail; these documents must be filed as described below.

j. *Cooperating agencies:* We are asking 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 environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item k below.

k. Deadline for filing comments, motions to intervene, protests, and requests for cooperating agency status: 60 days from issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, 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.

Comments, motions to intervene, protests and requests for cooperating agency status 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.

l. *Description of Surrender:* The existing Dundee Project is not operational and the generating units have been removed. The existing project consists of: (1) A 14-foot high by 130-feet long concrete spillway dam; (2) a 267-acre reservoir at elevation 27.4 feet msl; (3) a powerhouse; (4) an 80-foot long tailrace; (5) a 0.4-mile long transmission line and switchyard; and (6) appurtenant facilities. The reservoir also serves as a water supply. The applicant proposes to surrender its exemption and permanently lower the reservoir by 30 inches to increase the dam's stability for public safety reasons. The applicant proposes to accomplish this by removing 30'' from the top of the dam.

m. *Locations of the Application:* 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. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Anyone may submit comments, motions to intervene or protests in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. 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, motions to intervene or protests must be received on or before the specified date for the particular application.

Any filings must bear in all capital letters the title ''COMMENTS'', ''MOTIONS TO INTERVENE'' or ''PROTESTS'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

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.

o. *Procedural schedule:* The application will be processed according to the following accelerated milestones (from filing date). Revisions to these milestones will be made when the Commission determines it necessary to do so:

Notice of the availability of the EA—3 months
Ready for the Commission's decision on the application—3.5 months
Begin dam modification construction—4 months
Complete dam modification construction—6.5 months

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02–10745 Filed 4–30–02; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RM01–10–000]**

### Standards of Conduct for Transmission Providers; Notice of Staff Conference

April 25, 2002.

Take notice that on May 21, 2002, the Federal Energy Regulatory Commission staff will hold a public conference to discuss the proposed revisions to the gas and electric standards of conduct governing transmission providers and their energy affiliates issued in this docket on September 27, 2001.[1] To focus the discussion at the conference, a staff analysis of the comments received to date is attached to this notice. The conference will begin at 9:30 a.m. at the Commission's offices, 888 First Street NE., Washington, DC in the Commission's Meeting Room. All interested persons are invited to attend.

To reflect the changing structure of the energy industry, in this docket the Commission proposed to adopt one set

[1] Standards of Conduct for Transmission Providers, 66 FR 50919 (Sept. 27, 2001), IV FERC Stats. & Regs. Regulations Preambles ¶ 32,555 (Sep. 27, 2001).

of standards of conduct to govern the relationships between regulated gas and electric transmission providers and all their energy affiliates, broadening the definition of an energy affiliate covered by the standards of conduct, from the more narrow definition in the existing regulations found in parts 37 and 161. This proposal is intended to eliminate the potential for a transmission provider's market power over transportation to be transferred to its affiliated energy businesses because the existing rules do not cover all affiliate relationships.

The Commission received comments to the NOPR from 154 interested participants from all segments of the natural gas and electric industries, trade associations, and state and federal regulatory agencies. In light of these comments, in the attached analysis of the comments, the Commission staff suggests some possible changes in the proposals in the NOPR, specifically, changes to the proposed definition of an ''energy affiliate.'' The purpose of the public conference is to discuss the issues outlined in the attached staff paper.

The conference will be organized in a town meeting, or technical conference, format to allow discussion of specific drafting options for the regulatory text. Attendees who want to propose alternatives to the regulatory text in the attached staff paper should come prepared to share specific proposed language. Also, the participation of people familiar with the business operations of the transmission providers and their energy affiliates is particularly invited. Participants are encouraged to offer assessments of the quantitative impacts of the proposed rule and the benefits to be obtained by the proposed rule. The order of the discussion at the conference will follow the organization of the attached staff paper: the definition of an energy affiliate, application of the rules to the bundled sales function for retail native load, the independent functioning requirement, information disclosure rules, and the posting of specified information.

The Capitol Connection patrons in the Washington, DC area will receive notices regarding the broadcast of the conference. It also will be available, for a fee, live over the Internet, via C-Band Satellite, and via telephone conferencing. Persons interested in receiving the broadcast, or who need further information, should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection web site at *http://www.capitolconnection.gmu.edu* and click on ''FERC.''

In addition, National Narrowcast Network's Hearing-On-The-Line service covers all FERC meetings live by telephone so that interested persons can listen at their desks, from their homes, or from any phone, without special equipment. Billing is based on time on-line. Call (202) 966–2211 for further details.

Questions about the conference should be directed to: Demetra Anas, Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, 202–208–0178, *Demetra.Anas@ferc.gov.*

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

Staff Analysis of the Major Issues Raised in the Comments

In this rulemaking, the Commission proposed to adapt existing regulations to reflect the evolving energy market by consolidating the standards of conduct and applying them uniformly to all regulated transmission providers (natural gas pipelines and transmitting public utilities). Standards of Conduct for Transmission Providers.[2] The NOPR also broadened the definition of an energy affiliate from the more narrow definition in the existing regulations.[3] In this paper, staff provides its analysis of the major issues raised by the commenters in response to the NOPR. Further analysis will be necessary to evaluate the implications of the D.C. Circuit Court's recent decision in *Dominion Resources Inc.* v. *FERC.*[4]

## I. Background

The standards of conduct are one method used by the Commission to limit the ability of the transmission provider, a natural monopoly, to extend its market power over transmission to other energy markets by giving its affiliates unduly preferential treatment. Currently, the standards of conduct require that: (1) a transmission provider's transmission function operates independently from its marketing and sales functions; and (2) a transmission provider must treat all transmission customers, affiliated and unaffiliated, on a non-discriminatory basis.

In the NOPR, the Commission proposed to update its standards of conduct to reflect the current realities of the natural gas and electric industries. When the gas standards of conduct were first adopted, in the 1980's, the Commission was responding to concerns that pipelines had created marketing affiliates, and as a result, pipelines were giving their marketing affiliates preferential treatment. *See* Order No. 497 et. seq.[5] More recently, the Commission promulgated the electric standards of conduct in Order No. 889[6] simultaneously with Order No. 888, which required electric transmission providers to offer open access transmission service.

With the move toward open access transmission service for both the gas and electric industries, the energy market structure is vastly different now than it was 15 or even 5 years ago. The standards of conduct have, for the most part, remained unchanged, while the energy market structures have changed significantly.

As new types of market participants, both affiliated and unaffiliated, grow and change, more entities compete for access to transmission service. Moreover, with the changes in the size and scope of transmission providers resulting from mergers, the transmission providers and their affiliates are engaged in both gas and electric

[2] Standards of Conduct for Transmission Providers, 66 FR 50919 (Oct. 5, 2001), IV FERC Stats. & Regs. Regulations Preambles ¶ 32,555 (Sep. 27, 2001).

[3] The gas standards of conduct are codified at Part 161 of the Commission's regulations, 18 CFR Part 161 (2001), and the electric standards of conduct are codified at Part 37 of the Commission's regulations, 18 CFR Part 37 (2001).

[4] Dominion Resources, Inc., And Consolidated Natural Gas Co., 89 FERC ¶ 61,1652 (1999), *order on compliance filing,* 91 FERC ¶ 61,140 (2000), *order denying reh'g,* 93 FERC ¶ 61,214 (2000), *vacated and remanded* (D.C. Circuit No. 01–1169, Slip Op. Issued April 19, 2002).

[5] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. 1986–1990 ¶ 30,820 (1988); Order No. 497–A, *order on reh'g,* 54 FR 52781 (Dec. 22, 1989), FERC Stats. & Regs. 1986–1990 ¶ 30,868 (1989); Order No. 497–B *order extending sunset date,* 55 FR 53291 (Dec. 28, 1990), FERC Stats. & Regs. 1986–1990 ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date,* 57 FR 9 (Jan. 2, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,934 (1991), *reh'g denied,* 57 FR 5815 (Feb. 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date,* 57 FR 58978 (Dec. 14, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,958 (Dec. 4, 1992); Order No. 497–E, *order on reh'g and extending sunset date,* 59 FR 243 (Jan. 4, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,987 (Dec. 23, 1993); Order No. 497–F, *order denying reh'g and granting clarification,* 59 FR 15336 (Apr. 1, 1994), 66 FERC ¶ 61,347 (Mar. 24, 1994); and Order No. 497–G, *order extending sunset date,* 59 FR 32884 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,996 (June 17, 1994).

[6] Open Access Same-Time Information System (Formerly Real-Time Information Network) and Standards of Conduct, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles January 1991–1996 ¶ 31,035 (Apr. 24, 1996); Order No. 889–A, *order on reh'g,* 62 FR 12484 (Mar. 14, 1997), III FERC Stats. & Regs. ¶ 31,049 (Mar. 4, 1997); Order No. 889–B, *reh'g denied,* 62 FR 64715 (Dec. 9, 1997), II FERC Stats. & Regs. ¶ 31,253 (Nov. 25, 1997).

transactions. As customers of transmission companies compete for access to the transmission service, a transmission provider's market power over transmission could be transferred to its affiliated energy businesses because the existing rules do not cover all affiliate relationships.

Therefore, the NOPR proposed to combine the standards of conduct so that the regulations address the evolution in the gas and electric industries, including the convergence of many gas and electric companies. The NOPR also proposed that the standards of conduct would govern the relationship between the transmission provider and its energy affiliates, broadening the definition of energy affiliate to reflect the changes in competitive markets. Under the proposed definition of energy affiliates, the transmission provider would be required to treat its bundled sales function for retail native load as an energy affiliate. The proposed definition of energy affiliates would also eliminate the exemption in the current standards of conduct for producers, gatherers, processors and local distribution companies (LDCs) that only engage in on-system sales. Finally, the NOPR proposed that any offer of a discount for any transmission service made by the transmission provider must be announced to all potential customers solely by posting on the OASIS or Internet. This was to ensure that all parties have equal and timely access to discount information in the fast-paced marketplace.

In response to the NOPR, the Commission received 154 sets of comments, plus one reply comment, from natural gas pipelines, electric utilities, LDCs, producers, gatherers, marketers, industrials, end users, munis, coops, ISOs, trade associations, one city, and state and federal agencies. This paper provides staff's preliminary views on the most significant issues.

Some of the NOPR's initiatives were generally supported by the commenters. Specifically, the proposal to develop a single set of standards of conduct was endorsed by companies involved in the converging energy industry because they currently operate under both the electric and gas standards of conduct. In addition, commenters supported the proposals to exempt a Commission-approved RTO from the standards of conduct, and to permit a transmission owner that participates in an RTO but does not control or operate its transmission facilities to request an exemption from the standards of conduct.

The NOPR also solicited comments on specific additional policy suggestions, such as structural remedies, capacity limits, revising capacity allocation methods, disgorgement of opportunity cost and prohibiting profit sharing mechanisms. For the most part, the commenters, which were predominantly from the gas industry on these policy suggestions, argued that there was no evidence that justified the need for implementing, on a generic basis, the additional policy suggestions suggested in the NOPR. Very few commenters supported any of the measures. These measures are not discussed in this paper.

However, some of the comments raised significant substantive issues, which are discussed herein.

## II. Discussion

This paper discusses substantive issues that generated the most comments. The scope of the proposed rule yielded the greatest volume of comments. Therefore, the first two sections highlight the issues relating to: (1) the definition of energy affiliate, and (2) whether to treat the bundled sales function for retail native load as a marketing function. The third section addresses issues related to the requirement for the transmission function to operate independently. The fourth section highlights the current policy differences on information disclosure under the gas and electric standards of conduct compared to the NOPR's proposals. The fifth section addresses commenters' concerns relating to the requirement to post organizational charts and job descriptions on the Internet or OASIS. Finally, the last section discusses the proposed requirement to post discount information at the time a discount is offered.

### *A. Issues Concerning the Definition of An Energy Affiliate*

The current standards of conduct only govern the relationship between the regulated transmission provider and its marketing affiliate and/or wholesale merchant function. The NOPR proposed to govern the relationship between the transmission provider and all of its energy affiliates to eliminate the loophole in the current regulations that does not prohibit a transmission provider from giving other affiliates an undue preference or preferential access to information. Therefore, the NOPR defined the term energy affiliate broadly as,

> any entity affiliated with a transmission provider that engages in or is involved in transmission transactions or manages or controls transmission capacity or buys, sells, trades or administers natural gas or electric energy or engages in financial transactions relating to the sale or transmission of natural gas or electric energy.

Proposed Section 358.3(d). Under this definition, the NOPR proposed to govern the relationship between the transmission provider and affiliated producers, gatherers, LDCs and processors. This definition generated a lot of comments from virtually all industry groups arguing that the definition of energy affiliates was overly broad, suggesting that some narrowing of the definition would be appropriate.

Since the standards of conduct seek to prohibit undue preferences and thereby the transfer of market power from the transmission provider to its affiliates, the term ''energy affiliate'' must require the transmission business to operate independently from more of its energy affiliates than are covered by the existing rules. A narrow definition of energy affiliates would allow the transmission function to continue to share employees and information with some of its energy affiliates who could then receive an unfair advantage in the competitive marketplace. On the other hand, too broad a definition of ''energy affiliate'' would limit some of the efficiencies to be gained from vertical integration. The issue to be decided by the Commission is whether the costs associated with requiring the independent functioning of the transmission provider from a broad range of affiliates exceed the costs associated with potential anticompetitive behavior.

#### 1. Clarifying the Definition of Energy Affiliate

Affiliates not engaged or involved in transmission transactions: Thirteen entities, including Ad Hoc Marketer, INGAA and mostly natural gas pipelines, oppose the proposed definition of energy affiliates because it does not require the energy affiliate to be engaged or involved in transmission transactions on the transmission provider's system. These commenters urge the definition of energy affiliates to be narrowed to only apply to affiliates that are involved in transportation on affiliated transmission providers' systems.

Staff disagrees with the commenters. Although an affiliate may not be directly involved in transmission transactions, the energy commodity market is closely linked to the activities in the transmission market. The transmission market and commodity markets are so interconnected that a transmission provider does have the ability to operate

its transmission system in a manner as to give a trading affiliate an undue preference or to provide the trading affiliate with unduly preferential information. For example, a transmission constraint directly impacts the value of the commodity being transported and preferential access to information about such a constraint could provide a significant benefit to an affiliate engaged in trading of the commodity, even if the trader is not using the affiliated transmission provider. This is of particular importance in the electric power market because electric power cannot be practicably stored in large amounts. In these circumstances, Staff is concerned that the transmission provider could extend its market power over transmission to the other businesses or could operate its transmission system to unduly benefit an affiliate. Therefore, the definition of energy affiliates should not be revised to require the affiliate to be engaged or involved in a transmission transaction.

Trading and financial affiliates: Several commenters, including Ad Hoc Marketers, INGAA, one natural gas pipeline and four electric transmission providers oppose or request clarification on defining energy affiliates to include entities that trade power or are engaged in financial transactions. Entities involved in the trading of power or in financial transactions related to the sale, purchase or transmission of power are an integral part of the energy commodity and transmission markets. As discussed above, the transmission market and commodity markets are so interconnected that a transmission provider has the ability to operate its transmission system in a manner so as to give a trading affiliate an undue preference or to provide the trading affiliate with unduly preferential information. In these circumstances, Staff is concerned that the transmission provider could extend its market power over transmission to the trading of energy commodities or financial transactions involving energy commodities. Therefore, trading and financial affiliates should be included in the definition of energy affiliates, to the extent that they are engaged in transactions in the energy commodity or transmission market.

Pipeline affiliates: Twenty-seven entities, the majority of which came from the gas pipeline industry, pointed out that the definition of energy affiliate would appear to require transmission providers to treat affiliated transmission providers as energy affiliates. Many argue that such a broad definition of energy affiliate would restrict the joint operations of jurisdictional transmission facilities and would mandate unnecessary duplication of jointly operated facilities. INGAA and others point out that governing the relationship between affiliated transmission providers would be inconsistent with recent Commission policy. They cite the Commission's orders that required Dominion Transmission, Inc. to apply the gas standards of conduct to its energy affiliates as a merger condition. There, the Commission specifically excluded affiliated transmission providers from the definition of energy affiliates because they are already subject to the non-discrimination provisions of the standards of conduct.[7]

Staff agrees that jurisdictional pipelines coordinating transactions with affiliated pipelines or holding upstream or downstream capacity on other pipelines is not a concern. Similarly, coordination of transmission activities or sharing of information between affiliated electric transmission providers is not a concern. Nor does it appear that communications between regulated gas transmission providers and regulated electric transmission providers would be a problem. This is because the transmission activities of gas pipelines and electric transmission providers are adequately regulated under the open access rules. Moreover, the focus of the standards of conduct are to prevent transmission market power from extending to other products or services, so the transmission provider to transmission provider communications should not undermine the purpose of the rule. Since this was not the intent of the NOPR, the definition of energy affiliates should be clarified to exclude affiliated transmission providers.

Holding or service companies: Several commenters, including INGAA, Dominion, EEI and Williams, argue that the definition of energy affiliates could be construed to include service or holding companies because the definition includes affiliates that engage in financial transactions related to the transmission of natural gas or electricity. The commenters argue that this could limit the ability of senior officers and directors of the holding or service companies to exercise their fiduciary duties for their subsidiaries.

Holding and service companies typically are not participants in the energy or transmission market and would not be considered energy affiliates. As discussed above, only affiliates engaged in financial transactions that are involved in or engaged in the energy commodity or transmission markets will be considered an energy affiliate. Therefore, the final rule should clarify that the definition of energy affiliate does not include holding or service companies that do not engage in or are involved in transmission transactions in U.S. energy markets. This would avoid the problem highlighted in the comments of potentially prohibiting legitimate communications between the transmission company and the holding or service company.

Although, there may be situations where information from the transmission company could flow to an energy affiliate through a holding or service company, the purposes of the NOPR can be achieved by prohibiting the holding or service companies from acting as conduits for sharing information between the transmission provider and other energy affiliates. Therefore, the final rule should include a provision prohibiting any affiliate from acting as a conduit for sharing information with an energy affiliate. This proposed regulatory revision should be reflected in the prohibited disclosure provisions of section 358.5(b), which are discussed later in this document.

Foreign affiliates: Thirteen commenters, including INGAA, six natural gas pipelines, five electric transmission providers and Shell objected to the definition of energy affiliates to the extent that it includes foreign affiliates. They are concerned that transmission providers will be required to treat affiliates in Europe, South America and the Caribbean as energy affiliates. Staff sees no reason to be concerned about the possibility that a transmission provider will extend its market power by giving foreign affiliates an undue preference, where the foreign affiliates do not participate in the energy markets in the United States. Therefore, the final rule should clarify that definition of energy affiliates excludes foreign affiliates that do not participate in the U.S. energy markets. However, a transmission provider should treat a foreign affiliate that participates in U.S. energy markets, by either buying, selling or trading natural gas or electric energy, as an energy affiliate.

In addition, where a foreign affiliate has an ownership interest in a jurisdictional transmission provider that

[7] Dominion Resources, Inc. and Consolidated Natural Gas Co., 89 FERC ¶ 61,162 (1999), *order on compliance filing,* 91 FERC ¶ 61,140 (2000), *order denying reh'g,* 93 FERC ¶ 61,214 (2000), *vacated and remanded,* (D.C. Cir. No. 01–1169 Slip. Opinion issued on April 19, 2002). Even though the Commission required Dominion to apply the standards of conduct to its energy affiliates, it did not go so far as to require Dominion to apply the standards of conduct to its affiliated transmission providers.

affiliate is, by virtue of its ownership interests, participating in the U.S. energy markets. For example, a joint venture U.S. pipeline transmission provider would have to treat its Canadian affiliates that buy, sell or trade natural gas or electric energy or engage in or are involved in transmission transactions in U.S. energy markets as an energy affiliate.

Affiliates buying power for themselves: Several commenters, including Dominion, Calpine, and KN, argued that the Commission needs to clarify the definition of energy affiliates because including the terms ''buy,'' ''sell,'' or ''administer'' could be construed to include affiliated entities that are purchasing power for their own consumption, for example, a communications affiliate that is purchasing power to heat its office building. Under the NOPR, if an affiliate is simply ''buying'' power for its own consumption and not using the affiliated transmission provider for transmission, the transmission provider would be required to post the organizational charts and job descriptions for the energy affiliates, which the commenters argue, would be burdensome. Although these purchases can have an impact on the energy markets, nonetheless, there is little potential for competitive harm if the definition of energy affiliates is clarified to exclude any affiliate of the transmission provider that is solely purchasing power or natural gas for its own consumption and is not using an affiliated transmission provider for transmission.

Proposed regulatory text: The proposed revisions to section 358.3(d) would read as follows:

(d)(i) *Energy Affiliate* means an affiliate of a transmission provider that (1) engages in or is involved in transmission transactions in U.S. energy or transmission markets; or (2) manages or controls transmission capacity of a transmission provider in U.S. energy or transmission markets; or (3) buys, sells, trades or administers natural gas or electric energy in U.S. energy or transmission markets; or (4) engages in financial transactions relating to the sale or transmission of natural gas or electric energy in U.S. energy or transmission markets.

(ii) The definition of energy affiliate excludes (1) other affiliated regulated transmission providers; and (2) holding or service companies that do not engage in or are involved in transmission transactions in U.S. energy markets.

2. Should the Definition of Energy Affiliate include Producers, Gatherers and LDCs?

Under the proposed definition of energy affiliates, transmission providers would be required to apply the standards of conduct to their relationships with their affiliated producers, gatherers, intrastate pipelines, processors and LDCs. The NOPR proposed to eliminate the exemption of Order No. 497, which permitted the natural gas pipelines to share employees and information between its interstate transmission business and its affiliated producers, gatherers and LDCs.[8]

Ten entities, consisting mostly of producers and unaffiliated gas marketers, supported the proposed definition of energy affiliate, focusing on LDCs. They asserted that: (1) Conditions have changed since Order No. 497 was promulgated and LDCs compete more vigorously for access to transmission service because they no longer provide service under state approved cost-of-service regulation; (2) the current exemption is a loophole that permits the LDC to get preferential access to information, which harms competition; and (3) the LDC exemption permits pipelines to circumvent the standards of conduct by using the LDC as a conduit for sharing information where they are solely engaged in on-system sales.

Four states, Indiana, Pennsylvania, Utah and Wyoming, and the City of New Orleans opposed applying the standards of conduct to a transmission providers' relationship with its affiliated LDC because section 1 of the NGA makes production, gathering, distribution and intrastate transportation subject to regulation by the states.

Thirty-four commenters, primarily natural gas pipelines and affiliated marketers, opposed applying the standards of conduct to a transmission provider's relationship with its affiliated LDCs. They argued that: (1) There is no evidence or market analysis to support eliminating the exemption granted under Order No. 497; (2) to require such separation would cause unnecessary duplication of employees and gas control facilities, resulting in additional costs to the consumers; (3) the Commission does not have jurisdiction over producers, gatherers or LDCs; and (4) limits on communications with LDCs would impair reliability, and the ''emergency'' exception is insufficient.

The argument that the Commission cannot govern the relationship between the transmission provider and energy affiliates that are subject to state regulation is misdirected. The Commission has ample authority to ensure that the interstate pipeline treats all customers, affiliated and unaffiliated, on a non-discriminatory basis by regulating the conduct of the pipeline.[9] The NOPR did not, in any way, propose to regulate the affiliates' conduct. The real issue is not whether the Commission has the legal authority to require pipelines to function independently of state regulated affiliates. The issue is whether it is the correct policy to adopt.

In determining whether to adopt this policy, the Commission has to balance the costs to the transmission provider and its affiliated producers associated with separating shared functions against the benefit to competition and the elimination of discriminatory behavior. As noted by many of the commenters, there will be costs, and for some transmission companies that have fully integrated transmission and distribution functions, those costs could be considerable. On the other hand, the affiliate relationship between the transmission provider and its affiliated LDC gives the transmission provider the financial incentive to share information with the affiliated LDC, and the loophole in the current regulations permits it to do so. As a result, the affiliated LDC has an unfair advantage over unaffiliated sellers. Elimination of the loophole in the current regulations would level the playing field for all sellers and shippers, ensuring a competitive marketplace. Therefore, the definition of energy affiliates in the final rule should require a transmission provider to treat affiliated LDCs as energy affiliates.

Staff also recommends that the definition of energy affiliate include producers, gatherers and processors. Whether a producer or gatherer is making an on-system sale or an off-system sale, it is still competing for access to the interstate transmission system. Nothing in the language of the NGA distinguishes between transmission used for on-system sales versus off-system sales. The Commission's focus is to ensure comparability of service. To retain a loophole that permits the transmission provider to share employees with its energy affiliates or give its producers or

[8] 18 C.F.R. § 161.2(c) (2001).

[9] *See* Section 4 of the Natural Gas Act, which states that with respect to the sale or transportation of natural gas, no natural gas company shall make or grant an undue preference or subject any person to an undue preference or disadvantage or maintain any unreasonable difference in rates, charges, service or facilities. 15 U.S.C. § 717c (2000).

gatherers preferential information is inconsistent with the Commission's goal of non-discriminatory interstate transmission service.

With respect to producers, gatherers, and processors, the commenters voiced practical concerns about how the proposed standards of conduct would impact communications amongst these entities and with their affiliated transmission providers. INGAA seemed to assume that the NOPR proposed to restrict communications between producers, gatherers, and processors. This is not the case. The NOPR does not propose to restrict communications among producers, gatherers and processors. However, the NOPR was silent on what types of day-to-day communications would be permitted between the transmission providers and their affiliated producers, gatherers and processors. As discussed later, affiliates should be able to share certain operational information crucial to the reliable operation of the transmission system. This would alleviate many of the commenters' concerns about how the transmission provider will be able to do business with its affiliated gatherers, producers and processors.

Several parties voiced concern about the shared functions and employees on the upstream and downstream systems, particularly for off-shore facilities which are constructed and operated as integrated systems. The approach under the existing regulations has been to evaluate particular circumstances for each transmission provider's system, and where appropriate, permit the sharing of certain field-type personnel where there is little potential to give an affiliate an undue preference or to harm the competitive market. [10] However, the Commission has had considerable experience in determining which types of field-type personnel could be shared, and could provide additional guidance in the final rule or on a case-by-case basis in implementing the final rule.

*B. Should the Definition of Marketing, Sales or Brokering Include the Bundled Sales Function for Retail Native Load*

In proposed section 358.3(e), the definition of ''marketing, sales or brokering'' includes an electric transmission provider's sales unit, including those employees that engage in wholesale merchant sales or bundled retail sales. As a result, a transmission provider would have to separate its interstate transmission function from its bundled sales function. [11] This would eliminate the exemption of Order No. 889, which permitted the electric transmission provider to use the same employees for its interstate transmission business and its bundled retail sales and distribution business.

Fourteen commenters, including the Cooperatives, Calpine, ELCON, EPSA, NEMA, Transmission Access Policy Group and Transmission Group, four state agencies and the FTC supported the NOPR's proposal to include retail function employees within the definition of energy affiliate. They argued that the Commission can assert jurisdiction over the organizational structure of the jurisdictional public utility and the dissemination of information acquired through the operation of jurisdictional assets. Generally, they argue that: (1) The Commission must ensure that transmission service is not unduly discriminatory; (2) bundled retail sales represent a large percentage of utilities' sales and the utilities have little incentive to promote comparability, to improve OASIS or to provide equal quality service; and (3) the distinction between wholesale and retail is artificial and the conditions in the retail market impact the wholesale market. Several commenters, including Dynegy, argue that discriminatory behavior that harms competition is taking place. For example, Dynegy contends that some utilities block ATC across valuable interconnections in the name of service to native load, which has the effect of blocking other purchases within the utility's system. Commenters also assert that when a utility's merchant function reserves access to a valuable import path, purportedly for native load, only to simultaneously export the utility's own generation from the same control area in amounts equal to or greater than the imports this results in an undue preference. The FTC strongly endorses eliminating the native load exemption from the current regulations, contending that the retail merchant function should not have preferential access to information or to the interstate transmission grid.

Thirty-six commenters, including EEI, NASUCA, NARUC, many electric transmission companies and ten state agencies, opposed treating retail function employees as a marketing function. For the most part, they contend that: (1) The Commission is exceeding its statutory authority under section 201 of the FPA, which gives states regulatory authority over facilities used in distribution, intrastate commerce or retail consumption (state preemption); (2) separation of employees engaged in the bundled sales function for retail native load from interstate transmission employees would cause expensive duplication of staff and facilities, without any countervailing competitive benefit (estimates of the one-time costs range from $75,000—$1,000,000); (3) the transmission provider may not be able to maintain reliability and would have difficulty in coordinating generation dispatch; and (4) there are no competitive concerns because retail service is state mandated. NASUCA argues that structural separation may not be necessary to accomplish the Commission's goal that all market participants should have access to the same information. NASUCA proposes the required posting of any information relating to transmission prices or availability provided to retail sales employees by transmission employees should accomplish the Commission's goal without requiring the expense of requiring a separation of functions.

Several commenters, APPA, Duke, Bowater and Oklahoma Gas and Electric, proposed that transmission providers treat employees engaged in a bundled sales function for retail native load as energy affiliates only where they do business in states that have enacted retail competition. They argue that in states where there are no competitors seeking transmission access to serve retail customers, there can be no harm to the customer. North Carolina Utilities Commission argues that in states where there is no retail competition, such as North Carolina, the NOPR will not have the effect of promoting competition because there is none. However, a piece-meal rule, that excludes transmission providers in states that have not enacted retail competition would be difficult to implement because many transmission providers and their retail merchant operate in multiple states.

The NOPR's proposal is consistent with the Supreme Court's recent decision concerning Order No. 888. [12] The Supreme Court held that the plain language of section 201(b) of the Federal Power Act gives the Commission jurisdiction over wholesale sales of electric energy and transmission in interstate commerce. The Court further

[10] Order No. 497–F at 62,157 and Tennessee Gas Pipeline Company, 55 FERC ¶61,285 (1990).

[11] Section 284.286 of the Commission's regulations, 18 C.F.R. § 284.286 (2001) currently requires an interstate pipeline to separate its interstate transmission function from its unbundled sales service, essentially treating the pipeline's sales business as the equivalent of an affiliated marketing company.

[12] *New York et al.* v. *FERC et al.*, 70 U.S.L.W. 4151, 4166; 122 S.Ct. 1012; 2001 U.S. Lexis 1380 (March 5, 2002).

stated that no statutory language limits the Commission's transmission jurisdiction to the wholesale market. The NOPR proposed rules for transmission within the Commission's jurisdiction and did not assert jurisdiction over the bundled sales function. The Commission's focus and the proposed regulations relate to the jurisdictional interstate transmission provider and how it operates its interstate transmission system. Requiring the transmission provider to treat its bundled retail sales business as an energy affiliate is a critical step to full comparability.

The question facing the Commission is whether the cost of separating the retail sales function from the transmission function outweighs the benefit of eliminating the potential anticompetitive effects of a transmission owner's native load preference.

Staff has observed that many transmission providers have already structured their corporate organization so that the retail sales unit is a part of the wholesale merchant function. For those companies, there would be no cost to comply. However, for the transmission providers that currently share transmission function employees with employees engaged in bundled retail sales, there will be a cost of separating those employees and functions. These transmission providers, that typically use the shared employees for customer service, load forecasting and scheduling purposes, argue that they would incur significant costs to separate the transmission function from the retail sales function with no commensurate benefit.

As Duke recognized, the magnitude of these increased costs depends, in part, on how the separation is implemented and whether certain specific functions, like administrative or support functions, and certain information, like specific transaction or reliability information, can be shared between the transmission function and the retail sales function. Therefore, many electric transmission providers articulated the types of costs associated with separating the retail sales function from the transmission function, for example, hiring additional employees, leasing additional space, purchasing additional computers, software, increased administrative and legal costs. Only a few provided details quantifying the costs associated with separating the retail sales function, presumably because of the uncertainty whether the Commission would continue to permit the sharing of some support or administrative employees. As discussed below, under the current gas and electric standards of conduct, the Commission has permitted transmission providers to share non-transmission functions, such as administrative, accounting, human resources, with their marketing affiliates or merchant functions. This paper recommends that the Commission continue to permit the sharing of non-transmission functions between the transmission business and its energy affiliates under the proposed regulations.

On the other hand, when a transmission provider shares employees and information with its retail sales function, there is an inherent incentive for the transmission provider to favor its native load. As a result, the native load is shielded from external competition and the market is not competitive. EPSA highlights the potential $32 billion benefit of a well-functioning competitive market (citing a Department of Energy 1999 study.) More recently, the FTC studied competition and consumer protection, focused on retail competition, and found that effective wholesale and retail competition will mutually reinforce each other, thus combining to bring benefits to customers.[13] By requiring the transmission provider to give all transmission customers, wholesale or retail, affiliated or unaffiliated, the same access to transmission information, the Commission is fulfilling its obligation to ensure non-discriminatory transmission service. Moreover, requiring the transmission provider to treat its retail sales function as a marketing affiliate would level the playing field for all transmission customers, and would promote a competitive marketplace.

*C. The Independent Functioning Requirement*

The NOPR, like the current gas and electric standards of conduct, proposes to require the transmission business to function independently. Although the current standards of conduct require the transmission business to function independently of marketing or wholesale merchant functions, the proposed standards of conduct require the transmission business to function independently of any energy affiliates.

Costs of compliance: Gas pipelines and electric transmission utilities were almost unanimous in their opposition to the proposed broad definition of energy affiliates because they construed it to include affiliated businesses or components of their business that the Commission probably did not intend to sweep into the definition of an energy affiliate, such as affiliated transmission providers, holding companies, service companies and foreign affiliates. As a result, they argued that the costs associated with requiring the transmission function to operate independently of the other energy affiliates ranged from $75,000 to $200,000,000, depending on the size of the transmission provider.

It appears that the commenters' projected costs of imposing the independent functioning requirement reflect the ''worst-case scenario,'' that is, if the Commission were to require a complete separation of affiliated transmission providers, holding companies and other energy affiliates, such as electric retail sales, LDCs etc., as well as prohibiting the sharing of certain non-operating functions.

If the Commission narrows the definition of the term energy affiliate as discussed earlier, then the implementation costs would not be as large as those suggested by the commenters. Therefore, the majority of cost estimates submitted by the comments do not provide a useful basis for assessing the costs of expanding the independent functioning requirement to the transmission provider's relationship with a broader group of affiliates. However, some companies did break down specific costs associated with establishing separate computer and telephone systems and a separate office building for an affiliated LDC. For example, National Fuel, which is a pipeline whose operations are wholly integrated with its LDC, states it would cost $10.7 million in the first year to duplicate these facilities.

Sharing of non-transmission functions: Forty-six commenters, including gas pipelines, electric transmission providers, AGA, EEI, INGAA, NGSA and Industrials, were very concerned because the NOPR was silent on whether the Commission would implement the independent functioning requirement consistent with the case law that has developed under the current standards of conduct.

Historically, the Commission has recognized that different transmission providers are faced with different practical circumstances in reviewing the appropriate degree of separation between the transmission function and the marketing affiliate or wholesale merchant function. Under the current gas and electric current standards of conduct, the Commission has permitted the transmission function to share with its marketing affiliate or wholesale merchant function non-operating officers or directors, and personnel

[13] FTC Staff Report: Competition and Consumer Protection Perspectives on Electric Power Regulatory Reform, Focus on Retail Competition (Sep 2001) http://www.ftc.gov/reports/index.

performing various non-operating functions.[14] The Commission's approach has been to balance its regulatory goals with the practicalities of operating a transmission system, large or small.

For large gas and electric transmission providers, the Commission has permitted the sharing of various non-transmission functions such as legal, accounting, human resources, travel and information technology.[15] By permitting such sharing of non-operating employees, the Commission has allowed the transmission provider to realize the benefits of cost savings through integration where the shared employees do not have duties or responsibilities relating to transmission and could not give a marketing affiliate an undue preference. In these circumstances, the sharing of transmission business employees with marketing affiliate employees was not considered to be likely to be harmful to shippers, consumers or competition in the transmission market. The Commission has also recognized that under normal circumstances, highly placed employees, such as officers or directors, are not involved in day-to-day duties and responsibilities, and can be shared between a transmission provider and its marketing affiliate so long as these individuals comply with the information disclosure prohibitions.[16]

For small gas transmission providers, the Commission looked, on a case-by-case basis, at the size of companies, the number of employees and level of interest in transportation on the pipeline, and, where appropriate, determined that companies had separated to the maximum extent practicable even if they did share transmission employees with their marketing affiliates.[17] The Commission did not conduct comparable reviews of how small electric transmission providers implemented the independent functioning requirement of the electric standards of conduct because the Commission exempted many of the small electric transmission providers from the electric standards of conduct.[18]

The independent functioning requirement is a central component of the standards of conduct, limiting the ability of the transmission provider to use its market power to preferentially benefit an energy affiliate. Nonetheless, it is necessary to recognize the practicalities of operating a transmission system, and therefore staff recommends that the Commission continue to permit the sharing of non-transmission functions between the transmission business and its energy affiliates under the proposed regulations.

*D. Information Disclosure Requirements/Prohibitions*

The standards of conduct prohibitions on information disclosure are intended to prevent a transmission provider from granting its energy affiliate an undue preference over non-affiliates by sharing confidential or transmission information. The existing gas and electric standards of conduct concerning the permissible flow of information between affiliates are quite different, so as a result the positions of the commenters with respect to the NOPR's proposals depended on the industry upon which they were focused.

1. Current Policy Differences on Information Disclosure Under the Gas and Electric Standards of Conduct

Under the current gas standards of conduct, when a natural gas pipeline company shares transportation information with its marketing affiliate, the pipeline must contemporaneously share that information with non-affiliates.[19] This requirement is designed to prevent a transmission provider from giving its marketing affiliate undue preferences over its unaffiliated customers through the exchange of insider transmission information.

In addition, the current gas standards of conduct prohibit a pipeline from sharing with its marketing affiliate any information the pipeline receives from a nonaffiliated shipper or potential nonaffiliated shipper (this is considered confidential information).[20] The gas industry commonly refers to this as the ''automatic imputation rule'' because the Commission's policy is that when an employee that performs functions for the pipeline and its marketing affiliate receives confidential shipper information, the information is automatically divulged or imputed to the marketing affiliate since the employee is also working for the marketing affiliate. In *Tenneco,* the Court of Appeals endorsed this approach when it found that the relevant question is not whether a shared employee who receives critical information will disclose it to the affiliate, but whether that shared employee will in fact receive such information in the first place, or alternatively, how the pipeline intends to keep information supplied by nonaffiliated shippers from reaching a shared employee.[21]

Over the past 15 years, several natural gas pipelines have urged the Commission to adopt different approaches: (1) apply the ''automatic imputation rule'' only to shared operating employees; and (2) adopt a ''no-conduit rule.'' [22] However, the Commission has consistently applied the ''automatic imputation rule'' to all shared employees, whether they perform operating and non-operating functions, and specifically rejected a ''no-conduit rule.'' [23]

In contrast, under the current electric standards of conduct, which contain much broader information disclosure prohibitions, the Commission has permitted shared non-operating employees to receive confidential shipper information as long as the shared employee did not act as a conduit for sharing the information with wholesale merchant function employees.[24] In implementing Order

[14] The Commission's current policy is that non-operating functions include those not engaged in day-to-day marketing, sales, transportation or other gas-related operations, including clerical and secretarial staff, general office accounting staff and some field personnel. In Order No. 497–F, the Commission stated that field personnel, such as those who perform manual work (dig trenches) or purely technical duties (operate and maintain the pipeline's equipment) would not be considered operating employees.

[15] Under Standard G, 18 C.F.R. § 161.3(g)(2001), to the maximum extent practicable a pipeline's operating employees and the operating employees of its marketing affiliate must function independently of each other. In Order No. 497–E, the Commission defined operating employees as, in part, those that are engaged in the day-to-day duties and responsibility for planning, directing, organizing or carrying out gas-related operations, including gas transportation, gas sales or gas marketing activities. Order No. 497–E at 30,996.

[16] Order No. 497–E at 30,996.

[17] *See* e.g., Ringwood Gathering Co., 55 FERC ¶ 61,300 (1991) and Caprock Pipeline Company, et al., 58 FERC ¶ 61,141 (1992).

[18] Black Creek Hydro, Inc., 77 FERC ¶ 61,232 (1996).

[19] Standard F, 18 C.F.R. § 161.3(f) (2001), states that to the extent a pipeline provides to a marketing affiliate information related to transportation of natural gas, it must provide that information contemporaneously to all potential shippers, affiliated and non-affiliated on its system.

[20] Standard E, 18 C.F.R. § 161.3(e) (2001), states that a pipeline may not disclose to its marketing affiliate any information the pipeline receives from a nonaffiliated shipper or potential nonaffiliated shipper.

[21] Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992).

[22] Under a ''no-conduit rule,'' a shared non-operating employee could receive confidential information as long as the shared employee did not act as a conduit for sharing the information with the marketing affiliate or wholesale merchant function.

[23] *See* Order No. 497–E and F, and Amoco Production Co. and Amoco Energy Trading Co. v. Natural Gas Pipeline Company of America, 83 FERC ¶ 61,197 at 61,849 (1998).

[24] Under the gas standards of conduct, the contemporaneous disclosure requirement only applies to transportation information, while under the electric standards of conduct, the contemporaneous disclosure requirements apply to transmission and market information and prohibit

No. 889, the Commission justified the different rule because the electric standards of conduct provide a stricter separation of functions requirement than the pipeline standards.[25] When the Commission reviewed the standards of conduct for electric transmission providers, the Commission adopted the ''no-conduit'' rule, rather than applying the ''automatic imputation rule.''[26]

The NOPR proposed to prohibit the transmission provider from disclosing transmission information about transmission system operations, or information acquired from non-affiliated customers, to their marketing and sales employees and the energy affiliates' employees through non-public communications. The NOPR, however, was silent on how the information prohibitions would be applied to shared employees, that is, whether the Commission would adopt the ''automatic imputation rule'' from the gas standards of conduct or the ''no-conduit rule'' from the electric standards of conduct. Many commenters, from both the gas and electric industry, request, without much explanation, that the Commission codify the ''no-conduit rule'' and apply to it all transmission providers.

Under the proposed regulations, staff expects transmission providers would continue to share non-operating employees, including officers and directors with their energy affiliates. In the past, the Commission's focus has been how to keep the information supplied by non-affiliated shippers from reaching the shared non-operating employees. Some non-operating functions, for example, Human Resources or Travel, clearly have little or no access to transmission-related or market information and application of the information disclosure prohibitions has little practical impact on those operations. However, where shared employees have regular access to transmission-related information, such as billing or accounting, and provide services to both the transmission provider and its energy affiliates, Staff is concerned that there is an opportunity for transmission information to be used for other functions.

The issue is, once the shared employee learns confidential shipper information, can he or she use that information to give an energy affiliate an undue preference? Under the no-conduit rule, the shared non-operating employee could receive the information, but would be prohibited from sharing the information with an energy affiliate. Applying the no-conduit rule might allow transmission providers to share more non-operating employees with its energy affiliates without violating the information disclosure prohibitions.

On the other hand, the automatic imputation rule recognizes the reality that an individual cannot segment his or her brain, and once an individual learns information, he or she is likely to utilize it. The automatic imputation rule is a clearer standard and easier to implement because it eliminates the opportunity for improperly sharing information. Staff would recommend that the Commission adopt the automatic imputation rule under the proposed regulations.

2. Sharing of Operational/Reliability Information

Many commenters from virtually all segments of the gas and electric industry argue that the separation of functions and the information disclosure prohibitions required by the NOPR will prohibit a transmission provider from communicating crucial operational information with its retail sales function, generation function, producer, gatherer or LDC. They argue that prohibiting certain of these communications will endanger the reliability of both the gas and electric transmission systems. Several commenters argue that the Commission should adopt the approach taken when implementing Order No. 889, where the Commission permitted transmission providers to share certain types of operational information with its generation function and wholesale merchant function.

Staff recommends that transmission providers and their energy affiliates be permitted to share crucial operational information necessary to maintain the reliability of the transmission system. One option for resolving this concern would be to promulgate rules governing the specific types of information that a transmission provider could share with its energy affiliates.

3. Exceptions Under the Current Gas Standards of Conduct

Under current policy, a transmission provider is not required to contemporaneously disclose to all shippers information relating to a marketing affiliate's specific request for transportation service. The NOPR did not specifically address this issue. Similarly, in numerous cases implementing the existing gas standards of conduct, the Commission has permitted a non-affiliate to voluntarily consent, in writing, to allow the gas pipeline to share the non-affiliate's information with the marketing affiliate.[27] The NOPR did not specifically address this policy. Virtually every segment of the gas industry requested clarification whether the Commission would continue the ''specific-transaction exception'' and the voluntary disclosure provision.

In several cases implementing the existing gas standards of conduct, the Commission permitted transportation function employees to buy and sell gas for operational reasons, including to balance fuel usage, for storage operations, to effectuate cashouts and deplete or replenish line pack.[28] Several gas pipelines, as well as INGAA, note that the NOPR does not appear to retain the historical exclusion for such activities and urge the Commission to retain this exception.

These exceptions, which impact practical operations of the transmission system, are important and merit retention. Therefore, these exclusions should be continued in the proposed regulations.

Proposed regulatory text: The revision to proposed section 358.5(b) would add three new sections, sections 358.5(b)(3), 358.5(b)(5) and (6), and renumber section 358.5(b)(3) to 358.5(b)(4) as follows:

(3) An employee of a transmission provider and a transmission provider cannot use any affiliate or employee of an affiliate as a conduit for sharing information with an energy affiliate that is prohibited by sections 358.5(b)(1) and (2).

(4) If an employee of the transmission provider discloses information in a manner contrary to the requirements of sections 358.5(b)(1) and (2), the transmission provider must immediately post such information on the OASIS or Internet website.

off-OASIS communications. *See* 18 C.F.R. §§ 37.4(4) and 161.3(f) (2001).

[25] Under the gas standards of conduct, to the maximum extent practicable, a pipeline's operating employees and the operating employees must function independent of each other. *See* 18 C.F.R. § 161.3(g) (2001). In contrast, the employees of the electric transmission provider engaged in transmission system operations must function independently of the employees engaged in wholesale merchant functions, except for emergency circumstances affecting system reliability. *See* 18 C.F.R. § 37.4(a)(1) (2001). The key difference being the flexibility under the term ''maximum extent practicable,'' which permits, in certain situations, the sharing of operating employees.

[26] Allegheny Power Service Corp., et. al., 84 FERC ¶ 61,316 at 62,425 (1998).

[27] *See* e.g., Southern Natural Gas Company, 70 FERC ¶ 61,348 (1995).

[28] *See* e.g., East Tennessee Natural Gas Co., 63 FERC ¶ 61,578, *order on rehearing* 64 FERC ¶ 61,159 (1993).

(5) A nonaffiliated transmission customer may voluntarily consent, in writing, to allow the transmission provider to share the non-affiliate transmission customer's transmission information with an energy affiliate.

(6) A transmission provider is not required to contemporaneously disclose to all transmission customers or potential transmission customers information relating to an energy affiliate's specific request for transmission service.

*E. Posting Organizational Charts and Job Descriptions*

Currently, natural gas pipelines and electric utilities are required to post various organizational charts and job descriptions. The gas pipelines are required to make changes to the postings within three business days of a change. The Commission has never addressed the frequency of changes to be made under the electric standards of conduct. Commenters from the gas and electric industry urge the Commission to reconsider this requirement. Although they are already complying with this requirement with respect to their marketing affiliates, they argue that there would be significantly more information to post if the Commission adopts a broad definition of the term energy affiliate. Several urge that the information be updated 10–30 days from the date of the change, rather than the three days proposed by the NOPR. Commenters also argue that it may be difficult to post all changes within three business days given the complexity of some mergers or buy-outs.

Staff disagrees with the commenters position that there would be significantly more information to post with the broader definition of the term energy affiliate. Under the NOPR, there are only two changes, which might cause a minimal additional burden: (1) the transmission provider would have to identify all of its energy affiliates on the organizational charts in order to provide a clear picture of the transmission provider's relative position in the corporate structure of the parent company; and (2) a transmission provider would have to provide additional information concerning any employees it shares with its energy affiliates. Most companies already maintain organizational charts and structural information, so there should be little additional burden to post this. With respect to posting information for employees the transmission provider shares with its energy affiliate, such posting should be minimal because the standards of conduct require the transmission provider to function independently of its energy affiliates.

Regarding the ability to update employee information, Staff has observed that some companies link their employee or human resource databases to the posted organizational charts and job descriptions, such that an automatic download or update takes place each day. Therefore, requiring the changes to be posted within three days would appear reasonable. However, the commenters' arguments, that it may be difficult to post all changes within three business days given the complexity of some mergers or buy-outs, is also a reasonable one. That does not, however, justify a delay of 10 to 30 business days. In balancing the minimal burden associated with updating day-to-day employee information with the efforts that would be needed to post completely new organizational charts resulting from complex changes, such as the sale, purchase or merger of a company, it would be reasonable to require the information to be updated within seven business days from the date of the change.

*F. Posting Discounts at Time of Offer*

The NOPR proposed to require any offer of a discount for any transmission service made by the transmission provider to be announced to all potential customers solely by posting on the OASIS or Internet. Although this language is consistent with the electric standards of conduct, it represents a change from the current gas standards of conduct, which require discount information to be posted within 24 hours of the time gas first flows under a discounted transaction. The NOPR stated that posting discounts on the Internet is a simple, quicker way of communicating discount information to all potential customers and reflects the Commission's desire is to ensure that all potential customers have equal and timely access to discount information in the fast-paced marketplace.

Commenters from the electric industry were largely silent on this issue because they are already operating under these requirements.

A few commenters, APGA, Amoco/BP, CPUC and Reliant, offered unqualified support of this requirement. Twenty-six commenters, primarily from the gas industry, INGAA, Ad Hoc Marketers, NGSA, EPSA, and Industrials, strongly opposed posting discounts at the time of the offer. The commenters point out that discounting is fundamentally different between the gas and electric industry. In the gas industry, pipelines face a competitive transportation market, where discounting, pipeline-to-pipeline competition and alternative fuel sources are frequent. They argue that this proposal would put a damper on discounting and the posting requirement is inconsistent with selective discounting for the gas industry. Many expressed concern about the vagueness of the word ''offer'' and offered various definitions or variations for when the information should be posted. Several commenters, AGA, Dominion, Industrials and NISOURCE, recommended that discounts be posted after they are executed.

The final rule will need to balance the importance of equal and timely access to discount information with the possibility that a new discount requirement might put such a damper on discounting, that transmission capacity would remain unsold or put an interstate pipeline at a competitive disadvantage vis-a-vis non-jurisdictional competition, e.g., intrastate pipelines. Staff agrees that the term ''offer'' can be interpreted in a variety of ways, and recommends that the final rule provide additional clarification on the timing of the posting in the final rule. However, the current requirement, under section 161.3(h)(2), to post information within 24 hours of gas flow is too late to afford an unaffiliated competitor the opportunity to negotiate a comparable deal in today's fast-paced marketplace. In balancing those competing concerns, Staff recommends that the final rule require the transmission provider to post the discount at the conclusion of negotiations, when the discount offer is binding.

Proposed regulatory text: The proposed revisions to section 358.5(d) would read as follows:

(d) *Discounts*. Any offer of a discount for any transmission service made by the transmission provider must be posted on the OASIS or Internet website contemporaneously with the time that the offer is contractually binding. The posting must include: the name of the customer involved in the discount and whether it is an affiliate or whether an affiliate is involved in the transaction, the rate offered; the maximum rate; the time period for which the discount would apply; the quantity of power or gas scheduled to be moved; the delivery points under the transaction; and any conditions or requirements applicable to the discount. The posting must remain on the OASIS or Internet website for 60 days from the date of posting.

**List of Commenters**

AEC Storage and HUB Service INC.
Alabama Electric Cooperative, Inc.

Alabama Municipal Electric Authority (AMEA)
Alcoa Power Generating Inc.
Allegheny Power—Monongahela Power Company, The Potomac Edison Company and
The West Penn Power Company
Alliance Pipeline L.P.
American Electric Power System
American Forest & Paper Association
American Gas Association (AGA)
American Public Gas Association (APGA)
American Public Power Association (APPA)
Amoco Production Company and BP Energy Company (Amoco/BP)
Arkansas Public Service Commission
Atlanta Gas Light Company, Virginia Natural gas, Inc. and Chattanooga Company
Atmos Energy Corporation
Avista Corporation (Avista)
Bangor Hydro—Electric
Basin Electric Power Cooperative
Bonneville Power Administration (BPA)
Bowater Inc. (Bowater)
California Dairy Coalition
Calpine Corporation (Calpine)
Canadian Association of Petroleum Producers and the Alberta Department of Energy
Carolina Power & Light Company and Florida Power Corporation
Cinergy Services, Inc. (Cinergy)
City Council of the City New Orleans, Louisiana
CMS Energy Corporation (CMS)
Colorado Spring Utilities (CSU)
Connexus Energy
Conectiv
The Cooperatives—The Alabama Electric Cooperative, The Arkansas Electric Cooperative Corporation and The Seminole Electric Cooperative
Dairyland Power Cooperative
Discovery Producer Services LLC and Discovery and Discovery Gas Transmission LLC
Dominion Resources, Inc. (Dominion)
DTE Energy Company
Duke Energy Corporation (Duke Energy)
Dynegy Inc. (Dynegy)
East Texas Electric Cooperative, Inc. and Wolverine Power Supply Cooperative, Inc.
Edison Electric Institute (EEI)
Electric Power Supply Association (EPSA)
Electricity Consumers Resource
El Paso Corporation
El Paso Energy Partners, LP
Empire District Electric Company
Enbridge Inc.
Energy East Companies and Rochester Gas & Electric
Entergy Services, Inc. (Entergy)
Equitable Resources, Inc.
Exelon Corporation
Federal Trade Commission (FTC)
Fertilizer Institute
First Electric Cooperative Corporation
Florida Pubic Service Commission
Green Mountain Power Corporation
Gulf South Pipeline Company, LP
Gulfstream Natural Gas System, L.L.C.
Idaho Public Utilities
Independent Oil & Gas Association of West Virginia (IOGA)
Illinois Commerce Commission
Interstate Natural Gas Association of America (INGAA)
Independent Petroleum Association of America and Cooperating Association (IPAA)
The Industrials—The Process Gas Consumers Group, The American Forest & Paper Association, The American Iron and Steel Institute, The Georgia Industrial Group, The Industrial Gas Users of Florida, The Florida Industrial Gas Users, and United States Gypsum Company.
Industrial Coalitions on Standards of Conducts for Transmission Providers
Keyspan Corporation
Kinder Morgan Pipelines
LG& E Energy Corp.
The Long Island Lighting Company (filed one day out of time)
Maritimes & Northeast Pipeline, L.L.C.
Maryland Public Service Commission
Member System
Midwest Independent Transmission System
MIGC, Inc.
Minnesota Department of Commerce
Mississippi Public Service Commission
Mirant
Montana-Dakota Utilities Co.
Montana Power Company
National Association of State Utility Consumer Advocate
National Energy Marketer Association (NEMA)
National Propane Gas Association
National Fuel Gas Distribution Corporation
National Grid USA
National Rural Electric Cooperative Association
Natural Gas Supply Association (NGSA)
New Power Company
New York Power Authority (NYPA)
New York Independent System Operator, Inc.
Nevada Independent Energy Coalition
Niagara Mohawk Power Corporation
NICOR Gas
Nisource Inc.
North Carolina Utilities Commission
Northeast Utilities Service Company
Northeast Independent Transmission Company Proponents
Northwest Natural Gas Company
Oktex Pipeline Company
Oklahoma Corporation Commission
Oklahoma Gas & Electric Company
Orlando Utilities Commission
Pancanadian Energy Services Inc.
Piedmont Natural Gas Co.
Pinnacle West Companies
Portland Natural Gas Transmission System
PPL Companies
Process Gas Consumer Group
Proliance Energy, LLC
Public Utilities Commission of the State of California ''CPUC''
Public Service Company
PSEG Companies
Public Utilities Commission of Ohio & Michigan
Puget Sound Energy
Questar Market Resource, INC.
Questar Pipeline Company, Questar Gas Company, and The Questar Regulated Services Company
Reliant Resources, Inc.
Rural Utilities Service, United States Department of Agriculture
SCANA Companies—South Carolina Electric & Gas Company, Public Service Company, of North Carolina, South Carolina Pipeline Corporation, SCG Pipeline Inc., SCANA Energy Marketing, INC. and SCANA Services, Inc..
Sempra Energy
Shell Offshore Inc.
Shell Gas Transmission, LLC
Southern California Edison Company
Southern Company Services, Inc.
Southwest Transmission Cooperative, Inc. ( ''SWTC'')
Southwest Gas Corporation
Superior Natural Gas Corporation and Walter Oil & Gas Corporation
TECO Energy, Inc.
Transmission Access Policy Study Group (''TAPS'')
Transmission Group—Northern Natural Gas Company, Transwestern Pipeline Company, Florida Gas Transmission Company, Northern Border Pipeline Company, Midwestern Gas Transmission Company, and Portland General Electric.
Unaffiliated Marketers—The Midwest United Energy LLC, The Wasatch Energy, LLC and The Public Alliance for Community Energy.
USG Pipeline Company, B-R Pipeline Company , and The United States Gypsum Company
Utah Associated Municipal Power System
Utah Division of Public Utilities
Utilicorp United Inc.
Vector Pipeline L.P.
Vermont Department of Public Service
Washington Gas Light Company and Hampshire Storage Company
Washington Utilities and Transportation Commission
Wells Rural Electric Company
The Williams Companies

Williston Basin Interstate Pipeline Company
Wisconsin Electric Power Company and Wisconsin Gas Company
Wisconsin Public Service Corporation and The Upper Peninsula Power Company

[FR Doc. 02–10746 Filed 4–30–02; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7204–4]**

## Agency Information Collection Activities: Proposed Collection; Comment Request. Criteria for Classification of Solid Waste Disposal Facilities and Practices, Recordkeeping and Reporting Requirements (Renewal)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Criteria for Classification of Solid Waste Disposal Facilities and Practices, Recordkeeping and Reporting Requirements, ICR #1745.03, OMB No. 2050–0154, current expiration date is September 30, 1999. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection described below.

**DATES:** Comments must be submitted on or before July 1, 2002.

**ADDRESSES:** Commentors must send an original and two copies of their comments referencing docket number F–2002–DF2P–FFFFF to: (1) If using regular US Postal Service mail: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0002, or if using special delivery, such as overnight express service: RCRA Docket Information Center (RIC), Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. Commentors are encouraged to submit their comments electronically through the Internet to: *rcra-docket@epa.gov*. Comments in electronic format should also be identified by the docket number F–2002–DF2P–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commentors should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0002.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703–603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15 per page. The index and the supporting material is available electronically. The ICR is available on the Internet at *http://www.epa.gov/epaoswer/hazwaste/sqg/index.htm*.

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing.

EPA responses to comments, whether the comments are written or electronic, will be in a notice in the **Federal Register**. EPA will not immediately reply to commentors electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

**FOR FURTHER INFORMATION CONTACT:** For general information, contact the RCRA Hotline at 800 424–9346 or TDD 800 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703 412–9810 or TDD 703 412–3323. For more detailed information on specific aspects of this rulemaking contact Paul Cassidy, EPA, Office of Solid Waste (5306W), Industrial & Extractive Waste Branch, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, phone 703 308–7281, e-mail address: *cassidy.paul@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

*Affected entities:* EPA assumes that industrial waste units that previously co-disposed non-hazardous wastes and conditionally exempt small quantity generator (CESQG) hazardous waste on-site have ceased that practice and that commercial off-site industrial waste units are operating with stringent environmental controls in place. Therefore, entities that potentially will be affected by this action are limited to those that dispose of CESQG hazardous wastes in construction and demolition (C&D) waste landfills.

*Title:* Criteria for Classification of Solid Waste Disposal Facilities and Practices, Recordkeeping and Reporting requirements—40 CFR Part 257 Subpart B.

*OMB No.:* 2050–0154.

*EPA ICR No.:* 1745.03.

*Current expiration date:* September 30, 1999.

*Abstract:* In order to effectively implement and enforce final changes to 40 CFR Part 257—Subpart B on a State level, owners/operators of construction and demolition waste landfills that receive CESQG hazardous wastes will have to comply with the final reporting and recordkeeping requirements. 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 number for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. This continuing ICR documents the recordkeeping and reporting burdens associated with the location and ground-water monitoring provisions contained in 40 CFR Part 257—Subpart B.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and the clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques of other forms of information technology, e.g., permitting electronic submission of responses.

*Burden Statement:* The current annual burden to respondents for complying with the information collection requirements of Part 257—

Subpart B Criteria is approximately 11,000 hours per year, with a current annual cost of $393,000. The current estimated number of respondents is 164 with a current average annual burden of approximately 67 hours per respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: April 23, 2002.

**Matthew Hale,**

*Acting Office Director, Office of Solid Waste.*

[FR Doc. 02–10734 Filed 4–30–02; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2002–0023; FRL–6834–4]**

## Dimethoate Product Cancellation Order and Label Amendment; Technical Correction

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; technical correction.

**SUMMARY:** EPA issued a cancellation order in the **Federal Register** of March 13, 2002 eliminating the residential uses for Dimethoate. This document is being issued to correct the existing stocks provisions of this cancellation order.

**DATES:** The cancellations became effective March 13, 2002.

**FOR FURTHER INFORMATION CONTACT:** By mail: Patrick Dobak, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–8180; e-mail address: *dobak.pat@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Does this Action Apply to Me?

The Agency included in the cancellation order a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1.*Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at *http://www.epa.gov*. To access this document, go to the **Federal Register** listings at *http://www.epa.gov/fedrgstr*.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–2002–0023. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

### III. What Does this Technical Correction Do?

The cancellation order for uses of pesticide products containing Dimethoate on various commodities was published in the **Federal Register** on March 13, 2002 (67 FR 11330) (FRL–6828–1). The existing stocks language in Unit IV is not consistent with the proposed existing stocks provisions included in the January 10, 2002 proposed Cancellation Order. The following Unit IV replaces Unit IV of the Cancellation Order published on March 13, 2002. The replacement language is consistent with the language in the January 10, 2002 proposed cancellation order. No comments were received by the Agency. The revised existing stocks provisions are as follows:

### IV. Existing Stocks Provisions

1. *Distribution or sale of products by the registrant bearing instructions for use on houseflies and non-agricultural use sites*. The distribution or sale of existing stocks by the registrant of any product listed in Table 1 or 2 that bears instructions for any use identified in List 1, will not be lawful under FIFRA 1 year after the effective date of the cancellation order, except for the purposes of shipping such stocks for export consistent with section 17 of FIFRA or for proper disposal.

2. *Distribution, sale, or use of products by persons other than the registrant bearing instructions for use on houseflies and non-agricultural use sites*. Persons other than the registrant may continue to sell or distribute the existing stocks of any product listed in Table 1 or 2 that bears instructions for any of the uses identified in List 1 after the effective date of the cancellation order and may continue until such stocks are exhausted. The use of existing stocks by persons other than the registrant of any product listed in Table 1 or 2 that bears instructions for any uses identified in List 1 may continue until such stocks are exhausted.

### List of Subjects

Environmental protection, Pesticides, Use cancellation order.

Dated: April 23, 2002.

**Lois A. Rossi,**

*Director, Special Review and Reregistration Division.*

[FR Doc. 02–10735 Filed 4–30–02; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2002–0020; FRL–6834–3]**

## Pesticide Product; Registration Application; Extension of Comment Period

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces an extension of the comment period regarding receipt of an application to register a pesticide product containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**DATES:** Written comments, identified by the docket control number OPP–

30509B, must be received on or before May 31, 2002.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30509B in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** Mike Mendelsohn, Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8715; e-mail address: mendelsohn.mike@epa.gov.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS codes | Examples of potentially affected entities |
|---|---|---|
| Industry | 111<br>112<br>311<br><br>32532 | Crop production<br>Animal production<br>Food manufacturing<br>Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–30509B. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

### *C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30509B in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–30509B. Electronic comments may also be filed online at many Federal Depository Libraries.

### *D. How Should I Handle CBI that I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

### *E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the registration activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the

name, date, and **Federal Register** citation.

## II. Registration Application

EPA received an application as follows to register a pesticide product containing an active ingredient not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of the application does not imply a decision by the Agency on the application.

*Product Containing an Active Ingredient Not Included in Any Previously Registered Products*

*EPA File Symbol 524-LEI*

In the **Federal Register** of March 19, 2001 (66 FR 15435) (FRL–6771–5), EPA announced receipt of a seed increase registration application from Monsanto Company, 700 Chesterfield Parkway N., St. Louis, MO 63198 to register the product Event MON 863: Corn Rootworm Protected Corn (ZMIR13L) containing the plant-pesticide *Bacillus thuringiensis* Cry3Bb protein and the genetic material (Vector ZMIR13L) necessary for its production in corn. Monsanto subsequently modified their application for full commercial use and EPA announced receipt of the application on March 13, 2001 (67 FR 11330) (FRL–6828–1). The original comment period ended on April 12, 2002. The comment period is being extended to May 31, 2002. Proposed Classification/Use: None. For full commercial use.

## List of Subjects

Environmental protection, Pesticides and pest.

Dated: April 19, 2002.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

[FR Doc. 02–10627 Filed 4–30–02; 8:45 am]

BILLING CODE 6560–50–S

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## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2002–0012; FRL–6833–4]**

## Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

**DATES:** Comments, identified by docket control number OPP–2002–0012, must be received on or before May 31, 2002.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–2002–0012 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Shaja R. Brothers, Registration Support Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–3194; e-mail address: brothers.shaja@epa.gov.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

*A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS Codes | Examples of potentially affected entities |
|---|---|---|
| Industry | 111<br>112<br>311<br><br>32532 | Crop production<br>Animal production<br>Food manufacturing<br>Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–2002–0012. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

*C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–2002–0012 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB),

Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–2002–0012. Electronic comments may also be filed online at many Federal Depository Libraries.

*D. How Should I Handle CBI That I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

*E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

### List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 15, 2002.

**Debra Edwards,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

### Summary of Petitions

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioners. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

*2E6359, 2E6365, 2E6377, and 2E6393*

EPA has received pesticide petitions (PP) 2E6359, 2E6365, 2E6377, and 2E6393 from the Interregional Research Project Number 4 (IR-4), New Jersey Agricultural Experiment Station, P. O. Box 231 Rutgers University, New Brunswick, NJ 08903 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180.516 by establishing tolerances for residues of fludioxonil (4-(2,2-difluoro-1,3- benzodioxol-4-yl)-1H-pyrrole-3-carbonitrile) in or on the following raw agricultural commodities (RACs) with the respective tolerance levels in parts per million (ppm): PP 2E6359 proposes the establishment of a tolerance for the bushberry subgroup, lingonberry, juneberry, and salal at 2.0 ppm, PP 2E6365 proposes the establishment of a tolerance for watercress at 7.0 ppm, PP 2E6377 proposes the establishment of a tolerance for pistachio at 0.10 ppm and PP 2E6393 proposes the establishment of a tolerance for the caneberry subgroup at 5.0 ppm.

This notice includes a summary of petitions prepared by Syngenta Crop Protection Inc., Greensboro, North Carolina, 27409. EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on these petitions.

*A. Residue Chemistry*

1. *Plant metabolism*. The plant metabolism of fludioxonil is adequately understood for the purpose of the proposed tolerances.

2. *Analytical method*. Syngenta has developed and validated analytical methodology for enforcement purposes. This method (Syngenta Crop Protection Method AG-597B) has passed an Agency petition method validation for several commodities and is currently the enforcement method for fludioxonil. This method has also been forwarded to FDA for inclusion into PAM II. An extensive database of method validation data using this method on various crop commodities is available.

3. *Magnitude of residues*. Complete residue data for caneberry subgroup, bushberry subgroup, lingonberry, juneberry, salal, pistachio and watercress have been submitted. The requested tolerances are adequately supported.

*B. Toxicological Profile*

The nature of the toxic effects caused by fludioxonil are discussed in unit II.B of the **Federal Register** on December 29, 2000 (65 FR 82927) (FRL–6760–9).

1. *Animal metabolism*. The metabolism of fludioxonil in rats is adequately understood.

2. *Metabolite toxicology*. The residues of concern for tolerance setting purposes is the parent compound. Consequently,

there is no additional concern for toxicity of metabolites.

3. *Endocrine disruption*. Fludioxonil does not belong to a class of chemicals known for having adverse effects on the endocrine system. No estrogenic effects have been observed in the various short- and long-term studies conducted with various mammalian species.

*C. Aggregate Exposure*

1. *Dietary exposure*. The dietary exposure evaluation was made using the Dietary Exposure Evaluation Model (DEEM®, version 7.76) from Novigen Sciences, Inc. DEEM® default processing factors were used along with USDA's Continuing Survey of Food Intake by Individuals (CSFII) with the 1994–96 consumption database and the Supplemental CSFII children's survey (1998) consumption database. DEEM® inputs for all currently registered uses, pending uses, and proposed uses. Secondary residues in animal commodities were not considered in this evaluation since calculations showed that residue transfers from fed items to livestock and milk were minimal and resulted in negligible exposures.

i. *Food*. This chronic assessment utilized established tolerance values for the current uses and proposed tolerance values for the added proposed uses. This assessment assumes 100% crop treated for all commodities except strawberries and bulb vegetables. For strawberries and bulb vegetables, projected percent crop treated values of 50% and 28%, respectively, were calculated as a percent of base acres divided by the total planted acres.

ii. *Drinking water*. Estimated Environmental Concentrations (EEC's) of fludioxonil in drinking water were determined for the highest use rate of fludioxonil, which is turfgrass. SCI-GROW (Version 2.1) used to determine acute and chronic estimated environmental concentrations in ground water. FIRST (Version 1.0) was used to determine acute and chronic estimated environmental concentrations in surface water.

Based on model outputs, the estimated environmental concentrations of fludioxonil are 0.0553 parts per billion (ppb) for acute and chronic exposure to ground water and 70 ppb and 33 ppb for acute and chronic exposure, respectively, to surface water.

2. *Non-dietary exposure*. There is a potential residential post-application exposure to adults and children entering residential areas treated with fludioxonil. Since the Agency did not select a short-term endpoint for dermal exposure, only intermediate-term dermal exposures were considered. Based on the residential use pattern, no long-term post-application residential exposure is expected.

*D. Cumulative Effects*

EPA does not have, at this time, available data to determine whether fludioxonil has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, fludioxonil does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that fludioxonil has a common mechanism of toxicity with other substances.

*E. Safety Determination*

1. *U.S. population*. The chronic dietary exposure analysis showed that exposure from the established tolerances and proposed new tolerances for the general U.S. population would be 8% of the RfD. Chronic exposures to the U.S. population resulted in a margin of exposure (MOE) of 1445. The benchmark MOE for this assessment is 100. Therefore, results from the %RfD based risk analysis showed acceptable safety margins with respect to chronic exposures incurred by the dietary consumption of fludioxonil-treated commodities.

2. *Infants and children*. The chronic reference dose (RfD) for fludioxonil is 0.03 milligrams/kilograms (mg/kg) body weight/day and is based on a one year dog study with a no observed adverse effect level (NOAEL) of 3.3 mg/kg body weight/day and a safety factor of 100X. No additional FQPA safety factor was applied. The chronic dietary exposure analysis showed that exposure from the established tolerances and proposed new tolerances for Non-Nursing Infants <1 years old (the subgroup with the highest exposure) would be 34% of the RfD. The most sensitive subpopulation in the chronic assessment was non-nursing infants (<1 year old) with a MOE of 329. The benchmark MOE for this assessment is 100. Therefore, the estimates of dietary exposure clearly indicate adequate safety margins for the overall U.S. population.

Chronic Drinking Water Levels of Comparison (DWLOC) were calculated based on a chronic RfD of 0.03 mg/kg/day. For the chronic assessment, the non-nursing infant subpopulation generated the lowest chronic DWLOC of approximately 200 ppb. This gave a corresponding MOE value of 1,000. The chronic DWLOC of 200 ppb is considerably higher than the chronic EEC of 33 ppb and the MOE far exceeds the benchmark MOE of 100.

*F. International Tolerances*

There are no Codex Maximum Residue Levels established for fludioxonil.

[FR Doc. 02–10339 Filed 4–30–02; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2002–0015; FRL–6833–7]**

## Notice of Filing Pesticide Petitions to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

**DATES:** Comments, identified by docket control number OPP–2002–0015, must be received on or before May 31, 2002.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–2002–0015 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** Sidney Jackson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7610; e-mail address: jackson.sidney@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS codes | Examples of potentially affected entities |
|---|---|---|
| Industry | 111 | Crop production |

| Categories | NAICS codes | Examples of potentially affected entities |
|---|---|---|
| | 112 | Animal production |
| | 311 | Food manufacturing |
| | 32532 | Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–2002–0015. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

*C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–2002–0015 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–2002–0015. Electronic comments may also be filed online at many Federal Depository Libraries.

*D. How Should I Handle CBI That I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

*E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

### List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 15, 2002.

**Debra Edwards,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

### Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and

represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

**Interregional Research Project Number 4 (IR–4)**

*PP 1E6304, 2E6357, 2E6364, 2E6373*

EPA has received pesticide petitions 1E6304, 2E6357, 2E6364 and 2E6373, from the Interregional Research Project Number 4 (IR–4), 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR 180.532 by establishing tolerances for residues of cyprodinil, [4-cyclopropyl-6-methyl-*N*-phenyl-2-pyrimidinamine], in or on the following raw agricultural commodities (RACs):

1. PP 1E6304 proposes a tolerance for caneberry subgroup at 10.0 parts per million (ppm).
2. PP 2E6357 proposes a tolerance for bushberry subgroup, lingonberry, juneberry, and salal, at 3.0 ppm.
3. PP 2E6364 proposes a tolerance for watercress at 20 ppm.
4. PP 2E6373 proposes a tolerance for pistachio at 0.07 ppm.

Additional data may be needed before EPA rules on the petitions. Syngenta Crop Protection, Inc., Greenboro, NC 27409, is the manufacturer of the chemical pesticide, cyprodinil. Syngenta prepared and submitted the following summary of information, data, and arguments in support of the pesticide petitions. This summary does not necessarily reflect the findings of EPA.

*A. Residue Chemistry*

1. *Plant metabolism*. The metabolism of cyprodinil is adequately understood for the purpose of the proposed tolerances.

2. *Analytical method*. Syngenta has developed and validated analytical methodology for enforcement purposes. This method (Syngenta Crop Protection Method AG–631B) has passed an Agency petition method validation for several commodities and is currently the enforcement method for cyprodinil. An extensive data base of the method validation data using this method on various crop commodities is available.

3. *Magnitude of residues*. Complete residue data for caneberry subgroup, bushberry subgroup, lingonberry, juneberry, salal, pistachio, and watercress have been submitted. The requested tolerances are adequately supported.

*B. Toxicological Profile*

An assessment of toxic effects caused by cyprodinil is discussed in Unit III. A. and Unit III. B. of the **Federal Register** dated June 22, 2001 (66 FR 33478).

1. *Animal metabolism*. The metabolism of cyprodinil in rats is adequately understood.

2. *Metabolite toxicology*. The residues of concern for tolerance setting purposes is the parent compound. Based on structural similarities to genotoxic nucleotide analogs, there was concern that the pryimidine metabolites (CGA–249287, NOA–422054) may be more toxic than the parent compound. However, EPA's review indicates similar results in an acute oral and mutagenicity studies with both the parent compound and the CGA–249287 metabolite. EPA concluded that the toxicity of the CGA–249287 and NOA–422054 metabolites is no greater than that of the parent, conditional on submission and review of confirmatory data of an acute oral toxicity study and bacterial reverse mutation assay for the NOA–422054 metabolite. Although the metabolites CGA–232449 and CGA–263208 were determined to be of potential toxicological concern, they are not expected to be more toxic than cyprodinil *per se*.

3. *Endocrine disruption*. Cyprodinil does not belong to a class of chemicals known or suspected of having adverse effects on the endocrine system. Developmental toxicity studies in rats and rabbits and a reproduction study in rats gave no indication that cyprodinil might have any effects on endocrine function related to development and reproduction. The chronic studies also showed no evidence of a long-term effect related to the endocrine system.

*C. Aggregate Exposure*

1. *Dietary exposure*. Permanent tolerances have been established (40 CFR 180.532(a)) for the residues of cyprodinil, in or on a variety of RACs. Tolerance are established on grape at 2.0 ppm, grape, raisin at 3.0 ppm; onion, dry bulb at 0.6 ppm, onion green at 4.0 ppm; stone fruit group at 2.0 ppm, pome fruit group at 0.1 ppm, apple, wet pomace at 0.15 ppm; almond nutmeat at 0.02 ppm and almond hulls at 0.05 ppm. Time-limited tolerances under section 18 of Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (emergency exemption) have been established under 180.532(b) for caneberry subgroup at 10.0 ppm, and strawberry at 5.0 ppm. Tolerances values proposed in this submission are: Caneberry subgroup (10.0 ppm); pistachio (0.07 ppm); watercress (20 ppm); bushberry subgroup (3.0 ppm), lingonberry (3.0 ppm), juneberry (3.0 ppm) and salal (3.0 ppm).

a. *Food*. The dietary exposure evaluation was made using the dietary exposure evaluation model (DEEM$^{tm}$, version 7.76) from Novigen Sciences, Inc. DEEM default processing factors were used along with United States Department of Agriculture (USDA) continuing survey of food intake by individuals (CSFII) with the 1994–1996 consumption data base and the supplemental CSFII children's survey (1998) consumption data base. DEEM inputs for all currently registered uses, and proposed uses listed above. Secondary residues in animal commodities were not considered in this evaluation since calculations showed that residue transfers from feed items to livestock and milk were minimal and resulted in negligible exposures.

i. *Acute exposure*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. EPA has not conducted an acute dietary risk assessment since no toxicological endpoint of concern was identified during the review of the available data.

ii. *Chronic exposure*. This chronic assessment utilized established tolerance values for the current uses and proposed tolerance values for the added proposed uses. This assessment assumes 100% crop treated for all commodities. The chronic population adjusted dose (cPAD) for cyprodinil is 0.03 milligram/kilogram (mg/kg) body weight/day (bwt/day) and is based on a chronic rat study with a no observed adverse effect level (NOAEL) of 2.7 mg/kg bwt/day and a uncertainty factor (UF) of 100X. No additional Food Quality Protection Act (FQPA) safety factor was applied. For the purpose of aggregate assessment, the exposure values were expressed in terms of margin of exposure (MOE) which was calculated by dividing the NOAEL by the exposure for each population subgroup. The benchmark MOE for this assessment is 100. Results from the cPAD based risk analysis showed that there were acceptable safety margins with respect to chronic exposures incurred by the dietary consumption of cyprodinil-treated commodities. Chronic exposures to the U.S. population (48 states, all seasons) resulted in a MOE of 1,274 (7.1% of the total cPAD of 0.03 mg/kg bwt/day). The most sensitive subpopulation in the

chronic assessment was children (1 to 6 years) with a MOE of 354 (25.5% of the cPAD). The results of the chronic dietary risk assessment are presented in Table 1.

b. *Drinking water exposure*. Estimated environmental concentrations (EEC's) of cyprodinil in drinking water were determined for the highest use rate of cyprodinil, which is almond. Screening concentration in ground water (SCI-GROW) (Version 2.1) was used to determine acute and chronic EECs in ground water. First (Version 1.0) was used to determine acute and chronic EECs in surface water. Based on model outputs, the EECs of cyprodinil are 0.0056 parts per billion (ppb) for acute and chronic exposure to ground water and 35 ppb and 1 ppb for acute and chronic exposure, respectively, to surface water. Chronic drinking water levels of comparison (DWLOC) were calculated based on a cPAD of 0.03 mg/kg/day. For the chronic assessment, children (1 to 6 years) subpopulation generated the lowest chronic DWLOC of approximately 224 ppb. This gave a corresponding MOE value of 27,000. The chronic DWLOC of 224 ppb is considerably higher than the chronic EEC of 1 ppb and the MOE far exceeds the benchmark MOE of 100. The results for the U.S. population and the most sensitive subpopulation are presented in Table 1.

2. *Non-dietary exposure*. Cyprodinil is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

3. *Chronic aggregate exposure*. Using the total MOE equation for the determination of aggregate exposure (food and drinking water only), resulted in an aggregate $MOE_T$ of 342 for the most sensitive subpopulation, children (1 to 6 years). Table 1 summarizes the aggregate chronic exposure (food and drinking water only) for cyprodinil.

TABLE 1.—CYPRODINIL CHRONIC AGGREGATE EXPOSURES

| Population Sub-group | Drinking Water MOE [A, B, C] | Drinking Water % cPAD[D] | Food MOE[A,B,C] | Food % cPAD[D] | $MOE_T$ [C, E] |
|---|---|---|---|---|---|
| U.S. population | 94,5 | 0,1 | 1,274 | 7,1 | 1,229 |
| Children (1 to 6 years) | 27 | 0,33 | 354 | 25,5 | 342 |

[A]MOE= NOAEL/Exposure

[B]NOAEL= 3.3 mg/kg body weight/day

[C]Benchmark MOE = 100

[D]cPAD = 0.03 mg/kg body weight/day

[E]$MOE_T = 1/((1/MOE_{food})+(1/MOE_{d.water}))$

*D. Cumulative Effects*

Cumulative exposure to substances with a common mechanism of toxicity. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' EPA does not have, at this time, available data to determine whether cyprodinil has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, cyprodinil does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that cyprodinil has a common mechanism of toxicity with other substances.

*E. Safety Determination*

1. *U.S. population*. The chronic dietary exposure analysis showed that exposure from the proposed new tolerances for the general U.S. population would be 7.1% of the cPAD.

2. *Infants and children*. The chronic dietary exposure analysis showed that exposure from the proposed new tolerances for children 1 to 6 years old (the subgroup with the highest exposure) would be 25.5% of the cPAD. Therefore, the estimates of dietary exposure clearly indicate adequate safety margins for the overall U.S. population.

*F. International Tolerances*

There are no Codex maximum residue level's established for cyprodinil.

[FR Doc. 02–10632 Filed 4–30–02; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2002–0029; FRL–6834–7]**

## Notice of Filing Pesticide Petitions to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

**DATES:** Comments, identified by docket control number OPP–2002–0029, must be received on or before May 31, 2002.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–2002–0029 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** Sidney Jackson, Registration Division (7505C, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7610; e-mail address: jackson.sidney@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS codes | Examples of potentially affected entities |
|---|---|---|
| Industry | 111<br>112<br>311<br><br>32532 | Crop production<br>Animal production<br>Food manufacturing<br>Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–2002–0029. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

*C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–2002–0029 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–2002–0029. Electronic comments may also be filed online at many Federal Depository Libraries.

*D. How Should I Handle CBI That I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

## List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food a additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 17, 2002.

**Debra Edwards,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

## Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required

by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

**Interregional Research Project 4 (IR–4)**

*2E6356, 2E6372, 2E6375, and 2E6376*

EPA has received pesticide petitions numbers 2E6356, 2E6372, 2E6375, and 2E6376, from the Interregional Research Project Number 4 (IR–4), 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390 proposing pursuant to section 408(d) of the FFDCA 21 U.S.C. 346a(d), to amend 40 CFR 180.507 by establishing and/or amending tolerances for the combined residues of azoxystrobin: (methyl (E)-2-2-[6-(2-cyanophenoxy)pyrimidin-4-yloxy]phenyl-3-methoxyacrylate) and the *Z* isomer of azoxystrobin, (methyl (Z)-2-2-[6-(2-cyanophenoxy)pyrimidin-4-yloxy]phenyl-3-methoxyacrylate) in or on the agricultural commodities:

1. PP# 2E6356 proposes to establish a tolerance for caneberry subgroup at 5.0 parts per million (ppm).
2. PP# 2E6372 proposes to increase the existing tolerance for pistachio from 0.02 ppm to 1.0 ppm.
3. PP# 2E6375 proposes to establish a tolerance for asparagus at 0.02 ppm.
4. PP# 2E6376 proposes to establish a tolerance for cranberry at 0.5 ppm.

Additional data may be needed before EPA rules on the petition. Syngenta Crop Protection, Inc. (Syngenta), Greenboro, North Carolina 27409, is the manufacturer of the chemical pesticide, azoxystrobin. Syngenta prepared and submitted the following summary of information, data, and arguments in support of the pesticide petitions. This summary does not necessarily reflect the findings of EPA.

*A. Residue Chemistry*

1. *Plant metabolism*. The metabolism of azoxystrobin as well as the nature of the residues is adequately understood for purposes of the proposed tolerances. Plant metabolism has been evaluated in four diverse crops, cotton, grapes, wheat, and peanuts which should serve to define the similar metabolism of azoxystrobin in a wide range of crops. Parent azoxystrobin is the major component found in crops. Azoxystrobin does not accumulate in crop seeds or fruits. Metabolism of azoxystrobin in plants is complex with more than 15 metabolites identified. These metabolites are present at low levels, typically much less than 5% of the total radioactive residue (TRR).

2. *Analytical method*. An adequate analytical method, gas chromatography with nitrogen-phosphorus detection (GC–NPD) or in mobile phase by high performance liquid chromatography with ultra-violet detection (HPLC-UV), is available for enforcement purposes with a limit of detection (LOD) that allows monitoring of food with residues at or above the levels set in these tolerances. The analytical chemistry section of EPA concluded that the method(s) are adequate for enforcement. Analytical methods are also available for analyzing meat, milk, poultry, and eggs which also underwent successful independent laboratory validations.

3. *Magnitude of residues*. Complete residue data for azoxystrobin on caneberries, cranberries, pistachios, head and stem brassica, and asparagus have been submitted. The requested tolerances are adequately supported.

*B. Toxicological Profile*

An assessment of toxic effects caused by azoxystrobin is discussed in Unit III. A. and Unit III. B. of the **Federal Register** dated September 21, 2001 (66 FR 48585).

1. *Metabolite toxicology*. There are no metabolites of concern based on a differential metabolism between plants and animals.

2. *Endocrine disruption*. There is no evidence that azoxystrobin is an endocrine disrupter.

*C. Aggregate Exposure*

1. *Dietary exposure from food and feed uses*. Permanent tolerances have been established (40 CFR 180.507(a)) for the combined residues of azoxystrobin and its *Z* isomer, in or on a variety of raw agricultural commodities at levels ranging from 0.02 ppm on tree nuts to 50 ppm on leaves of root and tuber vegetables. Included in these tolerances are the numerous ones for animal commodities which were established in conjunction with tolerances for animal feed.

i. *Food*. For the purposes of assessing the potential acute and chronic dietary exposure, Syngenta has estimated acute and chronic exposure for all registered crops (EPA) pending uses, and newly proposed uses. Novigen Sciences Inc. dietary exposure evaluation model (DEEM), which is licensed to Syngenta, was used to estimate the chronic and acute dietary exposure.

a. *Acute*. The DEEM model was used for analysis of individual food consumption as reported by the United States Department of Agriculture (USDA) (1994–1996 data with supplemental continuing survey of food intake by individuals (CSFII) children's survey) using the Tier I analysis. The Tier I analysis used tolerance values as anticipated residues. Syngenta's acute dietary exposure assessment estimated percent of the acute population adjusted dose (aPAD) and corresponding margins of exposure (MOE) for the overall U.S. population, and infants/children, as presented in Table 1.

TABLE 1.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO AZOXYSTROBIN

| Population Sub-group1 | aPAD Milligram/Kilogram/day (mg/kg/day) | Percent aPAD (Food) | Surface Water Estimated Environmental Concentration (EEC) Parts Per Billion (ppb) | Ground Water EEC (ppb) | Acute Drinking Water Levels of Concern (DWLOC) (ppb) |
|---|---|---|---|---|---|
| U.S. population | 0.67 | 12 | 170 | 0.06 | 21,000 |
| Children (1 to 6 years old) | 0.67 | 19 | 170 | 0.06 | 5,300 |

[1]Within each of these categories, the subgroup with the highest food exposure was selected.

b. *Chronic*. The DEEM model was used for analysis of individual food consumption as reported by the USDA (1994–1996 data with supplemental CSFII children's survey) using the Tier I analysis. The Tier I analysis used tolerance values as anticipated residues. Syngenta's chronic dietary exposure assessment estimated percent of the

cPAD and corresponding margins of exposure MOE for the overall U.S. population, and infants/children, as presented in Table 2.

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO AZOXYSTROBIN

| Population Sub-group1 | cPAD (mg/kg/day) | Percent cPAD (Food) | Surface Water EEC (ppb) | Ground Water EEC (ppb) | Acute DWLOC (ppb) |
|---|---|---|---|---|---|
| U.S. population | 0.18 | 14 | 33 | 0.06 | 5,600 |
| Children (1 to 6 years old) | 0.18 | 24 | 33 | 0.06 | 1,300 |

[1]Within each of these categories, the subgroup with the highest food exposure was selected.

ii. *From drinking water*. There is no established maximum concentration level (MCL) for residues of azoxystrobin in drinking water. No health advisory levels for azoxystrobin in drinking water have been established. The concentration of azoxystrobin in surface water based on generic estimated environmental concentration (GENEEC) modeling and in ground water based on screening concentration in ground water (SCI-GROW) modeling.

2. *From non-dietary uses*. Azoxystrobin is registered for residential use on ornamentals and turf. The Agency evaluated the existing toxicological data base for azoxystrobin and assessed appropriate toxicological endpoints and dose levels of concern that should be assessed for risk assessment purposes. Dermal absorption data indicate that absorption is less than or equal to 4%. Syngenta agrees with previous EPA short-term and intermediate-term risk assessments for residential exposure which show an aggregate MOE >450 for short-term exposure and MOE of >550 for intermediate-term exposure.

*D. Cumulative Effects*

Azoxystrobin is related to the naturally occurring strobilurins. Syngenta concluded that further consideration of a common mechanism of toxicity is not appropriate at this time since there are no data to establish whether a common mechanism exists with any other substance.

*E. Safety Determination*

1. *U.S. population*. The acute dietary exposure analysis showed that exposure from the proposed new tolerances the general U.S. population would be 12% of the aPAD.

2. *Infants and children*. The acute dietary exposure analysis showed that exposure from the proposed new tolerances for children 1 to 6 years old (the subgroup with the highest exposure) would be 19% of the aPAD.

The chronic dietary exposure analysis showed that exposure from the proposed new tolerances for children 1 to 6 years old (the subgroup with the highest exposure) would be 24% of the cPAD.

FFDCA section 408 provides that EPA shall apply an additional ten-fold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In either case, EPA generally defines the level of appreciable risk as exposure that is greater than 1/100 of the no observed effect level in the animal study appropriate to the particular risk assessment. This hundred-fold uncertainty (safety) factor/margin of exposure (safety) is designed to account for combined interspecies and intraspecies variability. EPA believes that reliable data support using the standard hundred-fold margin/factor not the additional ten-fold margin/factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard margin/factor. The Agency ad hoc Food Quality Protection Act (FQPA) safety factor committee removed the additional 10x safety factor to account for sensitivity of infants and children.

Syngenta has considered the potential aggregate exposure from food, water and non-occupational exposure routes and conclude that aggregate exposure is not expected to exceed 100% of the aPAD or cPAD and there is a reasonable certainty that no harm will result to infants and children from the aggregate exposure to azoxystrobin residues.

*F. International Tolerances*

There are no Codex MRLs established for azoxystrobin.

[FR Doc. 02–10633 Filed 4–30–02; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7204–3]**

## Gurley Pesticide Burial Superfund Site/ Selma, NC, Notice of Proposed Settlement

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed settlement.

**SUMMARY:** Under Section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), NSEW Corporation (Settling Respondent) entered into a Prospective Purchaser Agreement (PPA) with the Environmental Protection Agency (EPA), whereby the Respondent agrees to reimburse EPA a portion of its response costs incurred at the Gurley Pesticide Burial Superfund Site (Site) located in Selma, Johnston County, North Carolina. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region IV, CERCLA Program Services Branch, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887.

Written comment may be submitted to Mr. Greg Armstrong at the above address within 30 days of the date of publication.

Dated: April 19, 2002.

**James T. Miller,**

*Acting Chief, CERCLA Program Services Branch, Waste Management Division.*

[FR Doc. 02–10733 Filed 4–30–02; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7204–2]**

## Notice of Proposed Administrative Settlement Under Section 122 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. 9622, Taylor Lumber & Treating Superfund Site

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice; request for public comment.

**SUMMARY:** In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 *et seq.*, and by order of the United States Bankruptcy Court for the District of Oregon, notice is hereby given of a proposed Settlement Agreement concerning the Taylor Lumber & Treating National Priorities List Superfund Site. The proposed Settlement Agreement would resolve claims of the United States under sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), and section 3008(h) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6928(h), against Taylor Lumber & Treating, Inc. Taylor Lumber & Treating was authorized to enter into this settlement by an order of the United States Bankruptcy Court, District of Oregon, where Taylor Lumber & Treating has filed a Chapter 11 bankruptcy petition.

EPA will receive $500,000 in cash from the proceeds of the sale of the Taylor Lumber treating plant, which will be placed in a special account for use at the Site. EPA may also receive additional payments if the total amount of funds in the bankruptcy estate available for distribution to general unsecured creditors other than EPA is greater than $350,000. EPA will release its liens on Taylor Lumber's real property and will grant covenants not to sue to the company and its bankruptcy estate.

Because of the schedule in the bankruptcy proceeding, the Bankruptcy Court has ordered a fourteen-day period for public comments. For fourteen calendar days following the date of publication of this notice, EPA will accept written comments relating to the proposed Settlement Agreement. EPA's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, 1200 Sixth Ave., Seattle, WA 98101.

**DATES:** Comments must be submitted on or before fourteen days.

**ADDRESSES:** A copy of the proposed settlement may be obtained from Jennifer Byrne, Assistant Regional Counsel (ORC–158), Office of Regional Counsel, U.S. EPA Region 10, 1200 Sixth Ave., Seattle, WA 98101. Comments should reference ''Taylor Lumber & Treating Settlement Agreement'' and ''Docket No. CERCLA–10–2002–0034'' and should be addressed to Jennifer Byrne at the above address.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Byrne, Assistant Regional Counsel (ORC–158), Office of Regional Counsel, U.S. EPA Region 10, 1200 Sixth Ave., Seattle, WA 98101; phone: (206) 553–0050; fax: (206) 553–0163; e-mail: *byrne.jennifer@epa.gov.*

Dated: April 23, 2002.

**L. John Iani,**

*Regional Administrator.*

[FR Doc. 02–10732 Filed 4–30–02; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7203–4]**

## Clean Water Act Section 303(d): Final Agency Action on 45 Total Maximum Daily Loads (TMDLs)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability.

**SUMMARY:** This notice announces final agency action on 45 TMDLs prepared by EPA Region 6 for waters listed in Louisiana's Mermentau and Vermilion/Teche river basins, under section 303(d) of the Clean Water Act (CWA). EPA evaluated these waters and prepared the 45 TMDLs in response to the lawsuit styled *Sierra Club, et al.* v. *Clifford et al.,* No. 96–0527, (E.D. La.). Documents from the administrative record files for the final 45 TMDLs, including TMDL calculations and responses to comments, may be viewed at *www.epa.gov/region6/water/tmdl.htm.* The administrative record files may be obtained by calling or writing Ms. Caldwell at the above address. Please contact Ms. Caldwell to schedule an inspection.

**FOR FURTHER INFORMATION CONTACT:** Ellen Caldwell at (214) 665–7513.

**SUPPLEMENTARY INFORMATION:** In 1996, two Louisiana environmental groups, the Sierra Club and Louisiana Environmental Action Network (plaintiffs), filed a lawsuit in Federal Court against the United States Environmental Protection Agency (EPA), styled *Sierra Club, et al.* v. *Clifford et al.,* No. 96–0527, (E.D. La.). Among other claims, plaintiffs alleged that EPA failed to establish Louisiana TMDLs in a timely manner.

### EPA Takes Final Agency Action on 45 TMDLs

By this notice EPA is taking a final agency action on the following 45 TMDLs for waters located within the Mermentau and Vermilion/Teche basins:

| Subsegment | Waterbody Name | Pollutant |
|---|---|---|
| 050103 | Bayou Mallet | Ammonia. |
| 050402 | Lake Arthur and Lower Mermentau River to Grand Lake | Ammonia. |
| 050103 | Bayou Mallet | Nutrients. |
| 050402 | Lake Arthur and Lower Mermentau River to Grand Lake | Nutrients. |
| 050701 | Grand Lake | Nutrients. |
| 050702 | Intracoastal Waterway | Nutrients. |
| 050901 | Mermentau River Basin Coastal Bays and Gulf Waters to State 3-mile limit. | Nutrients. |
| 050103 | Bayou Mallet | Organic enrichment/low DO. |
| 050402 | Lake Arthur and Lower Mermentau | Organic enrichment/low DO. |
| 050602 | Intracoastal Waterway | Organic enrichment/low DO. |
| 050603 | Bayou Chene—includes Bayou Grand Marais | Organic enrichment/low DO. |

| Subsegment | Waterbody Name | Pollutant |
|---|---|---|
| 050701 | Grand Lake | Organic enrichment/low DO. |
| 050702 | Intracoastal Waterway | Organic enrichment/low DO. |
| 050802 | Big Constance Lake and Associated Waterbodies (Estuarine) | Organic enrichment/low DO. |
| 050901 | Mermentau River Basin Coastal Bays and Gulf Waters to State 3-mile limit. | Organic enrichment/low DO. |
| 060207 | Bayou des Glaises Diversion Channel | Nutrients. |
| 060210 | Bayou Carron | Nutrients. |
| 060601 | Charenton Canal | Nutrients. |
| 060701 | Tete Bayou | Nutrients. |
| 060803 | Vermilion River | Nutrients. |
| 060901 | Bayou Petite Anse | Nutrients. |
| 060903 | Bayou Tigre | Nutrients. |
| 060904 | Vermilion B890 Basin New Iberia Southern Drainage Canal | Nutrients. |
| 060907 | Franklin Canal | Nutrients. |
| 060909 | Lake Peigneur | Nutrients. |
| 060911 | Vermilion-Teche River Basin—(Dugas Canal) | Nutrients. |
| 061103 | Freshwater Bayou Canal | Nutrients. |
| 060207 | Bayou des Glaises Diversion Channel | Organic enrichment/low DO. |
| 060209 | Irish Ditch/Big Bayou—unnamed Ditch to Irish Ditch | Organic enrichment/low DO. |
| 060210 | Bayou Carron | Organic enrichment/low DO. |
| 060211 | West Atchafalaya Borrow Pit Canal | Organic enrichment/low DO. |
| 060212 | Chatlin Lake Canal | Organic enrichment/low DO. |
| 060601 | Charenton Canal | Organic enrichment/low DO. |
| 060701 | Tete Bayou | Organic enrichment/low DO. |
| 060703 | Bayou du Portage | Organic enrichment/low DO. |
| 060803 | Vermilion River Cutoff | Organic enrichment/low DO. |
| 060901 | Bayou Petite Anse | Organic enrichment/low DO. |
| 060903 | Bayou Tigre | Organic enrichment/low DO. |
| 060904 | Vermilion River B890 Basin New Iberia Southern Drainage Canal | Organic enrichment/low DO. |
| 060907 | Franklin Canal | Organic enrichment/low DO. |
| 060908 | Spanish Lake | Organic enrichment/low DO. |
| 060909 | Lake Peigneur | Organic enrichment/low DO. |
| 060911 | Vermilion-Teche River Basin—(Dugas Canal) | Organic enrichment/low DO. |
| 061001 | West Cote Blanche Bay | Organic enrichment/low DO. |
| 061103 | Freshwater Bayou Canal | Organic enrichment/low DO. |

EPA requested the public to provide EPA with any significant data or information that may impact the 45 TMDLs at **Federal Register** Notice: Volume 66, Number 199, pages 52403–52404 (October 15, 2001). The comments received and EPA's response to comments may be found at *www.epa.gov/region6/water/tmdl.htm.*

Dated: April 22, 2002.

**Sam Becker,**

*Acting Director, Water Quality Protection Division, Region 6.*

[FR Doc. 02–10631 Filed 4–30–02; 8:45 am]

BILLING CODE 6560–50–P

## FARM CREDIT ADMINISTRATION

### Proposed Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Farm Credit Administration

**AGENCY:** Farm Credit Administration.

**ACTION:** Notice of availability of proposed guidelines.

**SUMMARY:** Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106–554; H.R. 5658) requires all Federal agencies to issue guidelines ensuring and maximizing the quality, objectivity, utility, and integrity of the information (including statistical information) that they disseminate. Agencies are required to issue their guidelines within 1 year after the Office of Management and Budget (OMB) issued procedural guidance to them. *See* 66 FR 49718, September 28, 2001. OMB's final guidance requires agencies to post their draft guidelines on their Web sites by May 1, 2002. The agencies are also required to publish a notice of the availability of their draft guidelines in the **Federal Register**. *See* 67 FR 369, January 3, 2002. The Farm Credit Administration (FCA) is hereby publishing notice of the availability of its draft guidelines on its Web site at *http://www.fca.gov* as of May 1, 2002.

**DATES:** Please send your comments to FCA by May 31, 2002.

**ADDRESSES:** You may send comments on the draft guidelines by electronic mail to Doug Valcour at *valcourd@fca.gov.* You may also mail or deliver written comments to Doug Valcour, Chief Information Officer, Office of Chief Information Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 or fax them to (703) 734–5784. You may review copies of all comments we receive in the Office of Chief Information Officer, Farm Credit Administration.

**FOR FURTHER INFORMATION CONTACT:** Cheryl Thomas, Director, Information Management Division, Office of Chief Information Officer, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4119, TDD (703) 883–4444; or Doug Valcour, Chief Information Officer, Office of Chief Information Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4166, TDD (703) 883–4444.

Dated: April 26, 2002.

**Kelly Mikel Williams,**

*Secretary, Farm Credit Administration.*

[FR Doc. 02–10721 Filed 4–30–02; 8:45 am]

BILLING CODE 6705–01–P

## FEDERAL COMMUNICATIONS COMMISSION

**[DA 01–2338]**

### Telecommunications Services Between The United States and Cuba

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** On October 18, 2001 the Commission authorized Sprint Communications Company, L.P. (Sprint) to lease and operate additional satellite facilities to upgrade an existing private line circuit from 2 Mbps to 6 Mbps between the United States and Cuba via an INTELSAT AOR satellite. Sprint is currently authorized by the Commission to provide service directly to Cuba. The Commission has authorized Sprint to provide service between the United States and Cuba in accordance with the provisions of the Cuban Democracy Act. Under the guidelines established by the Department of State, Sprint must submit reports indicating the numbers of circuits activated by facility, on or before June 30th, and December 31st of each year, and on the one-year anniversary of this notification in the **Federal Register**.

**DATES:** Effective October 5, 2001.

**FOR FURTHER INFORMATION CONTACT:** Claudia Fox, Deputy Chief, Policy Division, International Bureau, (202) 418–1527.

Federal Communications Commission.

**James Ball,**

*Chief, Policy Division, International Bureau.*

[FR Doc. 02–10655 Filed 4–30–02; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Disseminated Information

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice; solicitation of comments.

**SUMMARY:** The Federal Communications Commission (Commission) has made available its Draft Information Quality Guidelines pursuant to the requirements of the Office of Management and Budget's (OMB's) Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information Disseminated by Federal Agencies, 67 FR 8452, February 22, 2002.

**DATES:** The Commission must receive written comments on or before June 28, 2002.

**ADDRESSES:** Comments must be written and should be addressed to Dr. Karen Wheeless, Data Quality Guideline Comments, Room 1–A807, Office of Managing Director, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554 or to *kwheeles@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Dr. Karen Wheeless, Office of Managing Director, 202–418–2910, or by e-mail to *kwheeles@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106–554) directs OMB to issue government-wide guidelines that ''provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility and integrity of information (including statistical information) disseminated by Federal agencies.'' The OMB guidelines require each agency to prepare a draft report providing the agency's information quality guidelines. Each agency further is required to publish a notice of availability of this draft report in the **Federal Register** and to post this report on its Web site by May 1, 2002, to provide an opportunity for public comment. The Commission will post its draft Information Quality Guidelines on its Web site at (*www.fcc.gov/omd/dataquality*) and encourages public comment on the report.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 02–10585 Filed 4–30–02; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### FDIC Section 515 Information Quality Guidelines

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Notice of availability of guidelines and request for comments.

**SUMMARY:** The Federal Deposit Insurance Corporation (FDIC) is seeking comments on its draft Section 515 Information Quality Guidelines, which are available on the FDIC Web site: *http://www.fdic.gov/regulations/laws/publiccomments/index.html.* The Information Quality Guidelines describe the FDIC's procedures for reviewing and substantiating the quality of information before it is disseminated to the public, and the procedures by which an affected person may request correction of information disseminated by the FDIC that does not comply with the information quality guidelines. The FDIC will consider comments in developing its final information quality guidelines.

**DATES:** Comments are due by June 1, 2002.

**ADDRESSES:** Written comments should be addressed 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 at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. Send facsimile transmissions to fax number (202) 898–3838. Comments may be submitted electronically to *comments@fdic.gov.* Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC 20429, between 9 a.m. and 4:30 p.m. on business days.

**FOR FURTHER INFORMATION CONTACT:** Patricia Klear, Special Assistant to the Director, Division of Information Resources Management, 3501 Fairfax Drive, Room 7083, Arlington, VA 22226 *pklear@fdic.gov.*

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; 114 Stat. 2763).

Dated: April 23, 2002.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 02–10430 Filed 4–30–02; 8:45 am]

**BILLING CODE 6714–01–P**

## FEDERAL MARITIME COMMISSION

### Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

*Agreement Nos.: 011560–005, 011785–002.*

*Title:* The Transatlantic Bridge Agreement; COSCON/KL/YMUK Asia/U.S. East and Gulf Coast/Mediterranean Vessel Sharing Agreement.

*Parties:* COSCO Container Lines Company, Limited, Kawasaki Kisen Kaisha, Ltd., Yangming Marine Transport Corporation, Yangming (U.K.), Ltd.

*Synopsis:* The proposed agreement modifications add a provision relating to inland rates and land-side operations to conform with European Union law. The parties request expedited review.

*Agreement No.:* 011561–005, 011562–006.

*Title:* COSCO/KL Transatlantic Vessel Sharing Agreement; KL/YM Transatlantic Vessel Sharing Agreement.

*Parties:* COSCO Container Lines Company, Limited, Kawasaki Kisen Kaisha, Ltd., Yangming Marine Transport Corporation.

*Synopsis:* The proposed agreement modifications authorize COSCO to sub-charter slots to Zim Israel Navigation Company, Ltd. and adds a provision relating to inland rates and land-side operations to conform with European Union law. The parties request expedited review.

*Agreement No.:* 011733–004.

*Title:* Common Ocean Carrier Platform Agreement.

*Parties:* A.P. Moller-Maersk Sealand, Alianca Navegacao e Logistica Ltda., CMA CGM, S.A., Hamburg-Sud, Hapag-Lloyd Container Linie GmbH, Mediterranean Shipping Company, S.A., Nippon Yusen Kaisha, P&O Nedlloyd Limited, Safmarine Container Lines N.V., United Arab Shipping Company (S.A.G.).

*Synopsis:* The proposed agreement modification adds Nippon Yusen Kaisha as a non-shareholder party to the agreement.

*Agreement No.:* 011799.

*Title:* The Evergreen/Lloyd Triestino/Hatsu Marine Alliance/TSA Bridging Agreement.

*Parties:* Evergreen Marine Corp. (Taiwan) Ltd., Lloyd Triestino Di Navigazione S.P.A., Hatsu Marine Limited, American President Lines, Ltd. and APL Co. PTE Ltd.(operating as a single carrier), A.P. Moller-Maersk Sealand, CMA CGM S.A., Cosco Container Lines Ltd., Hanjin Shipping Company, Ltd., Hapag-Lloyd Container Linie GmbH, Hyundai Merchant Marine Co., Ltd., Kawasaki Kisen Kaisha, Ltd., Mitsui O.S.K. Lines, Ltd., Nippon Yusen Kaisha, Orient Overseas Container Line Limited, P&O Nedlloyd B.V., P&O Nedlloyd Limited, Yangming Marine Transport Corp.

*Synopsis:* The proposed agreement authorizes a ''bridge'' agreement between the Evergreen/Lloyd Triestino/Hatsu Marine Alliance Agreement and the Transpacific Stabilization Agreement (''TSA''). The Agreement will permit Lloyd Triestino and Hatsu, as well as their affiliate Evergreen, to discuss, share information, and reach voluntary agreements with the TSA and its members.

By Order of the Federal Maritime Commission.

Dated: April 26, 2002.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 02–10737 Filed 4–30–02; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

*License Number:* 14289N.

*Name:* BCR Freight (USA) Inc.

*Address:* 161 W. Victoria Street, Suite 240, Long Beach, CA 90805.

*Date Revoked:* April 12, 2002.

*Reason:* Failed to maintain a valid bond.

*License Number:* 4153N.

*Name:* Coda International, Inc.

*Address:* 239 New Road, Bldg. #A, Rm. 103, Parsippany, NJ 07054.

*Date Revoked:* March 31, 2002.

*Reason:* Failed to maintain a valid bond.

*License Number:* 14580N.

*Name:* Euro-America Container Line Inc.

*Address:* 12981 Ramona Blvd., Suite A, Irwindale, CA 91706.

*Date Revoked:* April 4, 2002.

*Reason:* Failed to maintain a valid bond.

*License Number:* 10614N.

*Name:* Five Oceans Cargo Lines, Ltd.

*Address:* 836 Five Forks Road, Virginia Beach, VA 23455.

*Date Revoked:* April 12, 2002.

*Reason:* Failed to maintain a valid bond.

*License Number:* 6347N.

*Name:* Josefina Seberger, Inc. dba Serve Freight Systems.

*Address:* 5123 Maplewood Avenue, Los Angeles, CA 90004.

*Date Revoked:* April 5, 2002.

*Reason:* Failed to maintain a valid bond.

*License Number:* 7802N.

*Name:* Orient Star Trading & Shipping, Inc.

*Address:* 38–01 69th Street, Woodside, NY 11377.

*Date Revoked:* April 3, 2002.

*Reason:* Failed to maintain a valid bond.

*License Number:* 16267N.

*Name:* Trident Transport International, Inc.

*Address:* 215 W. Diehl Road, Naperville, IL 60563.

*Date Revoked:* April 12, 2002.

*Reason:* Failed to maintain a valid bond.

**Sandra L. Kusumoto,**

*Director, Bureau of Consumer Complaints and Licensing.*

[FR Doc. 02–10738 Filed 4–30–02; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL RESERVE SYSTEM

**[Docket No. R–1121]**

### Draft Guidance for Information Dissemination Quality Guidelines; Availability

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice.

**SUMMARY:** The Federal Reserve Board (FRB) is announcing the availability of draft guidelines for the public entitled ''Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Federal Reserve.'' The guidelines can be found on the Federal Reserve Board's public web site, *www.FederalReserve.gov.* The document is intended to provide guidance to the public on the procedures the agency has in place for reviewing and substantiating the quality of the information that is disseminated. The guidelines also provide a mechanism for affected individuals to provide complaints to the agency. The Federal Reserve's guidelines are being issued pursuant to the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106–554, Section 515).

**DATES:** Submit written or electronic comments on the draft guidance by May 31, 2002.

**ADDRESSES:** Comments should refer to Docket No. R–1121 and should be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the

Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e-mail to *regs.comments@federalreserve.gov,* or faxing them to the Office of the Secretary at 202–452–3819 or 202–452–3102. Comments addressed to Ms. Johnson may also be delivered to the Board's mail facility in the West Courtyard between 8:45 a.m. and 5:15 p.m., located on 21st Street between Constitution Avenue and C Street, NW. Members of the public may inspect comments in Room MP–500 between 9 a.m. and 5 p.m. on weekdays pursuant to 261.12, except as provided in 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Mary M. West, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact 202–263–4869.

Board of Governors of the Federal Reserve System, April 25, 2002.

**Margaret McCloskey Shanks,**

*Assistant Secretary of the Board.*

[FR Doc. 02–10678 Filed 4–30–02; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL TRADE COMMISSION

### Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Federal Trade Commission

**AGENCY:** Federal Trade Commission (FTC).

**ACTION:** Notice of availability of draft guidelines; request for public comment.

**SUMMARY:** The FTC is making available its draft guidelines to implement section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 and government-wide guidance issued by the Office of Management and Budget for ensuring and maximizing the quality, objectivity, utility, and integrity of information disseminated by Federal agencies.

**DATES:** Comments must be submitted on or before June 1, 2002.

**ADDRESSES:** For comments in paper form: Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., NW., Washington, DC 20580. For comments in electronic form: *515@ftc.gov.* Provide electronic attachments, if any, in ASCII, WordPerfect, or Microsoft Word format. Please caption all comments: ''Comment—Draft 515 Guidelines.'' Pursuant to Commission Rule 4.2(d), 16 CFR 4.2(d), if your comment includes confidential materials or other private or sensitive information, please submit your comment in paper form, label the first page ''confidential,'' and also identify the information you consider to be confidential, private, or otherwise sensitive. Except for portions legally exempt from disclosure, comments may be made part of the public record or otherwise disclosed in accordance with applicable law, rules, and Commission policy. *See* 16 CFR 4.9(b); *www.ftc.gov/ftc/privacy.htm.* As discussed below, the FTC's draft section 515 guidelines are being posted on the Commission's Web site *www.ftc.gov.* Requests for paper copies of the guidelines should be addressed to the Public Reference Branch, FTC, 600 Pennsylvania Ave. NW., Washington, DC, 20580, (202) 326–2222.

**FOR FURTHER INFORMATION CONTACT:** Alex Tang, (202) 326–2447, or Gary Greenfield, (202) 326–2753, Attorneys, Office of the General Counsel, FTC; Daniel Danckaert, (202) 326–2222, Office of the Chief Information Officer, FTC.

**SUPPLEMENTARY INFORMATION:** Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001, Public Law 106–554, and implementing guidance issued by the Office of Management and Budget (OMB) require agencies to develop and issue guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of information that they disseminate to the public. *See* 67 FR 8452 (Feb. 22, 2002) (OMB Guidelines republished in their entirety).

Each agency is required to prepare and make available to the public a draft report, providing the agency's information quality guidelines and explaining how the guidelines will achieve information quality, utility, objectivity, and integrity. (In a notice published on March 4, 2002, OMB extended the original deadline for this draft report of April 1, 2002, to May 1, 2002. *See* 67 FR 9797.) The report must also detail the administrative mechanisms developed by the agency to allow affected persons to seek and obtain appropriate correction of information maintained and disseminated by the agency that does not comply with the OMB or the agency guidelines. The agency is required to publish a notice of availability of its draft report in the **Federal Register** and to post the report on the Web site to provide an opportunity for public comment. After consideration of such comment and appropriate revision, if any, the agency must submit the report to OMB no later than July 1, 2002. After comments, if any, are received from OMB, the agency must publish a notice of the availability of the report in its final form in the **Federal Register** and post the report on its Web site no later than October 1, 2002, which is the date the agency's guidelines are to become effective. The agency is required to submit further reports, on an annual fiscal-year basis, to OMB, by January 1 of each following year, regarding the number and nature of complaints received regarding agency compliance with the OMB guidelines and how such complaints were resolved. The first annual report is due January 1, 2004.

In accordance with the above requirements, the FTC is publishing this notice of the availability of its draft report pursuant to section 515 and the OMB Guidelines. The FTC's report, which includes the draft information quality guidelines and draft administrative mechanism for resolving section 515 requests for correction of information dissemination products, is being posed on the FTC's Web site, *www.ftc.gov.* The FTC seeks public comment on the guidelines and administrative mechanism until June 1, 2002. The FTC will review the comments and make appropriate revisions, if any, before submitting the report to OMB by July 1, 2002, as required by section 515 and the OMB Guidelines.

### Paperwork Reduction Act

The administrative mechanism for affected persons seeking correction of FTC information dissemination products is not an agency information collection activity that requires OMB review and approval under the Paperwork Reduction Act, 44 U.S.C. 3501–3520. *See* 5 CFR 1320.3(h)(1).

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 02–10690 Filed 4–30–02; 8:45 am]

**BILLING CODE 6750–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Draft Report on Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information Disseminated by HHS Agencies

**AGENCY:** Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability for comment of the U.S. Department of Health and Human Services Draft Agency Guidelines for Ensuring the Quality of Information Disseminated to the Public. The HHS Draft Agency Guidelines have been developed pursuant to the government-wide OMB Guidelines for Information Quality published on January 3, 2002. Comments are invited on the HHS draft guidelines, which are now available for review and comment at the following HHS Web site: *http://www.hhs.gov/infoquality*

**DATES:** Comments on the HHS draft agency guidelines must be submitted by 5 p.m., May 31, 2002.

**ADDRESSES:** Please submit written comments to Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation, Attn: Information Quality Comments, U.S. Department of Health and Human Services, Room 440D, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. Comments also may be e-mailed to *Info.comments@hhs.gov.* Single copies of the draft report are also available by contacting the Division of Data Policy at (202) 690–7100.

**FOR FURTHER INFORMATION CONTACT:** James Scanlon, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation, U.S. DHHS, Telephone (202) 690–7100.

**SUPPLEMENTARY INFORMATION:** On January 3, 2002, OMB issued final guidelines to federal agencies that implement Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554). Section 515 directs OMB to issue government-wide guidelines that provide policy and procedural guidance to federal agencies for ensuring and maximizing the quality, objectivity, utility and integrity of information (including statistical information) disseminated by federal agencies. The OMB guidelines in turn direct each federal agency to issue its own guidelines for ensuring the quality, objectivity, utility and integrity of the information it disseminates to the public, including administrative mechanisms allowing affected persons to seek and obtain, where appropriate, correction of information disseminated by the agency that does not comply with the guidelines. The agency's guidelines will apply to information that the agency first disseminates on or after October 1, 2002.

The OMB Guidelines further direct federal agencies to prepare a draft report, no later than May 1, 2002, providing the agency's information quality guidelines and describing the administrative mechanisms developed by the agency to allow affected persons to seek and obtain appropriate correction of information. The agency also is directed to publish a notice of the availability of this draft report in the **Federal Register,** and post this report on the agency's Web site to provide an opportunity for public comment.

### HHS Draft Agency Guidelines

In accordance with the requirements of the OMB Guidelines, the HHS draft report on agency guidelines is now available for review and comment at the following HHS Web site: *http://www.hhs.gov/infoquality.*

Within HHS, we have developed draft guidelines for each of the HHS Operating Agencies and Staff Offices that disseminate substantive information subject to the OMB guidelines. Our HHS draft report includes an HHS overview and summary followed by agency specific information quality guidelines. For each operating agency identified below, our draft report describes the following information—the mission of the agency, the scope and applicability of the guidelines within the agency, the types of information that the agency disseminates to the public, the types of dissemination methods employed, the agency quality assurance procedures, and the agency administrative mechanisms to allow affected persons to seek correction of agency information.

A. Administration for Children and Families
B. Administration on Aging
C. Agency for Healthcare Research and Quality
D. Centers for Disease Control and Prevention/Agency for Toxic Substances & Disease Registry
E. Centers for Medicare and Medicaid Services
F. Food and Drug Administration
G. Health Resources and Services Administration
H. Indian Health service
I. National Institutes of Health
J. Substance Abuse and Mental Health Services Administration
K. Office of the Secretary
1. Office of the Assistant Secretary for Planning and Evaluation
2. Office of Public Health and Science
3. Office of the Inspector General

### Comments Invited

Comments on the draft report are invited and must be submitted in writing to the office and email addresses specified. Because of staff and resource limitations, we cannot respond to individual comments.

Dated: April 24, 2002.

**William Raub,**

*Deputy Assistant Secretary for Planning and Evaluation.*

[FR Doc. 02–10553 Filed 4–30–02; 8:45 am]

BILLING CODE 4151–05–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control And Prevention

**[60Day–02–47]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506 (c)(2)(A) of the Paperwork reduction Act of 1995, the Center for Disease Control and Prevention is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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 for other forms of information technology. Send comments to Seleda M. Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

*Proposed Projects:* PHS Supplements to the Application for Federal Assistance SF–424 (0920–0428)—Extension—Office of the Director (OD), Centers for Disease Control and

Prevention (CDC) is requesting a three-year extension for continued use of the Supplements to the Request for Federal Assistance Application (SF–424). The Checklist, Program Narrative, and the Public Health System Impact Statement (third party notification) (PHSIS) are a part of the standard application for State and local governments and for private non-profit and for-profit organizations when applying for financial assistance from PHS grant programs. The Checklist assists applicants to ensure that they have included all required information necessary to process the application. The Checklist data helps to reduce the time required to process and review grant applications, expediting the issuance of grant awards. The PHSIS Third Party Notification Form is used to inform State and local health agencies of community-based proposals submitted by non-governmental applicants for Federal funding. There is no cost to the respondent.

| Respondents | Number of respondents | Number of responses/ respondent | Avg. burden/ response (in hrs.) | Total burden (in hrs.) |
|---|---|---|---|---|
| State and local health departments; non-profit and for-profit organizations | 7,457 | 1 | 5.7255 | 42,695 |
| Total | | | | 42,695 |

Dated: April 25, 2002.

**Nancy Cheal,**

*Acting Associate Director for Policy, Planning and Evaluation Centers for Disease Control and Prevention (CDC).*

[FR Doc. 02–10682 Filed 4–30–02; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30DAY–26–02]**

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes 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). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

*Proposed Project:* Preventing Hearing Loss Among Construction Workers—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC). The mission of the National Institute for Occupational Safety and Health (NIOSH) is to promote safety and health at work for all people through research and prevention. Using Health Belief/ Promotion models and stages of change theory (Prochaska's Transtheoretical Model), NIOSH has collaborated with the United Brotherhood of Carpenters (UBC) to develop a comprehensive hearing loss prevention program targeted specifically for carpenter apprentices. As part of the impact and evaluation component of this project, a survey will be administered to assess carpenter apprentices' hearing health attitudes, beliefs, and behavioral intentions before and after they receive the training program and at a one-year follow-up interval. The survey was developed and validated by NIOSH in collaboration with university partners and the UBC. This study involves 400 carpenters divided into four groups of 100 each: three experimental groups and one control group. Each of the three experimental groups will participate in one of three methods for delivering OSHA-required hearing loss prevention training (29 CFR, subpart D, 1926.52). The 300 participants in the experimental groups will be given one survey prior to training and a second survey (using an equivalent form) after training. The control group will not receive the experimental training and will simply be given one survey in conjunction with existing apprentice training activities. Half (50) of the participants in the control group will be administered one form, and the other half (50) will be given the equivalent form. This process will be repeated one and two years after the initial survey administration activities. Data collected in this investigation will enable NIOSH to better evaluate the effectiveness of the hearing loss prevention program in educating and motivating these workers to actively protect their hearing well before they suffer permanent noise-induced hearing loss. The annual burden for this data collection is 140 hours.

| Form name | Number of respondents | Responses per respondent | Hours per response |
|---|---|---|---|
| Form A | 350 | 1 | 12/60 |
| Form B | 350 | 1 | 12/60 |

Dated: April 25, 2002.

**Nancy E. Cheal,**

*Acting Associate Director for Policy, Planning and Evaluation Centers for Disease Control and Prevention.*

[FR Doc. 02–10683 Filed 4–30–02; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Disease Control and Prevention

**[Program Announcement 02044]**

## A Community-Based Intervention with Opinion Leaders to Achieve Syphilis Elimination; Notice of Availability of Funds

### A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year FY 2002 funds for a cooperative agreement research program for a Community-Based Intervention with Popular Opinion Leaders (CPOL) to Achieve Syphilis Elimination. This program addresses the ''Healthy People 2010'' objectives for Sexually Transmitted Diseases (STDs). This project also addresses the ''National Plan to Eliminate Syphilis from the United States'' pertaining to the strengthening of community involvement and partnerships and enhanced health promotion. For a copy of the ''National Plan to Eliminate Syphilis from the United States,'' visit the Internet site: *http://www.cdc.gov/stopsyphillis.*

It is intended that this research program will be conducted in communities that are located in high morbidity areas (HMAs) for syphilis as defined by the CDC on Attachment A. Funding is available for two demonstration sites for up to three years.

The goal of this research program is to implement and evaluate a community level intervention to prevent transmission of primary and secondary syphilis in rural and urban communities by training key community members (*i.e.* opinion leaders) within the affected communities to promote risk reduction and health seeking behaviors. The intervention that will be evaluated in this demonstration project is the Popular Opinion Leader (POL) model (Kelly, St. Lawrence, Stevenson, *et al,* 1992). For the purposes of this announcement and research program, POL will be referred to as the Community Popular Opinion Leader (CPOL) model. The CPOL model is based on Diffusion of Innovation Theory (Rogers, 1985), which suggests that changes can be rapidly disseminated and subsequently adopted by identifying, enlisting, and training opinion leaders within the affected community to endorse the desired behaviors. The Community Opinion Leaders function as ''agents of change'' by disseminating and personally endorsing health promotion (*e.g.* syphilis prevention) messages. They utilize their ability to influence other community members and facilitate changes in social norms and behaviors by sharing factual information, expressing their concern for syphilis prevention, and endorsing and modeling effective behavior change strategies within their social and sexual networks.

It has been empirically determined that the CPOL model is effective in reducing HIV-related sexual risk of men who have sex with men (MSM) in U.S. cities (*e.g.* Kelly, St. Lawrence, Stevenson, Hauth, *et al.,* 1992; Kelly, Murphy, Sikkema, McAuliffe *et al.,* 1997), and ethnic minority women who lived in urban low-income housing (Sikkema, Kelly, Winett, Solomon *et al.,* 2000). The Popular Opinion Leader model is also included in the ''Compendium of HIV Prevention Interventions with Evidence of Effectiveness.'' For a copy of the ''Compendium of HIV Interventions,'' visit the Internet site: *http://www.cdcnpin.org/Reports/HIVcompendium.pdf.* Although the CPOL model is effective in reducing HIV risk, its efficacy in preventing STDs other than HIV has never been empirically determined.

The goal of this research project is to evaluate the utility of the CPOL model in preventing primary and secondary syphilis in rural and urban HMA communities. It is required that the proposed research program be implemented in communities located in HMAs for syphilis. Applications should target heterosexually active adults at risk for syphilis due to sexual risk behaviors. It is also required that the program include collaboration between the local health department, community-based organizations (CBOs) that work directly with the at-risk population, and university researchers experienced in designing, implementing, and evaluating community-level interventions for STD/HIV prevention.

*Overall Study Objectives*

The overall objectives for this research program are:

(1) To design and implement a community-level intervention to prevent syphilis based on the (CPOL) model and using an experimental design.

(2) To target the CPOL intervention for heterosexually active adults at risk for syphilis infection and living in counties identified as HMAs.

(3) To evaluate the effectiveness of the CPOL intervention by identifying changes in attitudes, beliefs, health care seeking, sexual risk behaviors, and syphilis incidence in the intervention community, as compared to a similar community that does not receive the CPOL intervention.

### B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies including public and nonprofit faith-based organizations; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, and federally recognized Indian Tribal Governments, Indian Tribes, or Indian Tribal Organizations.

**Note:** Title 2 of the United State Code Section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

Other eligibility criterias include the following:

(1) Applicants must use the CPOL model as a basis for the community level intervention.

(2) Applicants must target male and female heterosexually active adults at-risk for syphilis infection.

(3) Applicants must implement the research program in two rural or two urban communities within project areas that are defined as (HMAs) for syphilis and received 2002 funding for syphilis elimination (*see* Attachment A).

(4) The two urban or two rural communities must be a matched pair, similar in population and demographic characteristics. The matched pair should also be located in the same state. One community must serve as the study community and have the interventions implemented immediately, while the matched community must serve as the control and have the interventions offered after the completion of the research program.

(5) The locations of the communities, within each matched pair of urban or rural sites, must be such that activities implemented in one community are unlikely to have any impact in the other.

**C. Availability of Funds**

Approximately $400,000 is available in FY 2002 to fund up to two awards. It is expected that the average award will be $200,000. It is expected that one application proposing two matched urban sites and one application proposing two matched rural sites will be awarded. It is expected that awards will be made on or before September 30, 2002 and will be made for a 12 month budget period within a project period of up to three years. Funding estimates may change depending upon the availability of funds.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

*1. Use of Funds*

Funds are awarded for a specifically defined purpose and may not be used for any other purpose or program. Funds may be used to support personnel and to purchase equipment, supplies and services directly related to project activities. Funds may not be used to supplant state or local health department funds, provide direct medical care (e.g., purchase of pharmaceuticals) or prevention case management.

*2. Funding Preferences*

Funds may be awarded in such a way as to achieve geographic distribution, and representation of counties affected by high syphilis morbidity.

**D. Program Requirements**

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for activities listed under 2. CDC Activities.

*1. Recipient Activities*

a. Design and conduct a research program to address the study objectives in Section A by implementing and evaluating a community-level intervention to prevent syphilis using the er (CPOL) model and targeting heterosexually active adults at risk for syphilis infection in urban or rural HMA communities.

b. Identify appropriate personnel for the project. Skills and experience of project personnel must include: (1) Familiarity with syphilis transmission, treatment and prevention. (2) Experience working within communities experiencing high rates of syphilis. (3) Experience working with community-based organizations that serve target population living in high syphilis morbidity areas. (4) Experience implementing and managing theory-driven and community based intervention projects. (5) Evaluation expertise.

c. Have in place or establish collaborative relationships with appropriate partners to accomplish project goals. Partnerships must include health departments, university based researchers and community based organizations that serve and are able to access and work with at-risk heterosexually active men and women in the targeted communities.

d. Collaborate with other recipients in developing and collecting a common set of core variables to permit systematic comparisons.

e. Collaborate with other recipients and CDC during the development, implementation and evaluation of the project.

f. Collaborate with other recipients and CDC to disseminate interim reports of research activities to regional, state and local partners.

g. Submit and obtain approval of the study protocols by the recipient's local institutional review board(s) and the CDC Institutional Review Board (IRB). Activities must be conducted in compliance with Protection of Human Subjects (45 CFR part 46).

h. Establish procedures to maintain the rights and confidentiality of all study participants, including securing any assurances necessary to conduct research involving human subjects.

i. Conduct local data management activities including data collection and management. Data collection may include street intercept interviews, focused individual interviews, role play assessment, paper and pencil measures, and process measures. Management of the data will include security of data, assurance of participant confidentially, data entry, and timely forwarding of data to the CDC project officer.

j. Analyze and disseminate results through reports, presentations, and publications.

k. Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant. Measures must be objective/quantitative and must measure the intended outcome. These Measures of Effectiveness shall be submitted with the application and shall be an element of the evaluation.

*2. CDC Activities*

A cooperative agreement reflects an assistance relationship between the Federal Government and the recipient in which substantial programmatic involvement is anticipated about the scientific and/or technical management of this research and or technical management of this research during its performance. With this in mind, CDC will:

a. Provide up-to-date scientific information, technical assistance, and guidance in the design and conduct of the research.

b. Provide technical assistance to awardees in developing and collecting a common set of core variables to enable comparison between project areas. Collaborative activities may include assistance on the development of common data collection instruments and developing a centralized system for data management for the core set of data elements collected by each funded project area.

c. Assist in the development of a common research protocol for annual IRB review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project, including analyses, is completed.

d. Assist in ensuring human subjects assurances are in place as needed.

e. Provide technical assistance on data collection methods, sampling methodology, intervention delivery, and quality assurance.

f. Assist in analysis and dissemination of results, including the preparation of manuscripts, as needed.

g. Monitor and evaluate the scientific and operational accomplishments of the project. This will be accomplished through periodic site visits, telephone calls, electronic communication, technical reports and interim data analyses.

h. Convene meetings of recipients for the exchange of information.

**E. Content**

*Letter of Intent (LOI)*

A Letter of Intent (LOI) is required for this research program. The narrative should be no more than three single spaced pages, printed on one side, with one-inch margins, and unreduced font. Your LOI will be used to prepare for the special emphasis panel (SEP) that will review the scientific merit of the applications, and should include the following information: Program Announcement Number 02044; name and address of institution; name and telephone number of a contact person; specific objectives to be addressed by the proposed project; and a brief description of project plans. Although

an LOI is required, the terms of the LOI are not binding and will not be used in the review of the application.

*Applications*

Applications must be developed in accordance with the information contained in this program announcement, the PHS 398 Grant Application, and the instructions provided in this section. Use the information in the Purpose, Program Requirements, and Evaluation Criteria to develop the application content. Your application will be evaluated on the criteria listed below, so it is important to address each, preferably in order, with sufficient detail. Applicants may submit only one proposal.

The narrative should be no more than 25 double spaced pages, printed on one side, with one-inch margins, unreduced font, and a number on each page. Applications with more than 25 pages will be returned and not reviewed. Please provide only attachments or appendices that are directly relevant to this request for funding. The budget and attachments/appendices, including letters of support, are not included in the count for the 25-page limit. All pages, including appendices, should be numbered sequentially. To document eligibility, the narrative must contain the following sections in the order presented below:

1. Abstract (1 page recommended)

Provide a brief abstract of the project. The abstract must reflect the project's focus and the length of the project period (maximum of 3 years) for which assistance is being requested (see ''Availability of Funds'' for additional information).

2. Specific Aims/Objectives (1 page recommended)

List the objectives and the specific research questions the application is intended to address. State the hypotheses to be tested.

3. Background and Significance (2–5 pages recommended)

Briefly sketch the background leading to the present application, including the theoretical or conceptual framework, and evaluate existing knowledge. Additional information regarding syphilis elimination is included in Attachment B. Specifically document how the proposed intervention may impact on syphilis morbidity in the targeted communities. Describe any available STD or syphilis specific prevention services. Describe the syphilis morbidity in the proposed project locations. Describe the characteristics of the targeted communities including whether they are urban or rural. Provide evidence of the communities' urban or rural characteristics. State concisely the importance and health relevance of the research described in this application by relating the specific aims to the objectives.

4. Preliminary Studies (2–3 pages recommended)

Use this section to provide an account of the research team members' preliminary studies pertinent to the application that will help to establish the experience and competence of the research team members to pursue this proposed project. Include information about the experience of the research team and its members with the target population, behavioral and/or community level interventions, evaluation, and history of collaboration with relevant community partners including CBO's. References to appropriate reports, presentations, publications and manuscripts submitted or accepted for publication may be listed and are not part of the page limitations. Five collated sets of no more than ten such items of background material may be submitted in an appendix.

5. Research Design and Methods (15–20 pages recommended)

a. Describe the research design and the procedures to be used to accomplish the specific aims of the project. Applications must address heterosexually active men and women at risk for syphilis infection. Applications must include the CPOL model as the community level intervention. Communities in counties within HMA project areas must be matched, similar in population and demographic characteristics, while being geographically placed such that activities in the study community do not have an impact on the control community.

b. Describe the intervention development process, content and delivery, including specific intervention protocols or plans for the development of intervention protocols. Also, include the intent to offer the intervention to the control communities after the completion of the research program. Applications must demonstrate a comprehensive understanding of the CPOL model and how it can be applied in a community affected by syphilis. The application must also include a description of how members of the target population will be involved in the intervention activities.

c. Describe the recruitment, sampling, and retention plans.

d. Describe the measures to be used to evaluate the community level impact of the intervention. Applications should include self-report, social cognitive, behavioral and biological measures. Outcomes should include: (1) Social cognitive outcomes (*e.g.* changes in attitudes and beliefs). (2) Behavioral outcomes (*e.g.* changes in health seeking behavior, sexual risk behavior, syphilis screening) (3) Biological outcomes (*e.g.* syphilis serology, other bacterial STDs) (4) Process outcomes (*e.g.* participant tracking of conversation initiations, opinion leader attendance at training sessions). (5) Morbidity outcomes (*e.g.*, rates of syphilis and other STDs among members of the targeted community). Assessment of outcomes should be appropriate for the target population and community.

e. Describe how the data will be collected. Sampling schemes should be the same in the study and control communities. Choose and justify the sample size(s) considering the principles of Diffusion Theory (Rogers, 1995) and the different outcomes of interest. Power calculations are not necessary for biological outcome measures.

f. Describe the data analysis plan, including a justification for the statistical techniques chosen to analyze the intervention data.

g. Describe quality assurance plans.

h. Provide a tentative sequence or timetable for the project.

i. Describe the nature and extent of collaboration with CDC and/or others during various phases of the project.

j. Specific, measurable, and time-framed objectives.

6. Inclusion of Women and Racial and Ethnic Populations

Describe the proposed plan for the inclusion of both sexes and racial and ethnic minority populations. Describe the proposed justification when representation is limited or absent. Include a statement as to whether the design of the study is adequate to measure differences when warranted.

7. Human Subject Involvement

Describe procedures that will provide for the protection of human subjects, including procedures to obtain appropriate parental consent where necessary. List how these procedures adequately address the requirements of 45 CFR part 46 for the protection of human subjects.

**F. Submission and Deadline**

*Letter of Intent (LOI)*

On or before June 1, 2002, submit the LOI to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

*Application*

Submit the original and five copies of PHS–398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398) and, if applicable, the Optional Form 310, ''Protection of Human Subjects Assurance Identification Certification Declaration''. Forms are available in the application kit and at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

On or before July 15, 2002, submit the application to the Technical Information Management Section, Office of the Director, Procurement and Grants Office, 2920 Brandywine Road, Suite 3000, Atlanta, Georgia 30341.

*Deadline:* Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks will not be acceptable proof of timely mailing.)

*Late Applications:* Applications that do not meet the criteria in 1. or 2. above will be returned to the applicant.

**G. Evaluation Criteria**

Applications will be reviewed and evaluated only on the basis of the evidence submitted. Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC. Applications will be reviewed by CDC for completeness and responsiveness to the purpose of this program announcement (as described in Section A), and as outlined under Eligible Applicants and Program Requirements. Incomplete applications, and applications that are not responsive, will be returned to the applicant without further consideration. It is important that the applicant's abstract reflects the project's focus, because the abstract will be used to help determine the responsiveness of the application.

All applications will be independently reviewed for scientific merit to evaluate the methods and scientific quality of the application. Factors to be used to evaluate the application include:

*1. Specific Aims (5 points)*

The specific aims of the research project, including the objectives, and documenting the hypotheses to be tested.

*2. Background (10 points)*

The background of the project, *i.e.,* the basis for the present proposal, the critical evaluation of existing knowledge, and identification of how the intervention will effect syphilis morbidity and its anticipated impact on the affected communities. The description of available STD or syphilis specific prevention services and the syphilis morbidity in the proposed project locations. A description of the targeted communities including evidence of the communities' urban or rural characteristics.

*3. Significance (15 points)*

The significance and innovation from scientific and programmatic standpoints of the proposed research, including the operationalization of the theoretical model and conceptual framework for the research and the rigor and appropriateness with which the outcomes are evaluated.

*4. Research Design and Methods (45 points)*

a. The adequacy of the proposed research design to address the overall objectives.

b. Plans for the development of intervention content and delivery, including specific intervention protocols or plans for the development of intervention protocols, and how members of the target population are involved in that process.

c. The recruitment and retention plan.

d. The self-report, social-cognitive, behavioral and biological outcome measures to be assessed. Outcomes should include: (1) Social cognitive outcomes (*e.g.* changes in attitudes and beliefs). (2) Behavioral outcomes (e.g. changes in health seeking behavior, sexual risk behavior, syphilis screening). (3) Biological outcomes (*e.g.* syphilis serology, other bacterial STDs). (4) Process outcomes (*e.g.* participant tracking of conversation initiations, opinion leader attendance at training sessions). (5) Morbidity outcomes (*e.g.,* rates of syphilis and other STDs among members of the targeted community). Assessment of outcomes should be appropriate for the target population and community.

e. Describe how the data will be collected. Sampling schemes should be the same in the study and control communities. Choose and justify the sample size(s) considering the principles of Diffusion Theory (Rogers, 1995) and the different outcomes of interest. Power calculations are not necessary for biological outcome measures.

f. The plan for data collection and data management, including quality assurance procedures.

g. A statistical analysis plan appropriate to the intervention evaluation.

h. The project time line.

i. Measures of Effectiveness. The Peer Review Panel shall assure that measures set forth in the application are in accordance with CDC's performance plans (See Attachment 4 in the application kit).

*5. Research Program Team (15 points)*

The qualifications and appropriateness of the proposed personnel to accomplish the proposed activities. Applications should include multi-disciplinary teams, including (but not limited to) health department staff, experienced with syphilis transmission and prevention, staff from participating CBO's and university scientists. The combined members of the research team must demonstrate a history of familiarity with, access to, and success working with the target populations (*e.g.* high risk heterosexually active adults at risk for syphilis), delivery of behavioral and/or community level interventions, and evaluation expertise. This familiarity, access and success may be demonstrated through biographical sketches, previous studies, and letters of support. Applicants must demonstrate a collaborative relationship between the local health departments, CBOs, and university researchers. The degree of commitment and cooperation of proposed collaborators must be confirmed by letters of support detailing the nature and extent of the involvement.

*6. Research Capacity (10 points)*

Availability of appropriate scientific oversight necessary to fulfill research program objectives. These will include development, implementation, and evaluation of the intervention, recruitment and retention of participants, and collection and management of project-related data. The application should describe the experience and capacity of the project team, and should include curriculm vitae (CVs) and position descriptions for all key staff in an attachment.

*7. Human Subjects (Not scored)*

Restate the strategies for the recruitment and retention of human subjects and how the applicant will obtain appropriate consent, when necessary. Are the procedures proposed adequate for the protection of human subjects and are they fully documented? Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects? The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research, including: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation. (2) The proposed justification when representation is limited or absent (3) A statement as to whether the design of the study is adequate to measure differences when warranted.

*8. Budget (Not scored)*

The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds. All budget categories must be itemized and appropriately justified.

**H. Other Requirements**

*Technical Reporting Requirements*

Provide CDC with original plus two copies of—

1. Annual progress report (the results of the Measures of Effectiveness shall be a data requirement to be submitted with or incorporated into the progress report. *See* CDC's Performance Plans at internet site: *http://www.cdc.gov/od/perfplan/2001perfplan*).

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, *See* Attachment I in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–5 HIV Program Review Panel Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–14 Accounting System Requirements
AR–15 Proof of Non-Profit Status
AR–21 Small, Minority, And Women-owned Business
AR–22 Research Integrity

**I. Authority and Catalog of Federal Domestic Assistance Number**

This program is authorized under sections 318 and 318A of the Public Health Service Act (42 U.S.C. sections 247c and 247c–1). The Catalog of Federal Domestic Assistance number is 93.977.

**J. Where To Obtain Additional Information**

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC home page Internet address—*http://www.cdc.gov.* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from:

Gladys T. Gissentanna, Grants Management Specialist, Procurement and Grants Office, Grants Management Branch, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341–4146. Telephone: (770) 488–2753. Fax: (770) 488–2777. E-mail address: *gcg4@cdc.gov.*

For program technical assistance, contact: Janet S. St. Lawrence, Ph.D., Division of STD Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, MS E44, Atlanta, GA 30333. Telephone: (404) 639–8298. Fax: (404) 639–8622. E-mail address: *nzsy@cdc.gov.*

Dated: April 24, 2002.

**Sandra R. Manning,**

*Director, Procurement and Grants Office, Centers for Disease Control and Prevention.*

[FR Doc. 02–10681 Filed 4–30–02; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Disease Control and Prevention

**[Program Announcement 02087]**

## Distribution and Evaluation of Hepatitis Curricula for Inmates and Correctional Staff; Notice of Availability of Funds

**A. Purpose**

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for distribution and evaluation of hepatitis curricula for inmates and correctional staff. This program addresses the ''Healthy People 2010'' focus area of Immunization and Infectious Diseases.

The purpose of the program is to provide assistance for the printing, distribution and evaluation of an existing educational curriculum that addresses the prevention counseling, testing and treatment of viral hepatitis in correctional settings in the United States. Specifically, applications are solicited for viral hepatitis curricula aimed at the education and training of inmates and correctional staff.

**B. Eligible Applicants**

Applications may be submitted by public and private non-profit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private non-profit organizations, State and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations and Faith-based organizations are eligible to apply.

Applicants must have ready access to corrections facilities for distribution and evaluation of their educational curricula.

**Note:** Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

**C. Availability of Funds**

Approximately $150,000 is available in FY 2002 to fund one award. It is

expected that the award will begin on or about September 1, 2002, and will be made for a 12-month budget period within a project period of one year. The funding estimate may change.

*Funding Preferences*

In making awards, priority for funding will be given to applicants with existing educational curricula for purposes of increasing the health (especially hepatitis) knowledge and awareness of incarcerated persons and those under the supervision of corrections staff, as well as the corrections staff itself, in local, State and Federal public and private corrections programs with a demonstrated high concentration of persons at high risk for viral hepatitis infection. Further preference will be given to applicants with a mechanism in place to distribute curricula materials to corrections facilities nationwide.

**D. Program Requirements**

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

*1. Recipient Activities*

a. Develop an operational plan and time-line for the project period that will reproduce and distribute an existing curricula to educate inmates and corrections officers.

b. Develop a plan that will evaluate the curricula and measure, at a minimum, changes in knowledge of specific audiences who would most benefit from curricula's effectiveness (*e.g.,* corrections staff, inmates).

c. Analyze the evaluation results and publish the findings and recommendations.

*2. CDC Activities*

a. Provide technical support related to viral hepatitis information and evaluation methodology, as requested.

b. Provide technical assistance for the distribution of the curricula, for both inmates and corrections staff, as requested.

c. Provide assistance in developing the evaluation plan, as requested.

d. Assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and or at least on an annual basis until the research project is completed.

**E. Content**

*Letter of Intent (LOI)*

An LOI is optional for this program. The narrative should be no more than 5 single-spaced pages, printed on one side, with one inch margins, and unreduced font. Your letter of intent will be used to plan and execute the evaluation of applications, and should include the following information: (1) name and address of institution, and (2) Name, address, and telephone number of contact person.

*Applications*

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 20 double-spaced pages, printed on one side, with one inch margins, and unreduced font.

Include the following in the narrative section of your application:

1. Provide clear, measurable, time-phased objectives as a part of the plan of operation with clearly stated long range goals.
2. Provide an operational plan that describes how the objectives will be achieved.
3. Provide an evaluation plan that includes qualitative and quantitative measures to assess the effectiveness of the program in accomplishing the program objectives.
4. Provide a projected time line for conducting the proposed program and evaluation activities.
5. Provide a description of personnel that includes current and proposed staff with position titles, position descriptions, experience, and percentage of time staff person will devote to assigned project responsibilities. Also, include a curriculum vita for new staff.
6. Provide a detailed, line-item budget for the project period that justifies each line-item.

**F. Submission and Deadline**

*Letter of Intent (LOI)*

On or before June 1, 2002, submit the LOI to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

*Application*

Submit the original and five copies of PHS–398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are available in the application kit and at the following *Internet address: www.cdc.gov/od/pgo/forminfo.htm.*

On or before July 1, 2002, submit the application to:

Technical Information Management-PA 02087,
Procurement and Grants Office,
Centers for Disease Control and Prevention,
2920 Brandywine Rd, Room 3000,
Atlanta, GA 30341–4146.

*Deadline:* Applications shall be considered as meeting the deadline if they are received on or before the deadline date.

*Late:* Applications which do not meet the criteria above will be returned to the applicant.

**G. Evaluation Criteria**

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

*1. Objectives (30 points)*

The degree to which the project objectives are capable of achieving the specific requirements defined in the program announcement. Objectives should include process and outcome measures.

*2. Plan (15 points)*

The degree to which the proposed activities described in the plan of operation, addresses the objectives and the degree of attainability of these objectives. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes: (a) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation, (b) the proposed justification when representation is limited or absent, (c) a statement as to whether the design of the study is adequate to measure differences when warranted, and (d) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

*3. Evaluation (10 points)*

The extent to which the proposed plan for evaluation measures the changes in knowledge of the target audiences, the impact on health behaviors and the cost benefit of such training for the organizations involved.

*4. Staff (10 points)*

The degree to which the applicant documents the staff qualifications and

skills needed to conduct the project activities.

*5. Capacity (30 total points)*

a. The degree to which the organization demonstrates access to the institutions and target populations necessary in representing both the security and health aspects of a broad range of correctional facilities and activities (*e.g.,* pre-release). The organizations must show evidence of a quality curricula with supporting educational materials. (15 points)

b. Evidence of experience working with corrections in health, security, and capable staff to deliver education and training to inmates and staff. (15 points)

*6. Measures of Effectiveness (5 points)*

Does the applicant provide Measures of Effectiveness that will demonstrate the accomplishment of the purpose of the cooperative agreement? Are the measures objective/quantitative and do they adequately measure the intended outcome?

*7. Budget (Not scored)*

The degree to which the budget is reasonable, clearly justified, and consistent with the intended use of funds.

*8. Human Subjects (Not Scored)*

Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects? An application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

**H. Other Requirements**

*Technical Reporting Requirements*

Provide CDC with original plus two copies of:

1. Semiannual progress reports.
2. Financial status report, no more than 90 days after the end of the budget period.
3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the announcement in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–15 Proof of Non-Profit Status
AR–22 Research Integrity

**I. Authority and Catalog of Federal Domestic Assistance Number**

This program is authorized under sections 301(a), and 317(k)(1) and 317(k)(2) of the Public Health Service Act, [42 U.S.C. sections 241(a), and 247b(k)(1) and 247(k)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

**J. Where To Obtain Additional Information**

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov.* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from:

Sharon Robertson, Grants Management Specialist, Acquisition and Assistance, Branch B, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146.

Telephone number: 770–488–2748. e-mail address: *sqr2@cdc.gov*.

For program technical assistance, contact: Linda Moyer, Centers for Disease Control and Prevention, National Center for Infectious Diseases, Division of Viral Hepatitis, 1600 Clifton Rd, NE, Mailstop G–37, Atlanta, GA 30333. Telephone number: 404–371–5910. e-mail address: *lam1@cdc.gov*.

Dated: April 25, 2002.

**Sandra R. Manning,**

*Director, Procurement and Grants Office, Centers for Disease Control and Prevention.*

[FR Doc. 02–10680 Filed 4–30–02; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

**[Program Announcement No. ACYF–PA–CCB–2002–02]**

### Child Care Policy Research Discretionary Grants

**AGENCY:** Administration on Children, Youth and Families, ACF, DHHS.

**ACTION:** Announcement of the availability of funds and request for applications for Child Care Research Scholars and State Child Care Data and Research Capacity Projects.

**SUMMARY:** The purpose of this program announcement is to announce the availability of $1.1 million in fiscal year 2002 funds for child care research, demonstration, and evaluation activities to be distributed through grants to fund projects in the following two priority areas: (1) Child Care Research Scholars; and (2) State Child Care Data and Research Capacity Projects. Accredited universities and colleges may submit a Child Care Research Scholar application on behalf of a doctoral student conducting dissertation research on a child care policy topic. Child Care and Development Fund Lead Agencies seeking to improve their capacity for data analysis and policy-relevant research are invited to submit applications for the State Child Care Data and Research Capacity Projects.

Projects funded under each of the priority areas are expected to address child care questions with implications for children and families, especially low-income working families and families transitioning off welfare. Of particular interest are studies that address child care subsidy issues such as family eligibility, parent co-pays, provider reimbursement, and waiting lists, and broader child care issues, such as professional development of providers. Also of interest are efforts to understand the relative costs and merits of strategies to improve the quality of child care. These issues are of particular relevance to State and local policy-makers who must make difficult decisions about how best to manage limited subsidy resources while responding to the needs of low-income families and children. Projects investigating ACF priorities related to child care policy, including early literacy, faith-based providers, father involvement, strengthening families, rural child care, positive youth development, and improved knowledge related to outcome measures will also be given priority. Funded projects will be part of a comprehensive research agenda intended to increase the capacity for child care research at the national, State, and local levels and promote better linkages among research, policy, practice, and outcomes for children and families.

**DATES:** The closing date for submission of applications is June 17, 2002. Mailed applications postmarked after the closing date will be classified as late.

*Mailing and Delivery Instructions:* Mailed applications shall be considered as meeting the announcement deadline if they are either received on or before the deadline date, or sent on or before the deadline date, and received by ACF in time for the independent review to: Administration on Children, Youth and Families, Child Care Bureau Program Announcement No. ACYF–PA–CCB–2002–02, Child Care Bureau Conference Management Center c/o MasiMax Resources, Inc., 1300 Piccard Drive, Suite 203, Rockville, MD 20850, Telephone: 1–240–632–5632.

Applicants must ensure that a legibly dated U.S. Postal Service postmark or a legibly dated, machine-produced postmark or a commercial mail service is affixed to the envelope/package containing the application(s). To be acceptable as proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications hand carried by applicants, applicant couriers, or by other representatives of the applicant shall be considered as meeting an announcement deadline if they are received on or before the deadline date, between the hours of 8:30 a.m. and 5 p.m., EST, Monday through Friday (excluding Federal holidays) at the address above. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

ACF cannot accommodate transmission of applications by fax or through other electronic media, regardless of date or time of submission and receipt. Therefore, applications transmitted to ACF electronically will not be accepted.

*Late Applications.* Applications that do not meet the criteria stated above and are not received by the deadline date and time are considered late applications. The Administration for Children and Families (ACF) will notify each late applicant that its application will not be considered in the current competition.

*Extension of Deadline.* ACF may extend an application deadline for applicants affected by acts of God such as floods and hurricanes, when there is widespread disruption of mail service, or for other disruption of services, such as prolonged blackout, that affect the public at large. A determination to waive or extend deadline requirements rests with the Chief Grants Management Officer.

*Notice of Intent to Submit Application:* If you intend to submit an application, please notify the Child Care Bureau by fax at 202–690–5600. This fax should include the following information: the number and title of this announcement; your organization's name and address; and your contact person's name, phone number, fax number, and e-mail address. The information will be used to determine the number of expert reviewers needed to evaluate applications and to update the mailing list for program announcements.

**FOR FURTHER INFORMATION CONTACT:** For information about the application process and program information, contact Dr. Joanna Grymes, Program Specialist, Administration for Children and Families, Child Care Bureau, Room 2046, Mary E. Switzer Building, 330 C Street, SW., Washington, DC 20447, Phone: 202–205–8214, Fax: 202–690–5600, Email: *jgrymes@acf.dhhs.gov.*

**SUPPLEMENTARY INFORMATION:** This announcement includes the instructions needed to apply for (1) Child Care Research Scholars and (2) State Child Care Data and Research Capacity Projects. The Standard Federal Forms that must be included in applications can be downloaded from the Internet at: *http://www.acf.dhhs.gov/programs/ofs/.* For each priority area, the required Standard Federal Forms are identified under ''Project Description and Application Requirements.''

The **SUPPLEMENTARY INFORMATION** section consists of six parts. Part I provides information about the Child Care Bureau, priority areas to be funded under this announcement, and instructions for submitting an application. Part II provides background information, instructions for completing applications, evaluation criteria, and funding procedures for Child Care Research Scholars (Priority Area 1). Part Ill provides background information, instructions for completing applications, evaluation criteria, and funding procedures for State Child Care Data and Research Capacity Projects (Priority Area 2). Part VI Appendices includes Appendix 1, content and format of application, and Appendix 2, the OMB-approved Uniform Project Description. The contents are outlined below:

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## Part I. General Information

### *A. Purpose*

The purpose of this program announcement is to fund child care research grants that will increase the capacity for child care research at national, State, and local levels while simultaneously addressing child care policy questions with implications for children and families, particularly low-income working families and families transitioning off welfare. An additional purpose is to further an understanding of the interactions among child care policy, and the ACF administrative priorities, including early literacy, faith-based providers, father involvement, strengthening families, rural child care, positive youth development, and improved knowledge related to outcome measures.

### *B. Citations*

1. *Statutory authority:* The Child Care and Development Block Grant Act of 1990 as amended (CCDBG Act); section

418 of the Social Security Act; Consolidated Appropriations Act, 2001 (Pub. L. 106–554).

2. *Catalog of Federal Domestic Assistance:* The Catalog of Federal Domestic Assistance number for both priority areas is 93.647.

3. *Paperwork Reduction Act of 1995* (Pub. L. 104–13): Public reporting burden for this collection of information is estimated to average 15 hours per response for the Child Care Research Scholars and 20 hours per response for the State Child Care Data and Research Capacity Building Projects. These estimates include the time for reviewing instructions, gathering and maintaining data needed, and reviewing the collection of information. The project description is approved under OMB control Number 0970–0139 which expires 12/31/03. 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.

*C. Number of Awards, Duration, and Funding Levels*

Approximately 5–8 grants, including both priority areas, will be awarded in Fiscal Year 2002 (ending September 30, 2002), subject to results of the competitive review process and availability of funds. This announcement is soliciting applications for project periods of up to three years. Awards, on a competitive basis, will be for a one-year budget period. Applications for continuation grants funded under these awards beyond the one-year budget period will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government. Child Care Research Scholars may apply, under these conditions, for a second year; State Child Care Data and Research Capacity Projects may apply for up to two additional years under the conditions listed. Should additional funds be available in FY 2003, ACF also reserves the right to fund additional projects from among the applications received through this announcement. Funding levels for the first budget period will be up to $30,000 for the Child Care Research Scholar grants and up to $250,000 for the State Child Care Data and Research Capacity projects.

*D. The Child Care Bureau*

The Child Care Bureau (CCB) was established in 1994 to provide leadership in efforts to enhance the quality, affordability, and supply of child care available for all families. The Child Care Bureau administers the Child Care and Development Fund (CCDF), a $4.8 billion child care program that includes funding for child care subsidies and activities to improve the quality and availability of child care. CCDF was created after amendments to ACF child care programs by Title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 consolidated four Federal child care funding streams including the Child Care and Development Block Grant, AFDC/JOBS Child Care, Transitional Child Care, and At-Risk Child Care. With related State and Federal funds, CCDF provides close to $11 billion a year to States, Territories, and Tribes to help low-income, working families access child care services.

The Bureau works closely with ACF Regions, States, Territories, and Tribes to assist with, oversee, and document implementation of new policies and programs in support of State, local and private sector administration of child care services and systems. In addition, the Bureau collaborates extensively with other offices throughout the Federal government to promote integrated, family-focused services and coordinated child care delivery systems. In all of these activities, the Bureau seeks to enhance the quality, availability, and affordability of child care services, support children's healthy growth and development in safe child care environments, enhance parental choice and involvement in their children's care, and facilitate the linkage of child care with other community services.

*E. Research Agenda and Goals*

The research agenda and goals of ACF and the Child Care Bureau target child care questions with implications for children and families, especially low-income working families and families transitioning off welfare. Of particular interest are child care subsidy issues such as family eligibility, parent co-pays, provider reimbursement, and waiting lists, and broader child care issues, such as professional development of providers. Also of interest are efforts to understand the relative costs and merits of strategies to improve the quality of child care. These issues are of particular relevance to State and local policy-makers who must make difficult decisions about how best to manage limited subsidy resources while responding to the needs of low-income families and children. The ACF priorities related to child care policy, including early literacy, faith-based providers, father involvement, strengthening families, rural child care, positive youth development, and improved knowledge related to outcome measures are also a significant component of the research agenda. Funded projects will be part of a comprehensive research agenda intended to increase the capacity for child care research at the national, State, and local levels and promote better linkages among research, policy, practice, and outcomes for children and families.

The Child Care Bureau's FY 2002 specific child care research agenda will extend the previously funded child care research activities and launch new evaluation and research capacity-building initiatives. The activities supported through this announcement will provide information and data to guide child care services, inform policy debates, and assist in developing solutions to complex child care issues. We intend to improve our capacity to respond to questions of immediate concern to policy makers, strengthen the child care research infrastructure, and increase knowledge about the efficacy of child care policies and programs in providing positive outcomes for children and helping low-income families obtain and retain work.

As more knowledge is gained about child development and well-being in contemporary environments, there is a need for better understanding of how child care affects the growing child. As more is known about the growing diversity in family values, child rearing strategies, preferences, and needs, questions arise as to how child care policies and programs affect the ability of parents to make wise decisions for their children. A better understanding of child care is also critical to employment goals for adults, particularly in the arena of welfare reform and economic self-reliance. In addition, there is a need for better information about how child care can help parents manage the difficulties of balancing work and family life, especially when resources are scarce.

The research agenda for the Child Care Bureau in FY 2000 and FY 2001 emerged from five broad research questions. These questions were designed to provide descriptive profiles of child care supply and demand, examine major variations and their outcomes, explore the interrelationships among child care market forces, policies and programs, and determine how these factors play out among different populations of children and families. These questions were: (a) What does child care look like today; (b) How do the variations in child care affect children; (c) How do the variations in

child care affect parents; (d) How do the answers to these broad questions translate into specific policy and program choices at the state and local levels; and (e) How do the answers to all the questions above differ for sub-groups of children and families? As the knowledge base grows in these areas, the emerging questions in child care policy shift to a broader context. The Child Care Bureau wishes to build upon this broad knowledge base and expand the research agenda to include questions such as: (a) What are the relative merits and cost-benefits of the policies and programs related to child care; (b) How can the child, family and community outcomes of policies and programs best be measured; and (c) What are the most cost-effective policies and programs that facilitate positive outcomes for children, families, and communities? Of primary importance are projects that have the capability of informing policy makers at the Federal, State and local levels on issues related to child care policy.

*F. Priority Areas To Be Funded Under This Announcement*

Projects funded under each priority area will contribute to the Child Care Bureau's research goals, provide timely answers to critical questions, and expand research capacity.

1. Child Care Research Scholar grants will provide support for doctoral candidates in conducting dissertation research on child care. Issues of special priority for Child Care Research Scholarships are child care policy issues, especially those focusing on outcomes for children and families. For a further discussion of the priorities, see Section E above. Applicants should expect to complete their dissertation research within the two-year scholarship period.

2. State Child Care Data and Research Capacity Projects are being funded to provide support to Child Care and Development Fund State Lead Agencies in building internal or contractual research and evaluation capacity. A major emphasis of these projects will be to improve the timeliness and reliability of the State child care data reported to the Child Care Bureau. We expect that projects funded under this priority will focus on building a State-level infrastructure to: (a) Improve data collection, analysis, interpretation, and reporting of CCDF data; (b) develop or improve analytic linkages with other State and local data systems; (c) build collaborative efforts among institutions of higher education, research organizations, policy makers, practitioners, and other stakeholders to promote high quality research; (d) conduct child care research that is specifically responsive to the needs of the State and local communities within the State; (e) develop leadership skills in the management and interpretation of data; and, (f) exercise effective dissemination strategies and means of informing policy decisions with research results.

*G. Submission of Applications*

Applicants should submit an original and two copies of the complete application packet. Each copy of the application should be securely stapled in the upper left-hand corner, clipped, or enclosed in a quick-release binder. Because each application will be duplicated for the review panel, do not use non-removable binders. Do not include tabs, plastic inserts, brochures, videos, or any other item that cannot be photocopied.

*H. Selection Process*

The Commissioner, Administration on Children, Youth and Families, will make the final selection of the applicants to be funded, upon receipt of the recommendation of the Associate Commissioner for the Child Care Bureau. Applications may be funded in whole or in part depending on: (1) The rank order of applicants resulting from the competitive review; (2) staff review and consultations; (3) the combination of projects which best meets the Bureau's research objectives; (4) the funds available; and (5) other relevant considerations.

Selected applicants will be notified through the issuance of a Financial Assistance Award which sets forth the amount of funds granted, the terms and conditions, reporting requirements, the effective date of the award, the budget period for which support is given, and the total project period for which support is provided.

1. Screening and Panel Review

Each application will be screened to determine whether the applicant organization is eligible as specified in each of the priority areas. Applications from ineligible organizations will be excluded from the review.

a. The review will be conducted in Washington, D.C. Expert reviewers will include researchers, Federal or State staff, child care administrators and other individuals experienced in the study of child care demand and supply, child care delivery systems, welfare and supportive services, early child development and education, parental choice and involvement, and other relevant areas.

b. A panel of at least three reviewers will evaluate each application to determine the strengths and weaknesses of the proposal in terms of the Bureau's research goals and expectations for the priority area under consideration, requirements for the Project Narrative Statement, and the evaluation criteria listed below.

c. Panelists will provide written comments and assign numerical scores for each application. The indicated point value for each criterion is the maximum numerical score for that criterion. The assigned scores for each criterion will be summed to yield a total evaluation score for the proposal.

d. In addition to the panel review, the Bureau may solicit comments from other Federal offices and agencies, from the states, from relevant non-governmental organizations, and from individuals whose particular expertise is identified as necessary for the consideration of technical issues arising during the review. Their comments, along with those of the panelists, will be considered by the Bureau in making funding decisions. The Bureau will also take into account the best combination of proposed projects to meet overall research goals.

2. Funding Date

Grants to successful applicants will be awarded by September 29, 2002.

**Part II. Priority Area 1: Child Care Research Scholars**

*A. Purpose*

This priority is intended to strengthen the child care research infrastructure by supporting the development of researchers with a grasp of child care research and its implications for policies and programs. Under this priority area, support will be provided to doctoral candidates in conducting dissertation research on child care issues under the auspices of the Child Care Bureau and the educational institution in which the student is enrolled. Dissertation research under this priority must support the Bureau's research agenda including addressing important questions about child care that have implications to families and children. The student is expected to gain experience and expertise in theories and methods related to child care, child development, early childhood education, child care program administration, or child care policy.

*B. Number of Awards*

Up to 5 scholarships will be awarded. No individual educational institution

will be funded for more than one candidate unless applications from other universities are scored as non-competitive by the expert review panel.

*C. Project Period*

The project period will be for a period of up to 24 months (9/30/02–9/29/04). For 24 month projects, the first 12 months will be funded through this competition. The subsequent year awards (12 months) will be considered on a non-competitive basis subject to the availability of funds from future appropriations, satisfactory progress of the grantee, and a determination that continued funding is in the best interest of the government. A subsequent year award will not be approved if the student has graduated by the end of the first year.

*D. Funding Levels*

Up to $30,000 will be awarded to each successful applicant for a 12-month budget period. If the applicant expects to receive a doctorate by the end of the first one-year budget period, the application should request funding for a single grant period.

*E. Matching Requirements and Non-Federal Share*

There are no matching requirements.

*F. Maximum Federal Share*

The maximum federal share is $30,000 for the first 12-month budget period and $20,000 for one subsequent 12-month period.

All monies must be used for the dissertation research including required personnel costs, travel, and other expenses directly related to the research.

*G. Eligible Applicants*

Eligible applicants include universities or colleges on behalf of doctoral candidates conducting dissertation research on a child care topic consistent with the research goals and priorities appropriate to child care policy described in Part I of this announcement, and who anticipate completing the child care-related dissertation within the two-year scholarship period.

To be eligible to administer the grant on behalf of the student, the institution must be fully accredited by one of the regional accrediting commissions recognized by the Department of Education. Although the faculty advisor will be listed as the Principal Investigator, this grant is intended for dissertation work being conducted by a doctoral candidate. Information about both the graduate student and the student's faculty advisor is required as part of this application. Any resultant grant award is not transferable to another student.

*H. Additional Requirements*

1. Research projects may include independent studies conducted by the doctoral candidate or well-defined portions of a larger study being conducted by a principal investigator holding a faculty position or senior research position and for which the graduate student will have primary responsibility.

2. The student must be the author of the proposal.

3. The student must have progressed at least to the point of having identified a dissertation committee.

4. Research projects must use sound quantitative or qualitative research methodologies or some combination of the two.

5. Given the size of these grants, sponsoring universities and colleges are encouraged to waive their customary indirect charges.

6. Each grant award is intended to support the dissertation work of a specific student (the applicant) and is not transferable to another student.

**I. Project Description and Application Requirements**

*1. Content and Format of Application*

Clarity and conciseness are of utmost importance. ACYF strongly encourages applicants to limit their applications to 100 pages, double-spaced, with standard one-inch margins and 12 point fonts. The total page limitation applies to both narrative text and supporting materials.

Applicants are cautioned to include all required forms and materials, organized according to the required format. (The description of the contents of the application materials listed below is included in Appendix 1 of this announcement.) The application packet must include the following items in order:

a. Cover Letter
b. Standard Federal Forms
- Standard Application for Federal Assistance (forms 424 and 424A)
- Assurances: Non-construction Programs (form 424B)
- Certifications regarding Lobbying
- Disclosures of Lobbying Activities
- Certification regarding Drug-free Workplace Requirements
- Certification regarding Debarment, Suspension, and other Responsibility Matters
- Protection of Human Subjects
- Certification regarding Environmental Tobacco Smoke

c. Table of Contents
d. Project Abstract
e. Project Narrative Statement
f. Appendices
- Contact Information for Student and Faculty Advisor
- Curriculum Vitae for Student and Faculty Advisor
- Letters of Support from Advisor
- Official Transcript of Student Reflecting Courses Completed at the Masters and Ph.D. Levels

2. Project Narrative Statement

The project narrative statement contains most of the information on which applications will be competitively reviewed. The Project Narrative should be carefully developed in accordance with the research goals and expectations described for the priority area in which the applicant is submitting a proposal, the requirements listed below and described in the Uniform Project Description (Appendix 2 in this announcement), and the evaluation criteria described in section ''J'' below.

The following sections from the Uniform Project Description (Appendix 2) should be included in the Project Narrative Statement of applications for Child Care Research Scholars:

a. Objectives and Need for Assistance
b. Approach
- Research Design and Methodology
- Management Plan

c. Additional Information
Organizational Profile
d. Budget and Budget Justification

*J. Evaluation Criteria*

Eligible applications will be scored competitively against the published evaluation criteria described below. These criteria will be used in conjunction with the other expectations, priorities and requirements set forth in this announcement to evaluate how well each proposal addresses the Bureau's research agenda and goals.

*Criterion 1:* Objectives and Need for Assistance (maximum of 20 points).

- The extent to which the application reflects a solid understanding of critical issues, information needs, and research goals.
- The extent to which the conceptual model, research issues, objectives and hypotheses are significant, well formulated and appropriately linked, reflect the Administration for Children and Families and the Child Care Bureau's research agenda and priorities, and will contribute new knowledge and understanding.
- The extent to which the proposed project framework is appropriate, feasible, and would significantly

contribute to the importance, comprehensiveness, and quality of the proposed research.

• The effectiveness with which the proposal articulates the current state of knowledge relative to issues being addressed, including: Critical child care issues and the complex interrelationships among major variables; the significance of these issues and variables for child care policies and programs; how current knowledge would be brought to bear on the proposed research; and how the research would benefit various audiences.

*Criterion 2:* Approach (Research Design and Methodology) (maximum of 40 points).

The extent to which the applicant's proposed research design:

• Appropriately links critical research issues, questions, variables, data sources, samples, and analyses;

• Employs technically sound and appropriate approaches, design elements and procedures;

• Reflects sensitivity to technical, logistical, cultural and ethical issues that may arise;

• Includes realistic strategies for the resolution of difficulties;

• Adequately protects human subjects, confidentiality of data, and consent procedures, as appropriate;

• Includes an effective plan for the dissemination and utilization of information by researchers, policy-makers, and practitioners in the field; and,

• Effectively utilizes collaborative strategies, as appropriate to the project goals and design.

*Criterion 3:* Approach (Management Plan) (maximum of 20 points).

The extent to which the project summary provides a management plan that:

• Presents a sound, workable and cohesive plan of action demonstrating how the work would be carried out on time, within budget and with a high degree of quality;

• Includes a reasonable schedule of target dates and accomplishments;

• Presents a sound administrative framework for maintaining quality control over the implementation and ongoing operations of the study; and,

• Demonstrates the ability to gain access to necessary organizations, subjects, and data.

*Criterion 4:* Applicant Profiles (Applicant Qualifications and Commitment) (maximum of 10 points).

The extent to which the scholar and advisor:

• Demonstrate competence in areas addressed by the proposed research, including relevant background, experience, training and work on related research or similar projects; and

• Demonstrate necessary expertise in research design, sampling, field work, data processing, statistical analysis, reporting, and information dissemination.

*Criterion 5:* Budget and Budget Justification (maximum of 10 points).

The extent to which proposed project costs are reasonable, the funds are appropriately allocated across component areas, and the budget is sufficient to accomplish the objectives. The budget should include funds to allow the research scholar to participate in the 2.5 day Child Care Bureau Annual Policy Research Meeting in Washington, D.C.

## Part III: Priority Area 2: State Child Care Data and Research Capacity Projects

### *A. Purpose*

The purpose of this priority area is to assist State CCDF Lead Agencies in improving their capacity to report reliable required child care data to the Child Care Bureau and to improve their capacity to conduct policy-relevant research and analysis in order to design and implement child care policies and programs that promote positive outcomes for children, families and communities.

The primary goal is to create a statewide research infrastructure to better understand child care needs, services, and outcomes for families in the context of social, economic and cultural change. Specific objectives include to: (1) Improve the collection, analysis, interpretation, and reporting of CCDF data; (2) develop or improve analytic linkages with other State and local data systems such as those maintained by child care licensing offices, TANF agencies, and resource and referral networks; (3) encourage collaborative efforts among institutions of higher education, research organizations, policy makers, practitioners, and other stakeholders to promote high quality research; (4) expand the availability of child care research that is specifically responsive to the needs of States and local communities; (5) develop leadership skills in management and interpretation of data; and (6) demonstrate effective dissemination strategies and means for informing policy decisions with research results.

Beginning with an assessment of its current CCDF administrative data systems and research needs, each State funded under this priority area will develop and implement a plan for improving its capacity for data collection and analysis and conducting policy relevant research. We anticipate that during the first budget period, some States may need to focus primarily on enhancements to CCDF reporting systems to ensure that their administrative data are valid, reliable and useful for policy analysis. Other States, with more refined child care data systems, will concentrate on developing improved capacity to analyze and interpret administrative data, conduct research, and use data to inform policy and program decisions. Ultimately, it is hoped that these efforts will evolve into a comprehensive strategy for ongoing development of a statewide research infrastructure. States are encouraged to create partnerships with relevant stakeholders and other appropriate collaborators to achieve these outcomes.

Applicants must demonstrate the need for assistance, commitment to improving the State's capacity for child care research and analysis, and the potential for these grant funds to make a difference. Successful grantees are expected to establish or expand a child care research, analysis and coordinating function, either as a unit within State government or through a contractual relationship with an outside research organization or university. The proposed staff of analysts must have extensive expertise in strategic planning, developing cross-disciplinary and cross-agency partnerships, implementing systems improvements, using large administrative data sets for research and analysis, and evaluating the implications of research findings for policy and program decisions. The grant awards will fund salaries and other expenses, including travel, for at least two full-time professional positions within an analysis unit.

### *B. Background Information*

The Personal Responsibility and Work Opportunity Act of 1996 made substantial changes in the structure of Federal child care assistance by combining four major Federal child care programs into the Child Care and Development Fund (CCDF). While States have significant flexibility in designing and implementing child care programs under CCDF, they are required to meet certain statutory and regulatory requirements. Among other requirements, this includes the designation of a State Lead Agency, biennial State CCDF Plans that describe how CCDF services will be implemented, and the submission of aggregate and case-level data about the services provided through CCDF.

States must spend at least 70 percent of their CCDF dollars to provide child care services for families who are on or transitioning off TANF or who are at-risk of welfare dependency. Through the use of certificates (vouchers), eligible families must be given access to child care services comparable to those available to families who are not eligible for CCDF assistance. States may also provide child care services through contracts/grants with providers. In their biennial plans to ACF, States provide information about their policies on issues such as family eligibility limits, co-payments, provider reimbursement rates, and provider health and safety requirements.

States must submit aggregate reports to ACF annually. These reports include information on the number of child care providers (by type) that received funding under CCDF, the number of children served by type of payment and child care services, consumer education, and the total unduplicated number of children and families served. Monthly case-level reports (sample or full-population at State option) may be submitted by States on a monthly or quarterly basis. These reports are submitted electronically to ACF via CONNECT:DIRECT, a secure line administered through the Social Security Administration. The case-level reports include total monthly family income for determining eligibility, county of residence, child gender and month and year of birth, ethnicity and race of children, whether the head of the family is a single parent, sources of family income, month/year when child care assistance started, type of child care used and whether the provider was a relative, monthly family co-payment, monthly amount to be paid to the provider, total hours of care in the month, Social Security Number of the head of household (if voluntarily provided), and reasons for care.

These aggregate and case-level CCDF reports are an important source of information about national, State, and local child care services and systems including child care supply and demand. As the Child Care Policy Research Consortium and Research Partnerships have demonstrated, when analyzed and readily-accessible, administrative data can be a valuable tool in helping policy makers make child care policy and program decisions. Through their analysis of CCDF administrative data at the cross-State, State, and local levels, the Partnerships are advancing our knowledge about the child care choices parents make, the supply of care in low-income neighborhoods, practices believed to improve care (e.g., provider accreditation, teacher training and education, reimbursement rates), the types of arrangements used by low-income parents, and their utilization of child care subsidies. By linking CCDF data with employment, resource and referral, and licensing data sources, the Partnerships have been able to study such topics as the relationship between availability of subsidized care and entry into the job market, the industries/employers likely to have employees who receive child care assistance, and the interrelationships between regulations and supply of care.

However, administrators indicate that they face many barriers to using child care research and data to inform their decisions. In an exploration of the research needs of State child care administrators, the Oregon Child Care Research Partnership conducted a national research roundtable that involved a number of State child care administrators. That study, reported in an issue brief, Research and Child Care Policy: A View from the States, found that administrators were much more likely to be influenced by research conducted by their own agency as opposed to an outside organization. When asked about barriers to using research, administrators most frequently indicated that their agency was not able to conduct the kinds of research that would be useful in making policy and program decisions. The issue brief strongly recommends that research capacity be developed at national, State, and local levels and that funds be directed to States to help States develop the infrastructure to conduct child care policy-relevant research starting with the data required under Federal CCDF reporting requirements.

Therefore, in this priority area, the Child Care Bureau seeks to work with States to improve the reliability of administrative data collected in the course of providing CCDF services, to assist States in improving their ability to analyze and interpret the data they collect, and to encourage State-level policy-relevant research. As a result, States will have improved information on which to make policy and program decisions and, nationally, the Child Care Bureau will be better able to meet its obligation to report to Congress regarding the services provided under CCDF.

*C. Eligible Applicants*

State and Territorial Lead Agencies administering child care programs under the Child Care and Development Block Grant (CCDBG) of 1990 as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and the Balanced Budget Act of 1997.

*D. Number of Awards*

Up to three State Child Care Data and Research Capacity Grants will be funded in Fiscal Year 2002, subject to the availability of funds and results of the evaluation process.

*E. Project Duration, Funding Levels, and Budget Periods*

State Child Care Data and Research Capacity Grants will be awarded for project periods of up to three years. The Child Care Bureau expects to invest up to $250,000 during the initial 12-month funding period for each project. Non-competitive applications for continuation of State Child Care Data and Research Capacity Projects will be considered in fiscal years 2003 and 2004 with up to $250,000 per project being available for a 12-month period. Applications for continuation grants funded beyond the 12-month budget period, but within the 36-month project period, will be entertained in the subsequent year on a noncompetitive basis, subject to the availability of funds from future appropriations, satisfactory progress of the grantee, and a determination that continued funding is in the best interest of the government. The project period for three-year grants is from September 30, 2002–September 29, 2005.

*F. Federal Share*

To maximize the Federal investment in the State Child Care Data and Research Capacity Projects and in the interest of project sustainability, a financial commitment by the applicant organization (or other participating entity) is required. The grantee must provide at least 20 percent of the total approved cost of the project. The total approved cost is the sum of the Federal share and the non-Federal share. Therefore, a project requesting $250,000 per budget period must include a match of at least $62,500. (To calculate the 20 percent non-Federal share, divide the Federal Share by 4.) A project receiving the maximum $750,000 during the three-year project period must include a match of at least $187,500 for the three-year project period. The total requested budget equals the Federal plus non-Federal share. Applicants are encouraged to meet their match requirements through cash contributions. However, the non-Federal share may be in-kind contributions. Grantees will be held accountable for the commitment of non-Federal resources and failure to provide the

required amount will result in a disallowance of unmatched Federal funds.

*G. Other Financial Requirements*

Funds available under this priority area may not be used to pay for existing positions currently funded using Federal, State, or local money. In addition, applicants are advised that funds under this priority are not intended to support the purchase of computer hardware or software.

*H. Data Ownership*

Raw data are the property of the agency or organization where the data reside. Working data files constructed for research belong to the grantee that is carrying-out the research, but analyses of those data may not be released without the approval of the agency that owns the original data. Once a study has been completed and released, clean, documented public use files must be prepared and archived according to specifications supplied by the Child Care Bureau. These public use data files will be the property of the Federal government and will remain in the public domain for secondary analysis by other researchers.

*I. Project Description and Application Requirements*

1. Contents and Format of Application

Clarity and conciseness are of utmost importance. ACYF strongly encourages applicants to limit their application to 100 pages, double-spaced, with standard one-inch margins and 12 point fonts. The total page limitation applies to both the narrative text and supporting materials.

Applicants are cautioned to include all required forms and materials, organized according to the required format. (The description of the contents of the application materials listed below is included in Appendix 1 of this announcement.) The application packet must include the following items in order:

a. Cover Letter
b. Standard Federal Forms
- Standard Application for Federal Assistance (forms 424 and 424A)
- Assurances: Non-construction Programs (form 424B)
- Certifications regarding Lobbying
- Disclosures of Lobbying Activities
- Certification regarding Drug-free Workplace Requirements
- Certification regarding Debarment, Suspension, and other Responsibility Matters
- Protection of Human Subjects
- Certification regarding Environmental Tobacco Smoke

c. Table of Contents
d. Project Abstract
e. Project Narrative Statement
f. Appendices
- Contact Information for all Key Staff
- Resumes
- Letters of Support, if appropriate
- Other

2. Project Narrative Statement

The project narrative statement contains most of the information on which applications will be competitively reviewed. The Project Narrative should be carefully developed in accordance with the research goals and expectations described for the priority area in which the applicant is submitting a proposal, the requirements listed below and described in the Uniform Project Description (Appendix 2 in this announcement), and the evaluation criteria and selection factors described in section ''J'' below.

The following sections from the Uniform Project Description (Appendix 2) should be included in the Project Narrative Statement of the application for State Child Care Data and Research Capacity projects:

a. Objectives and Need for Assistance
b. Approach
c. Organizational Profiles
- Management Plan
- Staff Qualification and Commitment
- Organizational Capacity and Resources

d. Budget and Budget Justification

*J. Evaluation Criteria*

The following criteria will be used to review and evaluate each application under this priority area. Each of the criteria should be addressed in the project description section of the application. The point values indicate the maximum numerical weight each criterion will be accorded in the review process. Note that the highest possible score an application can receive is 100 points.

*Criterion 1:* Objectives and Need for Assistance (35 Points).

In this section, applicants are expected to provide a clear and comprehensive description of their agency's current capacity to collect, analyze and report child care administrative data. This description should include data collection, analysis and reporting required by the State and Federal governments, as well as reports designed for the legislature and other constituencies. Applicants are encouraged to provide a description of the internal and external information needs of the agency, constituencies for information, and the types of data required or requested by these agencies, organizations or groups.

Applicants are expected to describe the current structure, management, and process for collecting, analyzing and reporting data. This description should include a consideration of the strengths and weaknesses of the current operating system and analytic components. The need for assistance should be clearly stated.

In addition, applicants should describe the research and evaluation that would be conducted by the proposed analysis unit. Applicants are encouraged to identify specific research questions to be addressed by the unit and explain how the agency's data systems would be used to answer these questions.

*Specific Review Criteria*

- Extent to which the applicant describes current methods and systems used by the agency to collect and compile the child care data required by the State and Federal government (including data sources, inputs, and reports) and describes the strengths and weaknesses of these systems. Linkages to TANF, licensing, and resource and referral systems should be described.
- Extent to which the applicant proposes activities which reflect the Administration for Children and Families and the Child Care Bureau's research agenda and priorities.
- Extent to which the applicant proposes a coherent approach to assessing the current quality of CCDF data, including the validity and reliability of the data as well as the procedures and policies in place for collection, analyses and interpretation of the data.
- Extent to which the applicant describes the internal and external information needs of the agency, constituencies for information, and the types of data required or requested by these agencies, organizations or groups.
- Extent to which the goals and objectives of the proposed analysis unit are explained clearly and are appropriate to this priority area, i.e., how the proposed unit would assist the agency in improving the State's capacity to meet internal and external information needs and its capacity for data collection, analysis, interpretation, and reporting.
- Extent to which the applicant presents a clear vision of the data analysis systems to be developed, including a discussion of the contextual factors that would facilitate or hinder the formation of the analysis unit.

• Extent to which the applicant's vision for a Statewide infrastructure for child care research and analysis is well conceptualized, feasible, and could continue evolving after the project period ends.

• Extent to which the applicant presents realistic examples of the research questions to be addressed, the types of studies to be conducted by the proposed analysis unit, and explains how these research questions and studies relate to State child care research priorities as well as the priorities and questions outlined in this announcement.

• Extent to which the applicant explains how the proposed research, evaluations and studies would contribute to the development of knowledge about the relationship between child care policies and programs and outcomes for children and families.

• Extent to which the applicant describes how the findings from the proposed studies would be used to inform policy and improve the quality of services.

• Extent to which the applicant clearly describes the types of products that would be produced by the analysis unit and the benefits that the State and other constituencies would derive from these reports and products.

*Criterion 2:* Approach (30 Points).

In this section, applicants are expected to describe in detail how they will implement the proposed analysis unit, improve the State's capacity for collection, analysis, interpretation, and reporting of data, and conduct child care policy-relevant research. Applicants are advised to present their assessment of the advantages and disadvantages of an in-house analysis unit versus a contractual partner. Applicants should describe why they have selected one approach over the other. The justification should include a description of how the chosen approach will integrate current information demands, operations and procedures, management structure, staffing and other resources.

Regardless of the approach selected (in-house or contractual), the applicant is expected to present an implementation plan and describe in detail how the unit will be established, managed, operated and evaluated. This section should also include a plan for sustaining the unit after Federal funding has ceased.

This section of the Project Narrative Statement also requires that the applicant describe the technical approach for addressing issues and achieving the objectives described in Criterion 1 above. This should include a detailed plan that identifies goals and objectives, relates those goals and objectives to the strengths and weakness identified regarding the State's current methods and systems used to collect and compile administrative data, and provides a work plan identifying specific activities necessary to accomplish the stated goals and objectives. The plan must demonstrate that each of the project objectives and activities support the needs identified and can be accomplished with the available or expected resources during the proposed project period.

For any research that is proposed within the project period, a methodological discussion must be provided that includes technical details of the proposed research design, including: (1) Conceptual framework for the research; (2) research questions, hypotheses and variables; (3) data sources; (4) linkages with other research; (5) data processing and statistical analysis; and (6) product development and information dissemination. (For more details, see below.)

When specific studies are proposed, applicants are asked to provide a flow chart or table showing the interrelationships among the proposed research issues, questions, variables, and data elements.

*Specific Review Criteria*

• Extent to which the applicant presents an informed assessment of the advantages and disadvantages of an in-house analysis unit versus a contractual partner.

• Extent to which the justification for selecting the proposed approach is explained in detail, including a description of how the chosen approach will mesh with current information demands, operations and procedures, management structure, staffing and other resources.

• Extent to which a coherent approach to improving the quality of CCDF data is embedded within the scope of the overall capacity-building.

• Extent to which the proposed implementation plan describes the function and scope of activities and indicates when the objectives and major activities under each objective will be accomplished.

• Extent to which the selected approach and implementation plan are appropriate and feasible and will build an analytic capacity for the agency; the description should present a feasible method for identifying research priorities, and determining research studies to be conducted.

• Extent to which the design for any proposed studies appropriately link critical research issues, questions, variables, data sources, samples, and analyses; employ technically sound and appropriate approaches; reflect sensitivity to technical, logistical, cultural and ethical issues that may arise; include realistic strategies for the resolution of difficulties; adequately protect human subjects, confidentiality of data, and consent procedures, as appropriate; include an effective plan for dissemination and utilization of the data; and effectively utilize collaborative strategies, as appropriate to the project goals and design.

• Extent to which the implementation plan provides an appropriate and feasible method for institutionalizing and sustaining the analytic unit after Federal funding has ceased.

*Additional Information*

1. Conceptual Framework for the Research

Based on the issues and objectives described in Criterion 1, present the conceptual framework for the proposed research, including the approach to be taken and why this approach was chosen.

2. Research Questions, Hypotheses and Variables

Based on the conceptual framework for the research, present: (1) Areas of inquiry to be explored; (2) specific research questions and hypotheses; and (3) research variables and constructs. This discussion should relate back to the earlier discussion of Objectives and Need (I, 2, a) and lead into the design elements that follow.

3. Data Sources and Sampling Plan

This section should include a detailed plan for identifying data sources and obtaining an appropriate sample to achieve objectives of the proposed research.

4. Linkages With Other Research

If the proposed project would involve linkage with ongoing research, describe the ongoing research design and status, how the proposed study would benefit from and contribute to it, how the technical aspects of the linkage would be structured and carried out, and how the linked studies would address the goals of this announcement. Describe how the proposed research will make a distinct contribution while building on ongoing research. Include a letter of cooperation from the individual/organization conducting the research which details the status of the data collection, procedures to ensure data

quality, timeliness of data availability and applicant access.

5. Data Processing and Statistical Analysis

Include a detailed plan for processing and analyzing data from all sources which illustrates how the analyses will meet the goals of this research. Discuss the procedures which would be used to clean data, ensure data quality, and prepare data tapes. Discuss plans for the analysis of data, including units of analysis, analytic techniques to be used with various types of data, statistical considerations including, but not limited to power analysis, attrition, response rates, etc., and the linkage of data sets, where appropriate. Describe documentation of the final data set and preparation of data for archiving by the Child Care Bureau.

6. Product Development and Information Dissemination

Include a product development schedule and information dissemination plan which describes the products to be generated during the course of this research (such as technical papers or reports, summaries, briefings, conference presentations, doctoral dissertations, journal articles, internet applications, software and public use data tapes, and the final report). Describe the audiences for various products and the dissemination strategies that will be employed. Discuss which products might be collaboratively developed or disseminated to intended audiences.

*Criterion 3:* Organization Profiles (25 Points).

Applicants need to demonstrate that they have the capacity to implement the proposed project. This criterion consists of three broad topics: (1) management plan, (2) staff qualifications and commitment, and (3) organizational capacity and resources.

Management Plan (10 Points).

**Overview**

Applicants are expected to present a sound and feasible management plan for implementing the analysis unit. This section should detail how the unit will be structured and managed, how the timeliness of activities will be ensured, how quality control will be maintained, and how costs will be controlled. The role and responsibilities of the lead agency should be clearly defined and, if appropriate, applicants should discuss the management and coordination of activities carried out by any partners, subcontractors and consultants.

Applicants are required to provide a plan that describes the role, responsibilities and time commitments of each proposed staff position, including consultants, subcontractors and/or partners. The plan should include a list of organizations and consultants who will work with the program along with a short description of the nature of their effort or contribution.

Applicants are expected to have the project fully staffed and ready for implementation as quickly as possible after notification of the grant award. Therefore, strategies for ensuring timely staffing and implementation should be clearly and succinctly presented in the management plan. The narrative should include a description of the timeline for hiring and procurement in the State, and methods that the applicant will use to expedite the process.

Applicants are also expected to produce a timeline that presents a reasonable schedule of target dates, accomplishments and deliverables by quarter. The timeline should include the sequence and timing of the major tasks and subtasks, important milestones, reports, and completion dates. The proposal should also discuss factors that may affect project implementation or the outcomes and present realistic strategies for the resolution of these difficulties. For instance, downtime due to staff vacancies at start should be reflected. Additionally, if appropriate, applicants should present a plan for training project staff, as well as staff of cooperating organizations.

**Specific Review Criteria**

- Extent to which the management plan provides a diagram showing the organizational structure of the project and the functional relationships among components.
- Extent to which the management plan presents a realistic approach to achieving the objectives of the proposed project on time and within budget, including clearly-defined responsibilities, timelines and milestones for accomplishing project tasks.
- Extent to which the roles and responsibilities of the lead agency are clearly defined and the time commitments of the project director and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

Staff Qualifications and Commitment (10 Points).

**Overview**

In this section, applicants should describe the qualifications of the project manager and key staff, including analysts who will staff the analysis unit and the positions they will fill. Applicants are also expected to describe the educational background and professional experience of other professionals who will form the interdisciplinary analysis unit or organization. (Brief resumes should be provided.) The proposed staff should include persons with educational backgrounds and professional experiences in early childhood services, child development, social work, public policy, economics and other social science disciplines such that the analysis unit or organization will be able to conduct research on a broad range of child care issues and approaches.

**Specific Review Criteria**

- Extent to which the proposed project director, key project staff (including analysts to be hired) and consultants have the necessary technical skill, knowledge and experience to successfully carry out their responsibilities.
- Extent to which staffing is adequate for the proposed project, including administration, program operations, data collection and analysis, reporting and dissemination of findings.
- Extent to which the applicant demonstrates executive level support and commitment from within the CCDF Lead Agency.

Organizational Capacity and Resources (5 Points).

**Overview**

Applicants must show that they have the organizational capacity and resources to form, manage, operate, evaluate and sustain an analysis unit, including the capacity to resolve a wide variety of technical and management problems that may occur. If the proposal involves partnering and/or subcontracting with other agencies/organizations, then the proposal should include an organizational capability statement for each participating organization documenting the ability of the partners and/or subcontractors to carry out their assigned roles and functions.

**Specific Review Criteria**

- Extent to which the applicant organization and partnering organizations collectively have experience and resources required to form, manage, operate and sustain an analysis unit.
- Extent to which the applicant has adequate organizational resources for the proposed project, including administration, program operations,

data processing and analysis, reporting and dissemination of findings.

*Criterion 4:* Budget and Budget Justification (10 Points).

Describe the nature and extent of financial participation from all sources during the proposed project period. Present a detailed budget for each 12-month interval of the proposed project period, i.e., the 12 month budget period to be funded under this announcement and subsequent budget periods that may be funded under a non-competing continuation process. Include a detailed budget narrative that describes and justifies line item expenses within the object class categories listed on the Standard Form 424A. (Line item allocations and justification are required for both Federal and non-Federal funds.) If project funds will be subcontracted, a detailed budget for the use of those funds must be also included. In estimating costs, applicant should consider down time due to staff vacancies, administrative processes, etc.

The proposed budget should include sufficient funding to cover travel expenses for a key person from the project and the evaluator to attend two two-and-a-half day meetings of grantees in the Washington DC area hosted by the Child Care Bureau. Attendance at these meetings is a grant requirement.

**Specific Review Criteria**

- Extent to which the costs of the proposed program are reasonable in view of the activities to be carried out, that funds are appropriately allocated across component areas, and that the budget is sufficient to accomplish the objectives.
- Extent to which the applicant demonstrates that it has sufficient fiscal and accounting capacity to ensure prudent use, proper disbursement, and accurate accounting of funds.
- Extent to which applicant's budget is sufficient to endure that unanticipated problems can be resolved and that the project will be completed on time and with a high degree of quality.

**Part IV. Appendices**

*A. Appendix 1: Contents and Format of the Application*

Clarity and conciseness are of utmost importance. ACYF strongly encourages applicants to limit their applications to 100 pages, double-spaced, with standard one-inch margins and 12 point fonts. This includes the entire Project Narrative Statement including text, tables, charts, graphs, resumes, corporate statements and appendices.

Applicants are encouraged to include all required forms and materials, organized according to the required format. The application packet must include the following items in order:

1. A cover letter that includes the announcement number, priority area and contact information.

2. Standard Federal Forms.

a. Standard Application for Federal Assistance (SF 424 fact sheet and SF 424A) must be included with the application.

b. Standard Form 424B, ''Assurances: Non-Construction Programs.'' Applicants must sign and return the Standard Form 424B with their applications.

c. Certifications Regarding Lobbying. Applicants must provide a certification regarding lobbying when applying for an award in excess of $100,000. Applicants must sign and return the certification with their applications.

d. Disclosure of Lobbying Activities. Applicants must disclose lobbying activities on the Standard Form LLL when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form to report lobbying. Applicants must sign and return the disclosure form, if applicable, with their applications.

e. Certification Regarding Drug-Free Workplace Requirements. Applicants must make the appropriate certification of their compliance with the Drug-Free Workplace Act of 1988. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the application.

f. Certification Regarding Debarment, Suspension, and Other Responsibility Matters. Applicants must make the appropriate certification that they are not presently debarred, suspended, or otherwise ineligible for an award. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the application.

g. Protection of Human Subjects: Assurance, Identification, Certification, and Declaration.

h. Certification Regarding Environmental Tobacco Smoke. Applicants must make the appropriate certification of their compliance. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the application.

3. For-profit entities wishing to receive a grant directly must provide a letter indicating their willingness to waive their fees. Non-profit organizations must submit proof of non-profit status in the application at the time of submission. The applicant can demonstrate proof of non-profit status in any one of three ways:

a. By providing a copy of the organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c3) of the IRS code;

b. By providing a copy of the currently valid IRS tax exemption certificate; or

c. By providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

4. Executive Order 12372—Single Point of Contact.

This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs'', and 45 CFR part 100, ''Intergovernmental Review of Department of Health and Human Services Program and Activities''. Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these twenty-four jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations that may trigger the accommodation or explain rule.

When comments are submitted directly to ACF, they should be addressed to: Alece Morgan, Office of Grants Management, 370 L'Enfant Promenade, SW., DC 20447, Attn: Child Care Policy Research Discretionary Grants. A list of the Single Points of Contact (SPOCs) for each State and Territory can be found on the following web site: *http://www.whitehouse.gov/omb/grants/spoc.html.*

5. Table of Contents

6. Project Abstract (not to exceed one page) for use in official briefings, decision packages, and public announcement of awards.

7. Project Narrative Statement (See instructions in Appendix 2 and Evaluation Criteria for each Priority described in this announcement.)

8. Appendices: All supporting materials and documents should be organized into appropriate appendices and securely bound in to the application package. Applicants are reminded that the total page limitation applies to both narrative text and supporting materials.

a. Contact Information for all Key Staff

b. Resumes

c. Letters of Support, if appropriate

d. Other

9. Number of Copies and Binding: An original and two copies of the complete application packet must be submitted. Each copy of the application should be securely stapled in the upper left-hand corner, clipped, or secured at the top with a two-hole punch fastener. Because each application will be duplicated for the review panel, do not use non-removable binders. Do not include tabs, plastic inserts, brochures, videos, or any other items that cannot be photocopied.

*B. Appendix 2: Uniform Project Description*

Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, all information requested through each specific evaluation criteria should be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application.

General Instructions

ACF is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Project descriptions are evaluated on the basis of substance, not length. Extensive exhibits are not required. Cross referencing should be used rather than repetition. Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant funded activity should be placed in an appendix.

Pages should be numbered and a table of contents should be included for easy reference.

Introduction

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions and the specified evaluation criteria. The instructions give a broad overview of what your project description should include while the evaluation criteria expands and clarifies more program-specific information that is needed.

Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives And Need For Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any ''collection of information that is conducted or sponsored by ACF.''

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Evaluation

Provide a narrative addressing how the results of the project and the conduct of the project will be evaluated. In addressing the evaluation of results, state how you will determine the extent to which the project has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the project. Discuss the criteria to be used to evaluate results, and explain the methodology that will be used to determine if the needs identified and discussed are being met and if the project results and benefits are being achieved. With respect to the conduct of the project, define the procedures to be employed to determine whether the project is being conducted in a manner consistent with the work plan presented and discuss the impact of the project's various activities on the project's effectiveness.

Additional Information

Following are requests for additional information that need to be included in the application:

Staff And Position Data

Provide a biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed.

Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission.

The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code, or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Letters of Support

Provide statements from community, public and commercial leaders that support the project proposed for funding. All submissions should be included in the application *OR* by application deadline.

Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

General

The following guidelines are for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. For purposes of preparing the budget and budget justification, ''Federal resources'' refers only to the ACF grant for which you are applying. Non-Federal resources are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

Personnel

*Description:* Costs of employee salaries and wages.

*Justification:* Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

*Description:* Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

*Justification:* Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

*Description:* Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

*Justification:* For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

Equipment

*Description:* ''Equipment'' means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000. (**NOTE:** Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.)

*Justification:* For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

*Description:* Costs of all tangible personal property other than that included under the Equipment category.

*Justification:* Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Contractual

*Description:* Costs of all contracts for services and goods except for those which belong under other categories such as equipment, supplies, construction, etc. Third-party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant, should be included under this category.

*Justification:* All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and subrecipients, other than States that are required to use Part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at 100,000). Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

**Note:** Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the

required supporting information referred to in these instructions.

Other

Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (noncontractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

*Justification:* Provide computations, a narrative description and a justification for each cost under this category.

Indirect Charges

*Description:* Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

*Justification:* An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Nonfederal Resources

*Description:* Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF–424.

*Justification:* The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process. A detailed budget must be prepared for each funding source.

Dated: April 25, 2002.

**James A. Harrell,**

*Deputy Commissioner, Administration on Children, Youth and Families.*

[FR Doc. 02–10781 Filed 4–30–02; 8:45 am]

BILLING CODE 4184–01–U

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Anesthetic and Life Support 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*: Anesthetic and Life Support 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 May 16, 2002, from 8 a.m. to 5 p.m.

*Location*: Holiday Inn, The Ballrooms, Two Montgomery Village Ave., Gaithersburg, MD.

*Contact Person*: Kimberly Littleton Topper, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12529. Please call the Information Line for up-to-date information on this meeting.

*Agenda*: The committee will discuss specific issues in the development of pharmaceuticals for the treatment of neuropathy and neuropathic pain. Areas for discussion will include duration of clinical trials, evaluation of nerve function, value of electrophysiological endpoints, appropriate clinical endpoints, and appropriateness of general and specific claims.

*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 May 10, 2002. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before May 10, 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.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kimberly Topper at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 24, 2002.

**Linda A. Suydam,**

*Senior Associate Commissioner for Communications and Constituent Relations.*

[FR Doc. 02–10708 Filed 4–30–02; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Cancer Institute Director's Consumer Liaison Group.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contract Person listed below in advance of the meeting.

*Name of Committee:* National Cancer Institute Director's Consumer Liaison Group.

*Date:* May 9, 2002.

*Time:* 1 p.m. to 4 p.m.

*Agenda:* To debrief on April 2002 meeting and to get updates from the Working Groups.

*Place:* 6116 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Elaine Lee, Executive Secretary, Office of Liaison Activities, National Institutes of Health, National Cancer Institute, 6116 Executive Boulevard, Suite 300 C, Bethesda, MD 20892, 301/594–3194.

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.

Information is also available on the Institute's/Center's home page: *deainfo.nih.gov/advisory/dclg/dclg.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 23, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–10675 Filed 4–30–02; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Mental Health Special Emphasis Panel, March 28, 2002, 12 p.m. to March 28, 2002, 1 p.m., Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD, 20892 which was published in the **Federal Register** on March 29, 2002, 67 FR 15219.

The meeting will be held on April 15, 2002 at 2 p.m. at the Neuroscience Center. The meeting is closed to the public.

Dated: April 23, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–10667 Filed 4–30–02; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice Of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Loan Repayment.

*Date:* May 14, 2002.

*Time:* 1 p.m. to 2:30 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* 2 Democracy Plaza, 6707 Democracy Boulevard, Room 752, Bethesda, MD 20892. (Telephone Conference Call).

*Contact Person:* Francisco O. Calvo, Chief, Review Branch, DEA, NIDDK, Room 752, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600. (301) 594–8897.

(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: April 23, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy*

[FR Doc. 02–10668 Filed 4–30–02; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group, Diabetes, Endocrinology and Metabolic Diseases B Subcommittee.

*Date:* June 18, 2002.

*Open:* 8 a.m. to 8:30 a.m.

*Agenda:* To review procedures and discuss policy.

*Place:* Canterbury Hotel, 780 Sutter Street, San Francisco, CA 94109.

*Closed:* 8:30 a.m. to adjournment.

*Agenda:* To review and evaluate grant applications

*Place:* Canterbury Hotel, 780 Sutter Street, San Francisco, CA 94109.

*Contact Person:* Michele L. Barnard, Scientific Review Administrator, Review Branch, DEA NIDDK, National Institutes of Health, Room 657, 6707 Democracy Boulevard, Bethesda, MD 20892. 301/594–8898.

(Catalogue of Federal Domestic Assistance Programs 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: April 23, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–10669 Filed 4–30–02; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIAAA.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section

552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Alcohol Abuse and Alcoholism, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Board of Scientific Counselors, NIAAA.
*Date:* June 6, 2002.
*Open:* 7:45 a.m. to 8 a.m.
*Agenda:* To Discuss Administrative Details.
*Place:* Parklawn Building, The Potomac Conference Room, 5600 Fishers Lane, Rockville, MD 20857.
*Closed:* 8 a.m. to 5:30 p.m.
*Agenda:* To review and evaluate the Laboratory of Molecular and Cellular Neurobiology, and the Section on Liver Biology, Laboratory of Physiologic Studies.
*Place:* Parklawn Building, The Potomac Conference Room, 5600 Fishers Lane, Rockville, MD 20857.
*Contact Person:* Brenda L. Sandler, Chief Administrative Management Branch, Div of Intramural Clinical and Biological Research, Building, 31, Room 1B58, Bethesda, MD 20892–2088, 301–496–9843, *Sandlerb@niaaa.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: April 23, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–10670 Filed 4–30–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, R21 REVIEW PA–99–131.
*Date:* May 9, 2002.
*Time:* 2 p.m. to 3 p.m.
*Agenda:* to review and 4valuate grant applications.
*Place:* Willco Building, Suite 409, 6000 Executive Boulevard, Rockville, MD 20892, (Telephone Conference Call).
*Contact Person:* Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol, Abuse and Alcoholism, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003, (301) 443–2926, *skandasa@mall.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: April 23, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–10671 Filed 4–30–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Special Emphasis Panel, Vitamin A and Zinc; Prevention of Pheumonia—Supplement.
*Date:* May 3, 2002.
*Time:* 12:30 p.m. to 1:30 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* 6100 Executive Blvd 5th Floor, Rockville, MD 20852, (Telephone Conference Call).
*Contact Person:* Gopal M. Bhatnagar, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, National Institutes of Health, PHS, DHHS, 9000 Rockville Pike, 6100 Bldg., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: April 23, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–10673 Filed 4–30–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institutes of General Medical Sciences; Notice of 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 Institutes of General Medical Sciences Special Emphasis Panel, ZGM–MBRS–1–02.
*Date:* May 6, 2002.
*Time:* 2 p.m. to 3:30 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Natcher Building, 45 Center Drive, Room 1AS–13, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Helen R. Sunshine, PhD, Chief, Office of Scientific Review, NIGMS, Natcher Building, Room 1AS–13, Bethesda, MD 20892, (301) 594–2881.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support, 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research,; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: April 23, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–10674 Filed 4–30–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 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:* May 6, 2002.

*Time:* 12 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:* Marcia Litwack, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–9 (50) Electronic Review Administration RFA.

*Date:* May 31, 2002.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Bill Bunnag, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5124, MSC 7854, Bethesda, MD 20892–7854, (301) 435–1177, bunnagb@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 23, 2002.

**LaVerne J. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–10672 Filed 4–30–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at the following Web sites: *http://workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014, Fax: (301) 443–3031.

**SUPPLEMENTARY INFORMATION:** Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection.

To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories
8901 W. Lincoln Ave.
West Allis, WI 53227
414–328–7840/800–877–7016
(Formerly: Bayshore Clinical Laboratory)

ACM Medical Laboratory, Inc.
160 Elmgrove Park
Rochester, NY 14624
716–429–2264

Advanced Toxicology Network
3560 Air Center Cove, Suite 101
Memphis, TN 38118
901–794–5770/888–290–1150

Aegis Analytical Laboratories, Inc.
345 Hill Ave.
Nashville, TN 37210
615–255–2400

Alliance Laboratory Services
3200 Burnet Ave.
Cincinnati, OH 45229
513–585–9000
(Formerly: Jewish Hospital of Cincinnati, Inc.)

American Medical Laboratories, Inc.
14225 Newbrook Dr.
Chantilly, VA 20151
703–802–6900

Associated Pathologists Laboratories, Inc.
4230 South Burnham Ave., Suite 250
Las Vegas, NV 89119–5412
702–733–7866/800–433–2750

Baptist Medical Center—Toxicology Laboratory
9601 I–630, Exit 7
Little Rock, AR 72205–7299

501–202–2783
(Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Laboratory Partners, LLC
129 East Cedar St.
Newington, CT 06111
860–696–8115
(Formerly: Hartford Hospital Toxicology Laboratory)

Clinical Reference Lab
8433 Quivira Rd.
Lenexa, KS 66215–2802
800–445–6917

Cox Health Systems, Department of Toxicology
1423 North Jefferson Ave.
Springfield, MO 65802
800–876–3652/417–269–3093
(Formerly: Cox Medical Centers)

Diagnostic Services Inc., dba DSI
12700 Westlinks Drive
Fort Myers, FL 33913
941–561–8200/800–735–5416

Doctors Laboratory, Inc.
P.O. Box 2658, 2906 Julia Dr.
Valdosta, GA 31602
912–244–4468

DrugProof, Divison of Dynacare
543 South Hull St.
Montgomery, AL 36103
888–777–9497/334–241–0522
(Formerly: Alabama Reference Laboratories, Inc.)

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC
1229 Madison St., Suite 500, Nordstrom Medical Tower
Seattle, WA 98104
206–386–2672/800–898–0180
(Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc.
P.O. Box 2969, 1119 Mearns Rd.
Warminster, PA 18974
215–674–9310

Dynacare Kasper Medical Laboratories*
14940–123 Ave.
Edmonton, Alberta
Canada T5V 1B4
780–451–3702/800–661–9876

ElSohly Laboratories, Inc.
5 Industrial Park Dr.
Oxford, MS 38655
662–236–2609

Express Analytical Labs
3405 7th Avenue, Suite 106
Marion, IA 52302
319–377–0500

Gamma-Dynacare Medical Laboratories*
A Division of the Gamma-Dynacare Laboratory Partnership
245 Pall Mall St.
London, ONT
Canada N6A 1P4
519–679–1630

General Medical Laboratories
36 South Brooks St.
Madison, WI 53715
608–267–6267

Kroll Laboratory Specialists, Inc.
1111 Newton St.
Gretna, LA 70053
504–361–8989/800–433–3823
(Formerly: Laboratory Specialists, Inc.)

LabOne, Inc.
10101 Renner Blvd.
Lenexa, KS 66219
913–888–3927/800–728–4064
(Formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America Holdings
7207 N. Gessner Road
Houston, TX 77040
713–856–8288/800–800–2387

Laboratory Corporation of America Holdings
69 First Ave.
Raritan, NJ 08869
908–526–2400/800–437–4986
(Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings
1904 Alexander Drive
Research Triangle Park, NC 27709
919–572–6900/800–833–3984
(Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.;
CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem
Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings
10788 Roselle Street
San Diego, CA 92121
800–882–7272
(Formerly: Poisonlab, Inc.)

Laboratory Corporation of America Holdings
1120 Stateline Road West
Southaven, MS 38671
866–827–8042/800–233–6339
(Formerly: LabCorp Occupational Testing Services, Inc., MedExpress/National Laboratory Center)

Marshfield Laboratories
Forensic Toxicology Laboratory
1000 North Oak Ave.
Marshfield, WI 54449
715–389–3734/800–331–3734

MAXXAM Analytics Inc.*
5540 McAdam Rd.
Mississauga, ON
Canada L4Z 1P1
905–890–2555
(Formerly: NOVAMANN (Ontario) Inc.)

Medical College Hospitals Toxicology Laboratory, Department of Pathology
3000 Arlington Ave.
Toledo, OH 43699
419–383–5213

MedTox Laboratories, Inc.
402 W. County Rd. D
St. Paul, MN 55112
651–636–7466/800–832–3244

MetroLab-Legacy Laboratory Services
1225 NE 2nd Ave.
Portland, OR 97232
503–413–5295/800–950–5295

Minneapolis Veterans Affairs Medical Center
Forensic Toxicology Laboratory
1 Veterans Drive
Minneapolis, Minnesota 55417
612–725–2088

National Toxicology Laboratories, Inc.
1100 California Ave.
Bakersfield, CA 93304
661–322–4250/800–350–3515

Northwest Drug Testing, a division of NWT Inc.
1141 E. 3900 South
Salt Lake City, UT 84124
801–293–2300 / 800–322–3361
(Formerly: NWT Drug Testing, NorthWest Toxicology, Inc.)

One Source Toxicology Laboratory, Inc.
1705 Center Street
Deer Park, TX 77536
713–920–2559
(Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB
Pathology-Toxicology Laboratory)

Oregon Medical Laboratories
P.O. Box 972, 722 East 11th Ave.
Eugene, OR 97440–0972
541–687–2134

Pacific Toxicology Laboratories
6160 Variel Ave.
Woodland Hills, CA 91367
818–598–3110/800–328–6942
(Formerly: Centinela Hospital Airport Toxicology Laboratory

Pathology Associates Medical Laboratories
110 West Cliff Drive
Spokane, WA 99204
509–755–8991/800–541–7891x8991

PharmChem Laboratories, Inc.
4600 N. Beach
Haltom City, TX 76137
817–605–5300
(Formerly: PharmChem Laboratories, Inc., Texas Division; Harris Medical Laboratory)

Physicians Reference Laboratory
7800 West 110th St.
Overland Park, KS 66210
913–339–0372/800–821–3627

Quest Diagnostics Incorporated
3175 Presidential Dr.
Atlanta, GA 30340
770–452–1590
(Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated
4770 Regent Blvd.
Irving, TX 75063
800–842–6152
(Moved from the Dallas location on 03/31/01; Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated
400 Egypt Rd.
Norristown, PA 19403
610–631–4600/877–642–2216
(Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated
506 E. State Pkwy.
Schaumburg, IL 60173
800–669–6995/847–885–2010
(Formerly: SmithKline Beecham Clinical Laboratories, International Toxicology Laboratories)

Quest Diagnostics Incorporated
7600 Tyrone Ave.
Van Nuys, CA 91405

818–989–2520/800–877–2520
(Formerly: SmithKline Beecham Clinical Laboratories)

Scientific Testing Laboratories, Inc.
463 Southlake Blvd.
Richmond, VA 23236
804–378–9130

S.E.D. Medical Laboratories
5601 Office Blvd.
Albuquerque, NM 87109
505–727–6300/800–999–5227

South Bend Medical Foundation, Inc.
530 N. Lafayette Blvd.
South Bend, IN 46601
219–234–4176

Southwest Laboratories
2727 W. Baseline Rd.
Tempe, AZ 85283
602–438–8507/800–279–0027

Sparrow Health System
Toxicology Testing Center, St. Lawrence Campus
1210 W. Saginaw
Lansing, MI 48915
517–377–0520
(Formerly: St. Lawrence Hospital & Healthcare System)

St. Anthony Hospital Toxicology Laboratory
1000 N. Lee St.
Oklahoma City, OK 73101
405–272–7052

Toxicology & Drug Monitoring Laboratory
University of Missouri Hospital & Clinics
2703 Clark Lane, Suite B, Lower Level
Columbia, MO 65202
573–882–1273

Toxicology Testing Service, Inc.
5426 N.W. 79th Ave.
Miami, FL 33166
305–593–2260

Universal Toxicology Laboratories (Florida), LLC
5361 NW 33rd Avenue
Fort Lauderdale, FL 33309
954–717–0300, 800–419–7187x419
(Formerly: Integrated Regional Laboratories, Cedars Medical Center, Department of Pathology)

Universal Toxicology Laboratories, LLC
9930 W. Highway 80
Midland, TX 79706
915–561–8851/888–953–8851

US Army Forensic Toxicology Drug Testing Laboratory
Fort Meade, Building 2490
Wilson Street
Fort George G. Meade, MD 20755–5235
301–677–7085

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (FR, 16 July 1996) as meeting the minimum standards of the ''Mandatory Guidelines for Workplace Drug Testing'' (59 FR, 9 June 1994, Pages 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

**Richard Kopanda,**

*Executive Officer, Substance Abuse and Mental Health Services Administration.*

[FR Doc. 02–10684 Filed 4–30–02; 8:45 am]

BILLING CODE 4160–20–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Correction of Application Deadline for the Grant Program, Targeted Capacity Expansion: Meeting the Mental Health Services Needs of Older Adults (SM 02–009)

**AGENCY:** Substance Abuse and Mental Health Services Administration (SAMHSA), DHHS.

**ACTION:** Correction of Application Deadline for the grant program, *Targeted Capacity Expansion: Meeting the Mental Health Services Needs of Older Adults (SM 02–009).*

**SUMMARY:** This notice is to inform the public that the application deadline published on April 23, 2002, for the grant program, *Targeted Capacity Expansion: Meeting the Mental Health Services Needs of Older Adults (SM 02–009),* is incorrect. The correct application deadline is June 19, 2002.

**PROGRAM CONTACT:** For questions about the due date for this program or other program issues relating to this program, contact: Betsy McDonel Herr, Ph.D., Social Science Analyst, Center for Mental Health Services, SAMHSA, Room 11C–22, 5600 Fishers Lane, Rockville, MD 20857, (301) 594–2197, (301) 443–0541 (FAX) E-mail: *bmcdone1@samhsa.gov.*

Dated: April 25, 2002.

**Richard Kopanda,**

*Executive Officer, SAMHSA.*

[FR Doc. 02–10709 Filed 4–30–02; 8:45 am]

BILLING CODE 4162–20–M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Availability

**SUMMARY:** The U.S. Fish and Wildlife Service announces that a Draft Comprehensive Conservation Plan and Environmental Assessment (CCP/EA) for Crescent Lake National Wildlife Refuge (Refuge) is available for review and comment. This CCP/EA, prepared pursuant to the National Wildlife Refuge System Improvement Act of 1997 and the National Environmental Policy Act of 1969, describes how the U.S. Fish and Wildlife Service intends to manage the Refuge for the next 15 years.

**DATES:** Please submit comments on the Draft CCP/EA on or before May 31, 2002.

**ADDRESSES:** Comments on the Draft CCP/EA should be addressed to: Steve Knode, Project Leader, U.S. Fish and Wildlife Service, Crescent Lake National Wildlife Refuge Complex, 115 Railway Street, Suite C109, Scottsbluff, NE 69361–3190.

**FOR MORE INFORMATION CONTACT:** Steve Knode, Project Leader, U.S. Fish and Wildlife Service, Crescent Lake National Wildlife Refuge Complex,115 Railway Street, Suite C109, Scottsbluff, NE 69361 (308) 635–7851; fax (308) 635–7841; or John Esperance, Branch Chief, Branch of Land Protection Planning, PO Box 25486–DFC, Denver, CO 80225; (303) 236–8145 ext. 658.

**SUPPLEMENTARY INFORMATION:**

#### Availability of Documents

Copies of the Draft CCP/EA may be obtained by writing to Steve Knode, Project Leader, U.S. Fish and Wildlife Service, Crescent Lake National Wildlife Refuge Complex, 115 Railway Street, Suite C109, Scottsbluff, NE 69361. Copies of the plan may also be viewed at this address.

#### Background

The 45,849-acre Crescent Lake National Wildlife Refuge (Refuge), established in 1931, is located 28 miles north of Oshkosh, Nebraska in Garden County, within the Central Flyway, at the southwestern end of the Nebraska Sandhills. It is administered by the U.S. Fish and Wildlife Service as part of the Crescent Lake/North Platte National Wildlife Refuge Complex. The Complex headquarters is 100 miles to the west in the city of Scottsbluff, NE.

Crescent Lake Refuge lies on the southwestern edge of the 19,300 square-mile Nebraska Sandhills, the largest sand dune area in the Western Hemisphere and one of the largest grass-

stabilized regions in the world. The Sandhills are characterized by rolling, vegetated hills and inter-dunal valleys which are oriented in a northwest to southeast direction. Many shallow lakes and marshes are interspersed in the lower valleys. Native grasses predominate. Wildlife diversity, except large ungulates and their predators, is relatively unchanged since early settlement.

The initial Refuge was 36,920 acres, acquired primarily from one large ranch. Additional lands were acquired between 1932 and 1937. Most lands were acquired or exchanged under the authority of the Migratory Bird Conservation Act (45 Stat. 1222). Approximately 2,566 acres were acquired under the Resettlement Administration (Executive Order 7027, April 30, 1935), a drought and depression relief program.

The Nebraska Sandhills are one of the few large native prairie areas in the United States that have not been substantially converted to farmland or otherwise modified. Thus, most of the plant and animal species present when settlement began are still present today.

This Draft CCP/EA identifies and evaluates four alternatives for managing Crescent Lake National Wildlife Refuge in Garden County, Nebraska for the next 15 years.

Under the No Action Alternative, the refuge managers would continue current management and would not involve extensive restoration of wetlands and grassland habitat, nor improvements to roads, interpretive, and administrative facilities.

This alternative would result in managing grasslands through grazing, using permittee cattle, rest, and limited prescribed fire. The Refuge staff would conduct limited surveys and management for threatened and endangered species, use grazing, fire, beneficial insects, and herbicides to control exotic plants and weeds; maintain the current levels of hunting, fishing, and wildlife observation; stay with the current cooperative agreements and partnerships; and continue the current levels of wildlife and habitat monitoring.

Under Alternative 2, the refuge managers would provide for the reintroduction of a bison herd that would range freely on Crescent Lake NWR. The bison would be reintroduced to the Refuge though a special use permit by allowing a permittee to seasonally graze on Refuge land, following the guidelines of a grazing step-down plan. The public would have visible access to the bison herd, which would provide historical ecology interpretation. With the reintroduction of the bison herd, the Refuge staff would increase monitoring of fire effects and wildlife trends. Over time, use of permittee cattle on the Refuge would be phased out. The Refuge staff would increase the use of prescribed fire to replicate historic fire frequency. Over a period of time, water control structures would be removed and lakes would return to natural levels. The Refuge staff would monitor and study threatened and endangered species to determine effects of historic management. The control of exotic plants would be done using increased prescribed fire along with beneficial insects and herbicides. The same number of lakes would remain open to fishing. The Refuge staff would continue current cooperative agreements and seek partnerships in bison management. The current hunting programs would be continued.

Under Alternative 3 the Refuge staff would actively manage grasslands using grazing with permittee cattle, rest, and prescribed fire. Water level management would be more intensively implemented. Existing water control structures would remain as necessary for draw-downs. The Refuge staff would increase monitoring, management, and research on threatened and endangered species. Control of weeds and exotic plants would be accomplished by use of grazing, beneficial insects, herbicides and increased prescribed fire. Current hunting programs would continue with limits on numbers of hunters instituted if crowding occurs. This alternative calls for the increase in number of Refuge lakes open to sport fishing and an increase in the fishery management of those open lakes. This alternative also calls for an increase in the levels of interpretation and environmental education. Continue current cooperative agreements and partnerships and seek additional ones. The Refuge would increase monitoring of wildlife and habitats.

Alternative 4 is the Service's preferred alternative that would enable Crescent Lake NWR staff to manage their resources for native birds and wild animals, and to pursue the desire to implement a more natural/historic management regime with bison and prescribed fire as historical habitat management tools.

Under this alternative the Refuge staff would, through a special use permit, reintroduce a bison herd on the 24,502-acre proposed Wilderness Area of the Refuge. The bison will be allowed to seasonally graze on Refuge land. The permittee would be required to follow the guidelines of a Bison Management step-down plan. The Refuge would increase prescribed fire in this area and incrementally remove interior fences. A five-year monitoring program would be established in this area to document changes in grasslands and wildlife. After the five-year period, the Refuge staff would determine if bison grazing is truly compatible with a healthy grassland ecosystem. If not, they would return to permittee cattle as the primary grassland management tool.

Under this alternative, the Refuge would retain the lakes presently open to fishing.

This alternative includes the following management strategies that would monitor threatened and endangered species use and conduct applied research to determine methods to increase use:

- The Refuge would continue to transplant blowout penstemon in additional sites and protect trees for bald eagle roosts.
- Control weeds and exotic plants using a combination of prescribed fire, beneficial insects, and herbicides.
- Continue current fishing opportunities with an increased emphasis on public environmental education and interpretation.
- Continue current hunting opportunities and add limited waterfowl hunting.
- Current cooperative agreements and partnerships would continue, and the Refuge staff would seek outside funding to implement parts of the Plan.
- The Refuge staff would actively seek a partnering effort in bison management.
- Refuge staff would increase monitoring of grasslands and wildlife with emphasis on evaluation of the use of bison and fire to manage grasslands.

Dated: March 13, 2002.

**John A. Blankenship,**

*Deputy Regional Director, Region 6, Denver, Colorado.*

[FR Doc. 02–10685 Filed 4–30–02; 8:45 am]

BILLING CODE 4310–55–P

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WO–310–1310–02–PB–24 1A]**

### OMB Approval Number 1004–0185; Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office Management and Budget

(OMB) for approval under the provisions of the Paperwork Reduction (44 U.S.C. Chapter 3501 *et seq.*). On August 21, 2001, the BLM published a notice in the **Federal Register** (66 FR 43899) requesting comments on the collection. The comment period ended October 22, 2001. No comments were received. You may obtain copies of the proposed collection of information and related explanatory material by contacting the BLM Information Clearance Officer at the telephone number listed below.

OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration, your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0185), Office of Information and Regulatory Affairs, Washington, D.C. 20503. Please provide a copy of your comments to the Bureau Information Collection Clearance Officer (WO–630) 1849 C St., NW., Mail Stop 401 LS, Washington, DC. 20240.

*Nature of Comments:* We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the Bureau of Land Management, including whether the information will have practical utility;

2. The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

3. Ways to enhance the quality, utility, and clarity of the information collected; and

4. How to minimize the information collection burden 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.

*Title:* Onshore Oil and Gas Drainage Protection, 43 CFR 3100 and 3162.

*OMB Approval Number:* 1004–0185.

*Abstract:* Federal and Indian (except Osage) oil and gas lessees and operating rights owners must monitor drilling activities of offending wells that may result in drainage situations of Federal oil and gas mineral resources. Respondents are oil and gas companies, lessees, operators, operating rights owners, and individuals.

*Form Number:* None.

*Frequency:* On occasion; nonrecurring.

*Description of Respondets:* Jessees and operating rights owners.

*Estimated Completion Time:* For ease of reference, this table summarizes the burden items in this information collection request:

| Type of analysis | Number of analyses and reporting per respondent | Hours |
|---|---|---|
| Preliminary ..... | 1,000@ 2 hours | 2,000 |
| Detailed ..... | 100@ 24 hours .. | 2,400 |
| Additional ..... | 10@ 20 hours .... | 200 |
| Total ..... | 1,110 ..... | 4,600 |

*Annual Responses:* 1,110.

*Annual Burden Hours:* 4,600.

*Bureau Clearance Officer:* Michael H. Schwartz (202) 452–5033.

Dated: April 5, 2002.

**Michael H. Schwartz,**

*Bureau of Land Management, Information Collection Clearance Officer.*

[FR Doc. 02–10689 Filed 4–30–02; 8:45 am]

BILLING CODE 4310–84–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CACA–44014]**

### Notice of Intent To Prepare an Environmental Impact Statement (EIS) on the Proposed Expansion/ Modernization of an Existing Wallboard Manufacturing Facility and Associated Quarry Operation

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of intent.

**SUMMARY:** United States Gypsum (USG) has proposed the expansion and modernization of USG's Plaster City wallboard manufacturing operations and Fish Creek Quarry operations located in Imperial County, California. Although USG's facilities are primarily on private land, several appurtenances cross public land. Using the U.S. government survey method, the areas within which the existing and proposed facilities are located are generally described as follows: SBBM, T.16S., R.11E. (Plaster City wallboard plant and portion of Interstate rail line; T.13S., R.9E. (Fish Creek quarry); T.13S., R.9E.; T.13S., R.10E.; T.14S., R.10E.; T.15E., R.10E., T.15S., R.11E.; T.16S., R.11E. (narrow gauge rail line between quarry and plant); T.16S., R.10E.; T.16S, R.11E. (water pipeline between Ocotillo and plant).

Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the BLM will direct the preparation of an environmental impact statement (EIS) by a third-party contractor on the impacts of this proposed project. Interested members of the public are encouraged to identify significant issues or concerns related to the proposed action to determine the scope of the issues (including alternatives) that need to be analyzed and to eliminate from detailed study those issues that are not significant. One public scoping meeting will be held. The location and time of the meeting will be announced in local newspapers or may be obtained by contacting Nicole Riven at 760–337–4426 or e-mail *nriven@ca.blm.gov*. Comments recommending that the EIS address specific environmental issues should include supporting documentation. Written comments must be received at the El Centro Field Office no later than June 10, 2002. Comments, including names and street addresses of respondents, will be available for public review at the El Centro Field Office 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.

**ADDRESSES:** Written comments should be addressed to Greg Thomsen, Field Manager, Bureau of Land Management, El Centro Field Office, 1661 South 4th Street, El Centro, CA 92243.

**FOR FURTHER INFORMATION CONTACT:** Linda Self (760) 337–4426.

**SUPPLEMENTARY INFORMATION:** USG's Plaster City wallboard plant has been in operation for over 55 years and is located adjacent to Evan Hewes Highway in Plaster City approximately 18 miles west of El Centro and 2 miles north of Interstate 8. The Fish Creek Quarry operations are located on Split Mountain Road approximately 26 miles north by northwest of Plaster City. The quarry operations are located within designated critical habitat for the Peninsular bighorn sheep (*Ovis canadensis*). Water for the facility is delivered via pipeline from the Ocotillo-Coyote Wells Groundwater Basin. Generally, the overall expansion/ modernization project consists of construction of new buildings, a

doubling in wallboard production by removing one operating production wallboard line, and installing a new state-of-the-art high speed line and increased mining of gypsum from 1.1 million tons per year (mty) to approximately 1.9 mty on land reserves owned and mined by USG. The project also includes expanding existing and planned quarry areas. The accumulated inert materials associated with the expanded manufacturing activities at the Plaster City site will be recycled or transferred to a landfill. To accommodate the expanded operations, water usage will increase from 400 acre-feet per year (AF/Yr) to a maximum of 767 AF/Yr. The project will include modernizing the existing warehouses, storage structures, and rail loading facility; upgrading electrical transmission lines (by Imperial Irrigation District); maintaining the narrow gauge rail line which runs between the plant and the quarry; replacing the existing pipeline that runs between Ocotillo and the plant and relocating a short portion of the Interstate rail line that runs through the Plaster City facility. Some of these facilities may be located within habitat for the Flat-tailed horned lizard (*Phrynosoma mcalli*). Although certain aspects of the project have already been implemented pursuant to Imperial County's previous decision to adopt a Negative Declaration for portions of the project, for purposes of this EIS, the '' baseline'' for evaluating the potential impacts of the project on the environment shall be the physical conditions that existed prior to project implementation.

Dated: April 25, 2002.

**Greg Thomsen,**

*Field Manager.*

[FR Doc. 02–10687 Filed 4–30–02; 8:45 am]

BILLING CODE 4310–40–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AK–040–1430–EU; AA–083994, A–029786]**

### Notice of Realty Action: Direct Sale, Alaska

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Realty Action: Direct Sale of Reversionary Interest of Recreation & Public Purpose Patent, Number 1230095; Chugiak, Alaska.

**SUMMARY:** Reversionary interest held by the United States in the following lands has been determined to be suitable for direct sale to the Chugiak Benefit Association (CBA), under the authority of section 203 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1713), at no less than the appraised fair market value of $31,649.25. The land is described as T. 15N., R. 1 W., Sec. 9, Lots 16 and 17, and 20 Seward Meridian, Alaska, located southwest of the North Birchwood Interchange, containing 3 acres, more or less. The land is currently owned by CBA, but is restricted by a reversionary clause in the patent. The land is an isolated parcel, difficult and uneconomic to manage as part of the public lands, and not needed for federal purposes. The sale is consistent with BLM's land use planning for the area involved and the public interest will be served by the sale.

**FOR FURTHER INFORMATION CONTACT:** Callie Webber, Anchorage Field Office, 6881 Abbott Loop Road, Anchorage, Alaska 99507, (907) 267–1272.

**SUPPLEMENTARY INFORMATION:** This action will accommodate and provide for the expansion of an existing senior housing and community development project, located on adjacent land. Funding is made available through a U.S. Department of Housing and Urban Development grant. The patent, when issued, will be for reversionary interest only. All other terms and conditions of Patent No. 1230095 will continue to apply to the lands involved. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed direct sale of the reversionary interest to the Anchorage Field Office Manager. Adverse comments will be evaluated, and could result in the modification or vacation of this decision. The reversionary interest will not be offered for conveyance until at least 60 days after the date of this notice.

Dated: March 29, 2002.

**June Bailey,**

*Acting Anchorage Field Office Manager.*

[FR Doc. 02–10703 Filed 4–30–02; 8:45 am]

BILLING CODE 4310–JA–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AZ–010–02–1430–ES; A–31350]**

### Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Arizona

**AGENCY:** Bureau of Land Management.

**ACTION:** Notice.

**SUMMARY:** The following public lands in the community of Littlefield in Mohave County, Arizona have been examined and found suitable for classification for lease or conveyance to the Littlefield School District under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Littlefield School District proposes to use the land for schools.

**Gila and Salt River Meridian**

T. 40 N., R. 16 W.,
Sec. 13, SE¼.
T. 41 N., R. 15 W.,
Sec. 33, portions of Lots 1, 4 and 5.
Containing 139 acres, more or less.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest. The lease/patent, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. Those rights for Old Highway 91, 200 feet wide granted by right-of-way AZA–021195.

5. Those rights for a 30 foot wide telephone line granted by right-of-way AZAR–035969.

6. Any other valid and existing rights of record not yet identified.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Arizona Strip Field Office, 345 E. Riverside Dr., St. George, Utah 84790.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed lease or conveyance or classification of the lands to the Field Office Manager, Arizona Strip Field Office, 345 E. Riverside Dr., St. George, UT 84790.

**Classification Comments**

Interested parties may submit comments involving the suitability of the land for schools. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

**Application Comments**

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a school. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

**Roger G. Taylor,**

*Field Manager.*

[FR Doc. 02–10700 Filed 4–30–02; 8:45 am]

**BILLING CODE 4310–32–P**

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[CO–200–1430–EU, COC–63798]**

## Notice of Realty Action

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Realty Action, competitive land sale in Colorado.

**SUMMARY:** The following lands have been found suitable for sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713) at not less than the appraised fair market value. The lands will not be offered for sale until at least 60 days after the date of this notice. Bidders are limited to those with adjacent land or legally recorded existing rights. Evidence of such must be presented at the time of the auction. All parcels are located in Teller County, Colorado as described below:

*Parcel 1.* All public land within the boundaries of the SE¼NE¼, and the SE¼ of Section 7, T. 15 S., R. 69 W., 6th P.M. containing 18 tracts totaling approximately 5.76 acres. A $50 non-refundable filing fee is also required to apply for the mineral estate.

*Parcel 2.* All public land within the boundaries of the SW¼, and the S½SE½ of Section 8, T. 15 S., R. 69 W., 6th P.M. containing 38 tracts totaling approximately 6.14 acres. A $50 non-refundable filing fee is also required to apply for the mineral estate.

*Parcel 3.* All public land within the boundaries of the S½SE¼ of Section 13, and the N½N½NE¼, and the N½S½N½NE¼ of Section 24, T. 15 S., R. 70 W., 6th P.M. containing 12 tracts totaling approximately 1.51 acre. A $50 non-refundable filing fee is also required to apply for the mineral estate.

*Parcel 4.* All public land within the boundaries of Section 21, and the NW¼NW¼ of Section 28, T. 15 S., R. 69 W., 6th P.M. containing 37 parcels totaling approximately 5.45 acres. A $50 non-refundable filing fee is also required to apply for the mineral estate.

*Parcel 5.* All public land within the boundaries of the S½S½N½NE¼, S½NE¼, NE¼SE¼NW¼, E½SE¼SE¼NW¼, E½NE¼NE¼SW¼, E½NE¼SE¼NE¼SW¼, and the SE¼, Section 24, T. 15 S., R. 70 W., 6th P.M. containing 25 tracts totaling approximately 6.77 acres. The United States will reserve all minerals and the surface will be patented subject to use reasonably incident to exploration and mining so long as the mineral estate is separate from the surface estate and held by the federal government. All bidders are advised that mining claims exist, the title is defeasible, and the claimant(s) may be entitled to a patent for surface and minerals should all requirements of the mining law be met.

*Parcel 6.* All public land within the boundaries of the E½NE¼, E½NW¼NE¼, NW¼NW¼NE¼, N½SW¼NW¼NE¼, SW¼NE¼, E½NE¼SE¼NW¼, E½SE¼SE¼NW¼, E½NE¼SW¼, S½NW¼NE¼SW¼, SW¼NE¼SW¼, E½SE¼NW¼SW¼, E½NE¼SW¼SW¼, SE¼SW¼SW¼, SE¼SW¼, SE¼ of Section 25, T. 15 S., R. 70 W., 6th P.M. containing 28 tracts totaling approximately 10.42 acres. The United States will reserve all minerals and the surface will be patented subject to use reasonably incident to exploration and mining so long as the mineral estate is separate from the surface estate and held by the federal government. All bidders are advised that mining claims exist, the title is defeasible, and the claimant(s) may be entitled to a patent for surface and minerals should all requirements of the mining law be met.

*Parcel 7.* Lot 78 Section 6, T. 16 S., R. 69 W., 6th P.M. containing approximately 8.41 acres. A $50 non-refundable filing fee is also required to apply for the mineral estate. In addition to the appraised value minimum bid and any bid addition, successful bidders shall reimburse the BLM for certain processing costs.

Other terms and conditions of the sale are:

1. Patent will be subject to a 60-foot wide right-of-way for all existing State and county roads, if any, as of the date of patent.

2. A right-of-way will be reserved for ditches and canals constructed by the authority of the United States under the Act of August 30, 1890 (26 Stat. 291; 43 U.S.C. 945).

These lands are classified for disposal pursuant to section 7 of the Taylor Grazing Act and were identified for disposal in a land use plan which was in effect on July 25, 2000, and the proceeds from this sale will be deposited in the Federal Land Disposal Account authorized under section 206 of the Federal Land Transaction Facilitation Act, Public Law 106–248. The lands were previously segregated for exchange, which is hereby canceled and are hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

The parcels will be offered for competitive sale, at 3170 East Main St., Canon City, Colorado not less than 60 days from the date of this publication and bidding will be by oral auction. Sealed bids will be accepted until close of business the day before the auction at the address below. Envelopes should be clearly marked ''SEALED BID: COC–63798 May 2, 2002 for PARCEL # as appropriate''. Bid amounts must be stated in the bid and signed. All bids, whether sealed or oral, shall be accompanied by a bid deposit of 30% of the appraised minimum bid and full payment of the mineral fee if necessary and the processing cost amount in the form of separate certified check, postal money order, bank draft, or cashiers check made payable to ''USDI, Bureau of Land Management'' for each of the appropriate three amounts. Oral bids will be accepted in $100 increments only. Federal law requires that bidders must be U.S. citizens 18 years of age or older, or, in the case of a corporation or association, subject to the laws of any State of the U.S. Proof of citizenship or authorization to bid for a corporation or association shall accompany the bid. The successful high bidder shall be required to submit the full payment of the balance of their bid no later than 90 days after the auction. Failure to submit

such payment shall result in forfeiture of the bid deposit and offering to the second highest bidder at their original bid. If no acceptable bid is received the land will be offered by sealed bid on the 1st and 3rd Wednesdays (4 p.m.) of each month at no less than the minimum bid until the offer is canceled.

**DATES:** Interested parties may submit comments on this action on or before 45 days from the date of this publication. Please reference the applicable serial number in all correspondence. Objections will be reviewed and this realty action may be sustained, vacated, or modified. Unless vacated or modified, this realty action will become final.

**ADDRESS FOR COMMENTS:** Royal Gorge Field Office Manager, Bureau of Land Management, 3170 E. Main St., Canon City, CO 81212.

**FOR FURTHER INFORMATION CONTACT:** David Hallock, Realty Specialist BLM, 719–269–8536; Royal Gorge Field Office, 3170 E. Main St., Canon City, CO 81212.

**Paul D. Trentzsch,**

*Acting Field Manager.*

[FR Doc. 02–10704 Filed 4–30–02; 8:45 am]

**BILLING CODE 4310–JB–P**

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[OR–025–02–1430–EU: G–2–0025]**

## Realty Action: Sale of Public Land in Harney County, OR

**AGENCY:** Bureau of Land Management (BLM), Burns District, Interior.

**ACTION:** Notice of realty action, sale of public land.

**SUMMARY:** The following described public land in Harney County, Oregon, has been examined and found suitable for sale under sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713 and 1719), at not less than the appraised market value. All parcels being offered are identified for disposal in the Three Rivers Resource Management Plan.

All of the land described is within the Willamette Meridian.

| Parcel number | Legal description | Acres | Minimum acceptable bid | Bidding procedures | Designated bidders |
|---|---|---|---|---|---|
| OR–56567 | T.18S., R.33½E., sec. 32, S½SW¼, SW¼SE¼. | 120 | $24,000 | Modified Competitive. | Gladys Williams, Terry and Nancy Williams, and Van Grazing Cooperative. |
| OR–56568 | T.19S., R.33½E., sec. 26, NW¼NW¼. | 40 | 8,000 | Modified Competitive. | Van Grazing Cooperative, Helen Opie, and Jack Joyce. |
| OR–56574 | T.22S., R.33E., sec. 28, E½ | 320 | 128,000 | Competitive | None. |
| OR–56575 | T.27S., R.34E., sec. 6, lots 3(40.26), 4(32.76), 5(32.54), SE¼NW¼. | 145.56 | 58,000 | Competitive | None |
| OR–56576 | T.27S., R.34E., sec. 9, SW¼SW¼ | 40 | 8,000 | Modified Competitive. | Fred and Betty Briggs, and John and Karen Starbuck. |
| OR–56577 | T.27S., R.34E., sec. 21, NE¼SE¼ | 40 | 8,000 | Modified Competitive. | Conly and Barbara Marshall, and Don Opie. |
| OR–56579 | T.27S., R.34E., sec. 23, S½SW¼; sec. 26, N½NW¼. | 160 | 32,000 | Modified Competitive. | Conly and Barbara Marshall, Donald and Susan Ramsey, Carol Temple, and Don Opie. |

The following rights, reservations, and conditions will be included on the patents conveying the land:

*All Parcels*—A reservation for a right-of-way for ditches and canals constructed thereon by the authority of the United States.

*OR–56575*—A restriction which constitutes a covenant running with the land, that the wetland riparian habitat must be managed to protect and maintain the habitat on a continuing basis.

The following patents, when issued, would be subject to the following rights-of-way held by third parties:

*OR–56574*—Power line purposes granted to Harney Electric Cooperative under OR–5183, power line purposes granted to Idaho Power Company under OR–12080, fiber optics purposes granted to CenturyTel under OR–54600, fiber optics facilities purposes granted to CenturyTel under OR–54915, U.S. Highway purposes granted to Oregon Department of Transportation (ODOT) under OR–30389, and fiber optics facilities purposes granted to Williams Communications, LLC under OR–54252.

*OR–56575*—County road purposes granted to Harney County under OR–56834.

*OR–56577*—Power line purposes granted to Harney Electric Cooperative under OR–5183, and telephone purposes granted to CenturyTel under OR–18562.

Access will not be guaranteed to any of the parcels being offered for sale, nor any warranty made as to the use of the property in violation of applicable land use laws and regulations. Before submitting a bid, prospective purchasers should check with the appropriate city or County planning department to verify approved uses.

All persons, other than the successful bidders, claiming to own unauthorized improvements on the land are allowed 60 days from the date of sale to remove the improvements.

All land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action, or 270 days from the date of publication of this notice, whichever occurs first.

### Bidding Procedures

*Competitive Procedures*

The Federal Land Policy and Management Act and its implementing regulations (43 CFR 2710) provide that competitive bidding will be the general method of selling land supported by factors such as competitive interest, accessibility, and usability of the parcel, regardless of adjacent ownership.

Under competitive procedures the land will be sold to any qualified bidder submitting the highest bid. Bidding will be by sealed bid followed by an oral auction to be held at 2:00 p.m. PST on the second Wednesday of the month

after July 1, 2002, at the Burns District Office, Bureau of Land Management, 28910 Hwy 20 West, Hines, Oregon 97738. To qualify for the oral auction bidders must submit a sealed bid meeting the requirements as stated below. The highest valid sealed bid will become the starting bid for the oral auction. Bidding in the oral auction will be in minimum increments of $100. The highest bidder from the oral auction will be declared the prospective purchaser.

If no valid bids are received, the parcel will be declared unsold and offered by unsold competitive procedures on a continuing basis until sold or withdrawn from sale.

*Modified Competitive Procedures*

Modified competitive procedures are allowed by the regulations (43 CFR 2710.0–6(c)(3)(ii)) to provide exceptions to competitive bidding to assure compatibility with existing and potential land uses.

Under modified competitive procedures the designated bidders identified in the table above will be given the opportunity to match or exceed the apparent high bid. The apparent high bid will be established by the highest valid sealed bid received in an initial round of public bidding. If two or more valid sealed bids of the same amount are received for the same parcel, that amount shall be determined to be the apparent high bid. The designated bidders are required to submit a valid bid in the initial round of public bidding to maintain their preference consideration. The bid deposit for the apparent high bid(s) and the designated bidders will be retained and all others will be returned.

The designated bidders will be notified by certified mail of the apparent high bid.

Where there are two or more designated bidders for a single parcel, they will be allowed 30 days to provide the authorized officer with an agreement as to the division of the property or, if agreement cannot be reached, sealed bids for not less than the apparent high bid. Failure to submit an agreement on a bid shall be considered a waiver of the option to divide the property equitably and forfeiture of the preference consideration. Failure to act by all of the designated bidders will result in the parcel being offered to the apparent high bidder or declared unsold, if no bids were received in the initial round of bidding.

*Unsold Competitive Procedures*

Unsold competitive procedures will be used after a parcel has been unsuccessfully offered for sale by competitive or modified competitive procedures.

Unsold parcels will be offered competitively on a continuous basis until sold. Under competitive procedures for unsold parcels the highest valid bid received during the preceding month will be declared the purchaser. Sealed bids will be accepted and held until the second Wednesday of each month at 2:00 p.m. PST/PDT when they will be opened. Openings will take place every month until the parcels are sold or withdrawn from sale.

All sealed bids must be submitted to the Burns District Office, no later 2:00 p.m. PST July 1, 2002, the time of the bid opening and oral auction. The outside of bid envelopes must be clearly marked with ''BLM Land Sale,'' the parcel number, and the bid opening date. Bids must be for not less than the appraised market value (minimum bid). Separate bids must be submitted for each parcel. Each sealed bid shall be accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the Department of the Interior-BLM for not less than 20 percent of the amount bid. The bid envelope must also contain a statement showing the total amount bid and the name, mailing address, and phone number of the entity making the bid. A successful bidder for competitive parcels shall make an additional deposit at the close of the auction to bring the total bid deposit up to the required 20 percent of the high bid. Personal checks or cash will be acceptable for this additional deposit only.

Federal law requires that public land may be sold only to either (1) Citizens of the United States 18 years of age or older; (2) corporations subject to the laws of any state or the United States; (3) other entities such as associations and partnerships capable of holding land or interests therein under the laws of the state within which the land is located; or (4) states, state instrumentalities or political subdivisions authorized to hold property. Certifications and evidence to this effect will be required of the purchaser prior to issuance of conveyance documents.

Prospective purchasers will be allowed 180 days to submit the balance of the purchase price. Failure to meet this timeframe shall cause the deposit to be forfeited to the BLM. The parcel will then be offered to the next lowest qualified bidder, or if no other bids were received, the parcel will be declared unsold.

A successful bid on a parcel constitutes an application for conveyance of those mineral interests offered under the authority of Section 209(b) of the Federal Land Policy and Management Act of 1976. In addition to the full purchase price, a nonrefundable fee of $50 will be required from the prospective purchaser for purchase of the mineral interests to be conveyed simultaneously with the sale of the land.

**EFFECTIVE DATE:** On or before June 17, 2002, interested persons may submit comments regarding the proposed sale to the Acting Three Rivers Resource Area Field Manager at the address described below. Comments or protests must reference a specific parcel and be identified with the appropriate serial number. In the absence of any objections, this proposal will become the determination of the Department of the Interior.

**ADDRESSES:** Comments, bids, and inquiries should be submitted to the Acting Three Rivers Resource Area Field Manager, Bureau of Land Management, 28910 Hwy 20 West, Hines, Oregon 97738.

**FOR FURTHER INFORMATION CONTACT:** Detailed information concerning this public land sale is available on the internet at <*http://www.or.blm.gov/Burns*> or may be obtained from Rudy Hefter, Acting Three Rivers Resource Area Field Manager; or Holly LaChapelle, Land Law Examiner, at the above address, phone (541) 573–4400.

Dated: March 6, 2002.

**Rudolph J. Hefter,**

*Acting Three Rivers Resource Area Field Manager.*

[FR Doc. 02–10706 Filed 4–30–02; 8:45 am]

BILLING CODE 4310–33–P

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[UT–100–1430–01; UTU–79243]**

## Notice of Realty Action

**AGENCY:** Bureau of Land Management (BLM), Interior.

**ACTION:** Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Utah.

**SUMMARY:** The following public land, located in Washington County, Utah near the community of Virgin, has been examined and found suitable for classification for lease or conveyance to the Town of Virgin under the provision of the Recreation and Public Purposes Act. As amended (43 U.S.C. 869 *et.seq.*):

**Salt Lake Meridian, Utah**

T. 41 S., R. 12 W.,

Sec. 23, NE¼NW¼NW¼,
Containing 10 acres, more or less.

**SUPPLEMENTARY INFORMATION:** The Town of Virgin proposes to use the land to construct, operate and maintain a BMX Bicycle Track. The land is not needed for Federal purposes. Leasing or conveying title to the affected public land is consistent with current BLM land use planning and would be in the public interest.

The lease or patent, when issued, would be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

Detailed information concerning this action is available at the office of the Bureau of Land Management, St. George Field Office, 345 E. Riverside Drive, St. George, Utah 84790. Upon publication of this notice in the **Federal Register**, the land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for leasing or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed classification, leasing or conveyance of the land to the Field Office Manager, St. George Field Office.

**Classification Comments**

Interested parties may submit comments involving the suitability of the lands for a BMX bicycle track. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

**Application Comments**

Interested parties may submit comments regarding the specific use proposed in the Town's application, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for BMX bicycle purposes.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Dated: March 20, 2002.

**Kim Leany,**

*Acting Field Office Manager.*

[FR Doc. 02–10705 Filed 4–30–02; 8:45 am]

**BILLING CODE 4310–DQ–P**

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## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### Agency Information Collection Activities: Proposed Collections; Comment Request

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of extension and revision of information collection forms.

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on forms MMS–123, MMS–123S, MMS–124, MMS–125, and MMS–133. The current Office of Management and Budget (OMB) approval of these forms expires in September 2002. MMS has retitled and revised the forms, which we will submit to OMB for approval. The modifications are an integral part of the new ''E-Forms Permit Process'' we are developing to provide an electronic option for drilling and well permitting and information submission.

**DATE:** Submit written comments by July 1, 2002.

**ADDRESSES:** Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817.

**FOR FURTHER INFORMATION CONTACT:** Alexis London, Rules Processing Team, Engineering and Operations Division, telephone (703) 787–1600.

**SUPPLEMENTARY INFORMATION:**

*Titles—OMB Control Numbers:* The new titles of the revised forms are listed with the current titles shown in parenthesis.

Form MMS–123, Permit to Drill a Well (Application for Permit to Drill (APD))—1010–0044.

Form MMS–123S, Permit to Drill Supplemental Information Sheet (Supplemental APD Information Sheet)—1010–0131.

Form MMS–124, Permit to Modify a Well (Sundry Notices and Reports on Wells—1010–0045.

Form MMS–125, End of Operations Report (Well Summary Report)—1010–0046.

Form MMS–133, Well Activity Report (Weekly Activity Report)—1010–0132.

*Abstract:* The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner which is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

This notice pertains to the MMS forms listed previously that are used to submit information required under 30 CFR 250, subpart D, Drilling Operations; subpart E, Well-Completion Operations; subpart F, Well-Workover Operations; subpart G, Abandonment of Wells; and subpart P, Sulphur Operations. Responses are mandatory. No questions of a ''sensitive'' nature are asked. MMS will protect proprietary information according to 30 CFR 250.196 (Data and information to be made available to the public), 30 CFR part 252 (OCS Oil and Gas Information Program), and the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR 2).

To implement the Government Paperwork Elimination Act and to streamline data collection, MMS is developing systems to provide electronic options for lessees and operators to use in submitting information and requesting approvals. This year, we expect to begin pilot testing the electronic submission of drilling and well information in a new ''E-Forms Permit Process.'' In developing this system, we have determined that some revisions are needed to the drilling and well information forms discussed in this notice. The new titles and changes to the paper forms are intended to acquaint the users with, and duplicate as closely as possible, the E-Forms Permit Process, which we anticipate will be fully implemented in FY 2003. Although initially the E-Forms Permit Process will be an alternative to submitting the paper forms, we expect that eventually it will eliminate the paper forms. As indicated,

all of the forms have been retitled and the data fields renumbered. We have eliminated some data fields that were either duplicative or no longer needed, renamed some sections and data fields, relocated data fields from one form to another, and added some data fields. It should be noted that the added data fields should not impose any additional burden on respondents as they previously included the information in accompanying attachments, and are not actually new information.

Additionally, on several of the forms, the well location field is changed to accommodate the more up-to-date NAD 83 format, which will be used in the E-Forms Permit Process. Respondents generally use location data in NAD 83 format, and must now convert the data in their MMS submissions to the NAD 27 format. This is burdensome for them and inaccurate for MMS because they can use different conversion factors in their submittals. (The Gulf of Mexico OCS Region will update its current policy discussed in NTL No. 99–G17 on this subject when OMB approves these forms.)

The modified forms are published as appendices 1 through 5 to this notice. The following explains how we use the information collected on each form. In addition to the general modifications previously discussed, the significant changes proposed for each form individually are explained.

• *Forms MMS–123 and MMS–123S.* MMS uses the information submitted to determine the conditions of a drilling site to avoid hazards inherent in drilling operations. District Offices use the information to evaluate the adequacy of a lessee's drilling, well-completion, well-workover, and well-abandonment plans and equipment to determine if the proposed operations will be conducted in an operationally safe manner with adequate protection for the environment. Except for proprietary data, the OCS Lands Act requires MMS to make available to the public the APD information. Changes to the forms include:

*Proposal to Drill* (form MMS–123)—This data field replaces the first item on the current form MMS–123 and specifies the three types (new well, sidetrack, bypass) of drilling procedures for permitting. Sidetrack and bypass drilling procedures are currently submitted on form MMS–124. The modified form MMS–123 will now include all drilling procedures that invoke a change in the American Petroleum Institute (API) well number. The MMS engineer will assign the approved API well number for both sidetracks and bypasses, as well as new wells.

*Well Name, Sidetrack No.,* and *Bypass No.* (both forms)—These identifiers are added to help eliminate confusion with regard to well naming and numbering.

*Plan Identification No.* (form MMS–123)—Before drilling a new well, it must be covered under an approved plan. This new data field corresponds with the E-Forms Permit Process. Identifying the plan will aid the MMS engineer in obtaining information from the Plan to determine if the general plan and drilling location (surface and bottomhole) have been analyzed and approved.

*List of Significant Markers Anticipated* (form MMS–123)—This information is currently immersed in the drilling prognosis attached to the form. Operators are required by regulations to state the ''estimated depths to the top of significant marker formations'' (30 CFR 250.414(f)(5)(iii)). The addition of this section transfers the information from the detailed open-format drilling prognosis currently included in the attachments.

*$H_2S$ Designation* and *Activation Plan Depth* (form MMS–123S)—Wells containing $H_2S$ are only about 1 percent of the total but pose such a significant threat that MMS and Industry should take extra precautions in defining the presence of $H_2S$-bearing formations throughout the OCS. Adding these data fields will allow MMS inspectors to verify that $H_2S$ safety equipment is in place prior to drilling through potential $H_2S$ zones.

*Drilling Fluid Information* (form MMS–123S)—We replaced the entire drilling fluid information/statements section with a simple one-line ''Yes'' or ''No'' question.

*Eliminated Data Fields*—We have eliminated as many of the data fields as possible on form MMS–123 to reduce duplication with form MMS–123S, and eliminated several that are not used in approval processing. The form MMS–123 data fields removed are: *Field Name, Unit No., OPD No., Surface and Bottom Location, Rig Name, Rig Type, Water Depth, Elevation at KB, Total Depth, Type of Well, Contact Name, and Contact Telephone No.* In addition, we removed data fields for *Area/Block and Approximate Date Work Will Start* from form MMS–123S.

• *Form MMS–124.* MMS District Supervisors use the information to evaluate the adequacy of the equipment, materials, and/or procedures that the lessee plans to use for drilling, production, well-completion, well-workover, and well-abandonment operations. We use the information to ensure that levels of safety and environmental protection are maintained. We review the information concerning requests for approval or subsequent reporting of well-completion, well-workover, or abandonment operations to ensure that procedures and equipment are appropriate for the anticipated conditions. Changes to the form include:

*Well Name, Sidetrack No.,* and *Bypass No.*—Approval for these ''initial'' drilling activities are currently requested on form MMS–124 but will be transferred to the revised form MMS–123. ''Modifications'' will continue to be submitted on form MMS–124 and the assigned well name and numbers identified.

*Rig Name or Primary Unit*—Primary unit was added to include wireline units, coil tubing units, and snubbing units, which may be used in lieu of a rig to complete the permitted operation. The E-Forms Permit Process will include the identification of the type of equipment movement onto platforms, which are designated by type and are not named as with rig.

*Proposed or Completed Work*—Some operations that require approval are modified to reflect current policy. *Plugback to Sidetrack/Bypass* defines plugback as abandonment of a sidetrack/bypass. *Modify Perforations* (changing the length interval previously approved) eliminates the operation of ''adding perforations.'' *Acidize with Coil Tubing* defines that this operation need only be permitted when using a coil tubing unit. *Bullheading* (pumping down the tubing) acid into a well no longer requires a permit.

*Eliminated Data Fields*—We have eliminated three data fields (*Field Name, Unit No., and OPD No.*) that are not used in approval processing.

• *Form MMS–125.* District Supervisors use the information to ensure that they have accurate data on the wells under their jurisdiction and to ensure compliance with approved plans. It is also used to evaluate remedial action in well-equipment failure or well-control loss situations. Changes to the form include:

*Well Name, Sidetrack No.,* and *Bypass No.*—These identifiers are added to help eliminate confusion with regard to well naming and numbering.

*Kick Off Point* (KOP)—The addition of this data field transfers the information now located on the well schematic that is part of an attachment to the form. The KOP from the original well to a sidetrack or bypass indicates at what depth a new unique wellbore begins. This is critical since open hole data are collected, tracked, and verified by

wellbore. Assigning the open hole data to the correct wellbore is essential to reserve and resource estimations, conservation issues, fair market value determinations, and placing the wellbore in the proper field.

*Perforated Interval(s) this Completion*—This section will include three data fields for information now included on supplemental attachments to form MMS–125. The data correspond to fields included in our database that MMS personnel now populate. The fields are: *If Subsea Completion (Type of Protection), Buoy Installed, Tree Height Above Mudline.*

*Acid, Fracture, Cement Squeeze, Plugging Program, Etc.*—The data fields from this section on current form MMS–125 are relocated and modified or eliminated. The cement squeeze/plugging portion is relocated to the *Abandonment History of Well* section and modified to obtain more relevant abandonment information on the well that is now included on supplemental attachments to form MMS–125. The acid/fracture operations portion is eliminated.

*Abandonment History of Well*—In addition to the relocated cement squeeze/plugging data, this section will include three data fields for information now included on supplemental attachments to form MMS–125. The fields are: *If Stub (Type of Protection), Buoy Installed, Stub Height Above Mudline.*

*Hydrocarbon Bearing Intervals*—This section is renamed and includes slightly reworded data fields from the *Summary of Porous Zones* and *Formation* sections of the current MMS–125.

*List of Significant Markers*—This section is simply renamed from the *Geologic Markers* section on the current MMS–125.

*Eliminated Data Fields*—We have eliminated three data fields (*Field Name, Unit No., and OPD No.*) that are not used in approval processing. Because the data are already collected on form MMS–133, we also eliminated the sections on: *Casing Record; Liner/Screen Record; and former ''item 77'' requiring a List of Electric and Other Logs Run, Directional Surveys, Velocity Surveys, and Core Analysis.* The *Tubing Record* section is relocated to form MMS–133.

• *Form MMS–133.* District Office engineers review and use this information to: monitor the conditions of a well and status of drilling operations; be aware of the well conditions and current drilling activity (i.e., well depth, drilling fluid weight, casing types and setting depths, completed well logs, and recent safety equipment tests and drills); determine how accurately the lessee anticipated well conditions and if the lessee is following the approved APD; and analyze requests to revise an APD (i.e., revised grade of casing or deeper casing setting depth). Without this information, MMS would be unable to monitor drilling operations from off-site. The alternative to requiring drilling activity reports would be to conduct many more onsite inspections. However, the additional inspectors and helicopters to transport them would not be efficient or cost effective. Furthermore, lessees would likely experience delays in obtaining timely approvals to revise drilling plans because District Offices would not have current and complete information. Changes to the form include:

*Well Name, Sidetrack No.,* and *Bypass No.*—These identifiers are added to help eliminate confusion with regard to well naming and numbering.

*Rig Name or Primary Unit*—Primary unit was added to include wireline units, coil tubing units, and snubbing units, which may be used in lieu of a rig to complete the permitted operation. The E-Forms Permit Process will include the identification of the type of equipment movement onto platforms, which are designated by type and are not named as with rigs.

*Casing/Liner/Tubing Record*—This section was modified and includes data elements relocated from form MMS–125. This information will now be reported cumulatively on each form MMS–133 report and completed at the end of the well operation.

*Frequency:* Forms MMS–123, MMS–123S, MMS–124, and MMS–125 are on occasion; form MMS–133 is weekly.

*Estimated Number and Description of Respondents:* Approximately 130 Federal OCS oil and gas lessees.

*Estimated Reporting and Recordkeeping ''Hour'' Burden:* We estimate the following burdens for submitting the paper copies of these revised forms. It should be recognized that when the new E-Forms Permit Process is fully implemented, it should result in reduced burden hours. However, these anticipated burden reductions are not yet determined, as they will depend on the upcoming pilot testing. The annual burden hours shown for each form were the totals previously estimated and approved by OMB.

Form MMS–123: 2½ hours per form; annual burden of 4,078 hours.

Form MMS–123S: 1½ hour per form; annual burden of 683 hours.

Form MMS–124: 1¼ hours per form; annual burden of 11,875 hours.

Form MMS–125: 1 hour per form; annual burden of 2,275 hours.

Form MMS–133: 1 hour per form; annual burden of 2,275 hours.

*Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden:* We have identified no ''non-hour cost'' burdens associated with the subject forms.

*Public Disclosure Statement:* The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

*Comments:* Before submitting an information collection request to OMB, PRA section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *''. Agencies must specifically solicit comments to: (a) evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology. We will summarize written responses to this notice and address them in our submission for OMB approval, including any appropriate adjustments to the estimated burdens.

Agencies must estimate both the ''hour'' and ''non-hour cost'' burdens to respondents or recordkeepers resulting from the collection of information. We have identified no non-hour cost burdens for the information collection aspects of the subject forms. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. You should not include estimates for equipment or services purchased: (i) before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide

information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

*Public Comment Policy:* Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

*MMS Information Collection Clearance Officer:* Jo Ann Lauterbach, (202) 208–7744.

Dated: April 1, 2002.

**E.P. Danenberger,**

*Chief, Engineering and Operations Division.*

## Appendices 1–5: Forms MMS–123, 123S, 124, 125, and 133

BILLING CODE 4310–MR–W

APPENDIX 1 – FORM MMS-123

**U.S. Department of the Interior**
**Minerals Management Service (MMS)**

*Submit ORIGINAL plus THREE copies, with ONE copy marked "Public Information"*

OMB Control Number 1010-0044
OMB Approval Expires XX/XX/2005

# PERMIT TO DRILL A WELL (Replaces Application for Permit to Drill)

| | | | |
|---|---|---|---|
| 1. PROPOSAL TO DRILL ☐ NEW WELL ☐ SIDETRACK ☐ BYPASS | | 2. MMS OPERATOR NO. | 3. OPERATOR NAME and ADDRESS *(Submitting Office)* |
| 4. WELL NAME (CURRENT) | 5. SIDETRACK NO. (CURRENT) | 6. BYPASS NO. (CURRENT) | |
| 7. SPUD DATE | 8. PLAN IDENTIFICATION NO. | | |
| 9. API WELL NO. (CURRENT SIDETRACK / BYPASS) | | | |

| WELL AT TOTAL DEPTH | | WELL AT SURFACE | |
|---|---|---|---|
| 10. LEASE NO. | | 15. LEASE NO. | |
| 11. AREA NAME | | 16. AREA NAME | |
| 12. BLOCK NO. | | 17. BLOCK NO. | |
| 13. LATITUDE (NAD 83) | 14. LONGITUDE (NAD 83) | 18. LATITUDE (NAD 83) | 19. LONGITUDE (NAD 83) |

| LIST OF SIGNIFICANT MARKERS ANTICIPATED | | | |
|---|---|---|---|
| 20. NAME | 21. TOP (MD) | 20. NAME | 21. TOP (MD) |
| | | | |
| | | | |

22. LIST ALL ATTACHMENTS *(Attach complete well prognosis and attachments required by 30 CFR 250.414(b) through (g) or 30 CFR 250.1617(c) and (d), as appropriate.)*

| | |
|---|---|
| 23. AUTHORIZING OFFICIAL *(Type or print name)* | 24. TITLE |
| 25. AUTHORIZING SIGNATURE | 26. DATE |

| THIS SPACE FOR MMS USE ONLY | | |
|---|---|---|
| APPROVED: ☐ With Attached Conditions ☐ Without Conditions | BY | TITLE |
| API WELL NO. ASSIGNED TO THIS WELL | | DATE |

**PAPERWORK REDUCTION ACT OF 1995 (PRA) STATEMENT:** The PRA (44 U.S.C. 3501 et seq. Requires us to inform you that we collect this information to obtain knowledge of equipment and procedures to be used in drilling operations. MMS uses the information to evaluate and approve or disapprove the adequacy of the equipment and/or procedures to safely perform the proposed drilling operation. Responses are mandatory (43 U.S.C. 1334). Proprietary data are covered under 30 CFR 250.196. 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. Public reporting burden for this form is estimated to average 2½ hours per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding the burden estimate or any other aspect of this form to the Information Collection Clearance Officer, Mail Stop 4230, Minerals Management Service, 1849 C Street, N.W., Washington, DC 20240.

**MMS** **FORM MMS-123** (4/1/2002 - Supersedes all previous versions of form MMS-123 which may not be used.) Page 1 of 1

APPENDIX 2 – FORM MMS-123S

U.S. Department of the Interior
Minerals Management Service (MMS)

*Submit ORIGINAL plus TWO copies.*

OMB Control Number 1010-0131
OMB Approval Expires XX/XX/2005

# PERMIT TO DRILL A WELL SUPPLEMENTAL INFORMATION SHEET

**(Replaces Supplemental APD Information Sheet)**

| | | | | |
|---|---|---|---|---|
| 1. OPERATOR NAME | 5. WELL NAME | 6. SIDETRACK NO. | 7. BYPASS NO. | 12. WATER DEPTH / 13. ELEVATION AT KB |
| 2. API WELL NO. (12 digits) | 8. SURFACE WELL LOCATION *(NAD 83)*<br>LATITUDE _____ LONGITUDE _____ | | | 14. TYPE OF WELL<br>☐ EXPLORATORY ☐ DEVELOPMENT |
| 3. BOTTOM LEASE NO. | 9. BOTTOM WELL LOCATION *(NAD 83)*<br>LATITUDE _____ LONGITUDE _____ | | | 15. $H_2S$ DESIGNATION<br>☐ KNOWN ☐ UNKNOWN ☐ ABSENT |
| 4. TOTAL DEPTH *(PROPOSED)*<br>MD _____ TVD _____ | 10. RIG NAME | 11. RIG TYPE | | 16. $H_2S$ ACTIVATION PLAN DEPTH FT (TVD) |

| Hole Size (In) | Casing (Indicate if liner) | Casing Size (In) | Weight (#/ft) / Grade | Burst Rating (psi) / Collapse Rating (psi) | Type of Connection | MASP (psi) | Safety Factors B | Safety Factors C | Safety Factors T | Top of Liner MD | Casing Depth (ft) MD / TVD | Casing Shoe (ppg) PP | Casing Shoe (ppg) MW | Casing Shoe (ppg) FG | Well-head Rating (psi) | BOP Size (in) | Rated BOP Working Pressure Annular/ Diverter (psi) / Ram (psi) | Test Pressures Annular/ Diverter (psi) / Ram (psi) | Test Pressures Casing Test (psi) / MW Used for Test (ppg) | Casing Shoe (ppg) | Cement (ft³) | Drilling Fluid Type (oil base, water base, synthetic) |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Drive/ Structural | | | | | | | | | | | | | | | | | | | | | |
| | Conductor | | | | | | | | | | | | | | | | | | | | | |
| | Surface | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | |

| | | |
|---|---|---|
| 17. CONTACT NAME | 18. CONTACT PHONE NO. | 19. CONTACT E-MAIL ADDRESS |

**Will you maintain quantities of mud and mud material (including weight materials and additives) sufficient to raise the entire system mud weight ½ ppg or more?** ☐ **YES** ☐ **NO**

**PAPERWORK REDUCTION ACT OF 1995 (PRA) STATEMENT:** The PRA (44 U.S.C. 3501 et seq. requires us to inform you that we collect this information to obtain well status, well and casing test, and well casing configuration data. MMS uses this information to have accurate data and information on all wells under its jurisdiction and to ensure compliance with approved plans. Responses are mandatory (43 U.S.C. 1334). Proprietary data are covered under 30 CFR 250.196. 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. Public reporting burden for this form is estimated to average 1½ hour per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding the burden estimate or any other aspect of this form to the Information Collection Clearance Officer, Mail Stop 4230, Minerals Management Service, 1849 C Street, N.W., Washington, DC 20240.

**MMS** **FORM MMS-123S** (4/1/2002 - Supersedes all previous versions of form MMS-123S which may not be used.)

APPENDIX 3 – FORM MMS-124

**U.S. Department of the Interior**
**Minerals Management Service (MMS)**

*Submit ORIGINAL plus THREE copies, with ONE copy marked "Public Information"*

OMB Control Number 1010-0045
OMB Approval Expires XX/XX/2005

# PERMIT TO MODIFY A WELL (Replaces Sundry Notices and Reports on Well)

| | | | |
|---|---|---|---|
| 1. TYPE OF SUBMITTAL<br>☐ REQUEST APPROVAL ☐ SUBSEQUENT REPORT | | 2. MMS OPERATOR NO. | 3. OPERATOR NAME and ADDRESS *(Submitting Office)* |
| 4. WELL NAME | 5. SIDETRACK NO. | 6. BYPASS NO. | |

| | | | | |
|---|---|---|---|---|
| 7. API WELL NO. | 8. PRODUCING INTERVAL CODE | 9. WELL STATUS | 10. WATER DEPTH *(Surveyed)* | 11. ELEVATION AT KB *(Surveyed)* |

| WELL AT TOTAL DEPTH | | WELL AT SURFACE | |
|---|---|---|---|
| 12. LEASE NO. | | 17. LEASE NO. | |
| 13. AREA NAME | | 18. AREA NAME | |
| 14. BLOCK NO. | | 19. BLOCK NO. | |
| 15. LATITUDE (NAD 83) | 16. LONGITUDE (NAD 83) | 20. LATITUDE (NAD 83) | 21. LONGITUDE (NAD 83) |

22. PROPOSED OR COMPLETED WORK

☐ ACIDIZE WITH COIL TUBING ☐ INITIAL COMPLETION ☐ PERMANENT ABANDONMENT ☐ ALTER CASING
☐ ARTIFICIAL LIFT ☐ MULTI-COMPLETION ☐ TEMPORARY ABANDONMENT ☐ PULL CASING
☐ DEEPEN ☐ RECOMPLETION ☐ CHANGE ZONE ☐ WORKOVER
☐ PLUG BACK TO SIDETRACK / BYPASS
☐ MODIFY PERFORATIONS ☐ OTHER _____

| | |
|---|---|
| 23. RIG NAME OR PRIMARY UNIT (e.g. wireline unit, coil tubing unit, etc.) | 24. RIG TYPE |

25. DESCRIBE PROPOSED OR COMPLETED OPERATIONS *(Attach prognosis or summary of completed work, as appropriate.)*

| | | |
|---|---|---|
| 26. CONTACT NAME | 27. CONTACT TELEPHONE NO. | 28. CONTACT E-MAIL ADDRESS |
| 29. AUTHORIZING OFFICIAL *(Type or print name)* | 30. TITLE | |
| 31. AUTHORIZING SIGNATURE | 32. DATE | |

| *THIS SPACE FOR MMS USE ONLY* | | |
|---|---|---|
| APPROVED BY | TITLE | DATE |

**PAPERWORK REDUCTION ACT OF 1995 (PRA) STATEMENT:** The PRA (44 U.S.C. 3501 et seq. requires us to inform you that we collect this information to obtain knowledge of equipment and procedures to be used in drilling well-completion, workover, and production operations. MMS uses the information to evaluate and approve or disapprove the adequacy of the equipment and/or procedures to safely perform the proposed operation. Responses are mandatory (43 U.S.C. 1334). Proprietary data are covered under 30 CFR 250.196. 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. Public reporting burden for this form is estimated to average 1¼ hours per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding the burden estimate or any other aspect of this form to the Information Collection Clearance Officer, Mail Stop 4230, Minerals Management Service, 1849 C Street, N.W., Washington, DC 20240.

**MMS** **FORM MMS-124** (4/1/2002 - Supersedes all previous versions of form MMS-124 which may not be used.) Page 1 of 1

APPENDIX 4 – FORM MMS-125

**U.S. Department of the Interior**
**Minerals Management Service (MMS)**

*Submit ORIGINAL plus THREE copies, with ONE copy marked "Public Information"*

OMB Control Number 1010-0046
OMB Approval Expires XX/XX/2005

# END OF OPERATIONS REPORT (Replaces Well Summary Report)

| | | | |
|---|---|---|---|
| 1. ❑ 1ST COMPLETION<br>❑ RECOMPLETION<br>❑ ABANDONMENT<br>❑ CORRECTION | 2. API WELL NO. | 3. PRODUCING INTERVAL CODE | 4. OPERATOR NAME and ADDRESS *(Submitting Office)* |
| 5. WELL NAME | 6. SIDETRACK NO. | 7. BYPASS NO. | 8. MMS OPERATOR NO. |

| WELL AT TOTAL DEPTH | | WELL AT PRODUCING ZONE | |
|---|---|---|---|
| 9. LEASE NO. | | 14. LEASE NO. | |
| 10. AREA NAME | | 15. AREA NAME | |
| 11. BLOCK NO. | | 16. BLOCK NO. | |
| 12. LATITUDE (NAD 83) | 13. LONGITUDE (NAD 83) | 17. LATITUDE (NAD 83) | 18. LONGITUDE (NAD 83) |

| | | | |
|---|---|---|---|
| 19. WELL STATUS / TYPE CODE | 20. DATE OF WELL STATUS | 21. SPUD DATE | 22. DATE TD REACHED |

| | | |
|---|---|---|
| 23. DATE SIDETRACKED / BYPASSED | 24. KICK OFF POINT (MD) | 25. TOTAL DEPTH *(Surveyed)*<br>MD _____ TVD _____ |

**PERFORATED INTERVAL(S) THIS COMPLETION**

| 26. TOP *(MD)* | 27. BOTTOM *(MD)* | 28. TOP *(TVD)* | 29. BOTTOM *(TVD)* |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |

| | |
|---|---|
| 30. RESERVOIR NAME | 31. NAME(S) OF PRODUCING FORMATION(S) THIS COMPLETION |

| | | |
|---|---|---|
| 32. IF SUBSEA COMPLETION (TYPE OF PROTECTION)<br>❑ GUARD ❑ NONE | 33. BUOY INSTALLED<br>❑ YES ❑ NO | 34. TREE HEIGHT ABOVE MUDLINE |

**HYDROCARBON BEARING INTERVALS**

| 35. INTERVAL NAME | 36. TOP (MD) | 37. BOTTOM (MD) | 38. TYPE OF HYDROCARBON |
|---|---|---|---|
| | | | |
| | | | |
| | | | |

## END OF OPERATIONS REPORT (Continued)

| LIST OF SIGNIFICANT MARKERS PENETRATED | | | |
|---|---|---|---|
| 39. NAME | 40. TOP (MD) | 39. NAME | 40. TOP (MD) |
| | | | |
| | | | |
| | | | |

| ABANDONMENT HISTORY OF WELL | | | |
|---|---|---|---|
| 41. CASING SIZE | 42. CASING CUT DATE | 43. CASING CUT METHOD | 44. CASING CUT DEPTH |
| | | | |
| | | | |
| | | | |

| 45. IF STUB (TYPE OF PROTECTION ) | 46. BUOY INSTALLED | 47. STUB HEIGHT ABOVE MUDLINE |
|---|---|---|
| ❑ DOME ❑ NONE | ❑ YES ❑ NO | |

| 48. CONTACT NAME | 49. CONTACT TELEPHONE NO. | 50. CONTACT E-MAIL ADDRESS |
|---|---|---|
| 51. AUTHORIZING OFFICIAL *(Type or print name)* | 52. TITLE | |
| 53. AUTHORIZING SIGNATURE | 54. DATE | |

**PAPERWORK REDUCTION ACT OF 1995 (PRA) STATEMENT:** The PRA (44 U.S.C. 3501 et seq. requires us to inform you that we collect this information to obtain knowledge of equipment and procedures to be used in drilling operations. MMS uses the information to evaluate and approve or disapprove the adequacy of the equipment and/or procedures to safely perform the proposed drilling operation. Responses are mandatory (43 U.S.C. 1334). Proprietary data are covered under 30 CFR 250.196. 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. Public reporting burden for this form is estimated to average 1 hour per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding the burden estimate or any other aspect of this form to the Information Collection Clearance Officer, Mail Stop 4230, Minerals Management Service, 1849 C Street, N.W., Washington, DC 20240.

APPENDIX 5 – FORM MMS-133

**U.S. Department of the Interior**
**Minerals Management Service (MMS)**

OMB Control Number 1010-0132
OMB Approval Expires XX/XX/2005

# WELL ACTIVITY REPORT (Replaces Weekly Activity Report)

**BEGINNING DATE:** _____ **ENDING DATE:** _____

REPORT IS NOT TO EXCEED 7 DAYS (1 WEEK) IN DURATION

☐ **CHECK IF THIS IS THE LAST WELL ACTIVITY REPORT**

| GENERAL INFORMATION | | | |
|---|---|---|---|
| 1. API WELL NO. | | | 2. OPERATOR NAME |
| 3. WELL NAME | 4. SIDETRACK NO. | 5. BYPASS NO. | 6. CONTACT NAME / CONTACT TELEPHONE NUMBER |
| 7. BOTTOM LEASE NO. | | | 8. WATER DEPTH |
| 9. BOTTOM AREA NAME | | | 10. RIG NAME OR PRIMARY UNIT (e.g. wireline unit, coil tubing unit, etc) |
| 11. BOTTOM BLOCK NO. | | | 12. ELEVATION AT KB |

**13. WELLBORE INFORMATION**

| WELLBORE | SPUD DATE | TD DATE | STATUS | FINISH DATE | MD | TVD | MW PPG | LAST BOP TEST DATE | LAST BOP TEST PRESSURE | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | LOW | HIGH |
| 00 | | | | | | | | | | |
| 01 | | | | | | | | | | |

**14. CURRENT WELLBORE INFORMATION**

| WELLBORE | SPUD DATE | TD DATE | STATUS | FINISH DATE | MD | TVD | MW PPG | LAST BOP TEST DATE | LAST BOP TEST PRESSURE | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | LOW | HIGH |
| 02 | | | | | | | | | | |

**15. CASING / LINER / TUBING RECORD**

| TUBULAR TYPE | HOLE SIZE (IN) | SIZE (IN) | WEIGHT (#/FT) | GRADE | TEST PRESSURE (psi) | SHOE TEST (EMW) | SETTING DEPTH *(MD)* | | CEMENT QUANTITY *(cubic ft.)* |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | TOP | BOTTOM | |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |

**WELL ACTIVITY REPORT (Continued)**

**16. OPEN HOLE TOOLS, MUDLOGS, AND DIRECTIONAL SURVEYS**

| SERVICE COMPANY | DATE OPERATIONS COMPLETED | TOOL LOGGING METHOD | LOG TOOL CODE | INTERVAL DEPTH (MD) | |
|---|---|---|---|---|---|
| | | | | TOP | BOTTOM |
| | | | | | |
| | | | | | |
| | | | | | |
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| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

**17. IDENTIFY OTHER OPEN HOLE DATA COLLECTED**

| | YES | NO | | YES | NO | | YES | NO |
|---|---|---|---|---|---|---|---|---|
| VELOCITY SURVEYS | | | PALEO SAMPLES | | | SIDEWALL SAMPLES | | |
| CONVENTIONAL CORES | | | LITHO SAMPLES | | | GEOCHEM SAMPLES | | |

**18. WELL ACTIVITY SUMMARY**

**Provide a daily summary of well activities.**

**PAPERWORK REDUCTION ACT OF 1995 (PRA) STATEMENT:** The PRA (44 U.S.C. 3501 et seq. requires us to inform you that we collect this information to obtain knowledge of equipment and procedures to be used in drilling operations. MMS uses the information to evaluate and approve or disapprove the adequacy of the equipment and/or procedures to safely perform the proposed drilling operation. Responses are mandatory (43 U.S.C. 1334). Proprietary data are covered under 30 CFR 250.196. 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. Public reporting burden for this form is estimated to average 1 hour per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding the burden estimate or any other aspect of this form to the Information Collection Clearance Officer, Mail Stop 4230, Minerals Management Service, 1849 C Street, N.W., Washington, DC 20240.

[FR Doc. 02–10772 Filed 4–30–02; 8:45 am]

BILLING CODE 4310–MR–C

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### Notice of Proposed Information Collection for 1029–0092 and 1029–0107

**AGENCY:** Office of Surface Mining Reclamation and Enforcement.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collections of information under 30 CFR part 745, State-Federal cooperative agreements; and 30 CFR part 887, Subsidence Insurance Program Grants.

**DATES:** Comments on the proposed information collection must be received by July 1, 2002 to be assured of consideration.

**ADDRESSES:** Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement. 1951 Constitution Ave, NW., Room 210–SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtreleas@osmre.gov.*

**FOR FURTHER INFORMATION CONTACT:** To request a copy of the information collection request, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783 or via e-mail at the address listed above.

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [*see* 5 CFR 1320.8 (d)]. This notice identifies information collections that OSM will be submitting to OMB for approval. These collections are contained in (1) 30 CFR part 745, State-Federal cooperative agreements; and (2) 30 CFR part 887, Subsidence Insurance Program Grants. OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

The following information is provided for the information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

*Title:* State-Federal cooperative agreements—30 CFR part 745.

*OMB Control Number:* 1029–0092.

*Summary:* 30 CFR part 745 requires that States submit information when entering into a cooperative agreement with the Secretary of the Interior. OSM uses the information to make findings that the State has an approved program and will carry out the responsibilities mandated in the Surface Mining Control and Reclamation Act to regulate surface coal mining and reclamation activities on Federal lands.

*Bureau Form Number:* None.

*Frequency of Collection:* Once.

*Description of Respondents:* State governments that regulate coal operations.

*Total Annual Responses:* 12.

*Total Annual Burden Hours:* 454.

*Title:* Subsidence Insurance Program Grants—30 CFR part 887.

*OMB Control Number:* 1029–0107.

*Summary:* States and Indian tribes having an approved reclamation plan may establish, administer and operate self-sustaining State and Indian Tribe-administered programs to insure private property against damages caused by land subsidence resulting from underground mining. States and Indian tribes interested in requesting monies for their insurance programs would apply to the Director of OSM.

*Bureau Form Number:* None.

*Frequency of Collection:* Once.

*Description of Respondents:* States and Indian tribes with approved coal reclamation plans.

*Total Annual Responses:* 1.

*Total Annual Burden Hours:* 8.

Dated: April 1, 2002.

**Richard G. Bryson,**

*Chief, Division of Regulatory Support.*

[FR Doc. 02–10642 Filed 4–30–02; 8:45 am]

BILLING CODE 4310–05–M

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### Notice of Proposed Information Collection for 1029–0027 and 1029–0036

**AGENCY:** Office of Surface Mining Reclamation and Enforcement Interior.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval to continue the collections of information under 30 CFR part 740, Surface Coal Mining and Reclamation Operations on Federal Lands, and 30 CFR part 780, Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plans. These information collection activities were previously approved by the Office of Management and Budget (OMB), and assigned them clearance numbers 1029–0027 and –0036, respectively.

**DATES:** Comments on the proposed information collection must be received by July 1, 2002 to be assured of consideration.

**ADDRESSES:** Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 210—SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtrelease@osmre.gov.*

**FOR FURTHER INFORMATION CONTACT:** To request a copy of the information collection requests, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783.

**SUPPLEMENTARY INFORMATION:** OMB regulations at 5 CFR part 1320, which implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8 (d)]. This notice identifies information collections that OSM will be submitting to OMB for approval. These collections are contained in (1) 30 CFR part 740, General requirements for surface coal mining and reclamation operations on Federal lands (1029–0027); and (2) 30 CFR part 780, State-Federal cooperative agreements (1029–0092). OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection requests to OMB.

The following information is provided for the information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

*Title:* 30 CFR part 740—General requirements for surface coal mining and reclamation operations on Federal lands.

*OMB Control Number:* 1029–0027.

*Summary:* Section 523 of SMCRA requires that a Federal lands program be established to govern surface coal mining and reclamation operations on Federal lands. The information requested is needed to assist the regulatory authority determine the eligibility of an applicant to conduct surface coal mining operations on Federal lands.

*Frequency of Collection:* Once.

*Description of Respondents:* Applicants for surface coal mine permits on Federal lands.

*Total Annual Responses:* 36.

*Total Annual Burden Hours:* 2,433.

*Title:* 30 CFR part 780—Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan.

*OMB Control Number:* 102–0036.

*Summary:* Sections 507(b), 508(a), 510(b), 515(b) and (d), and 522 of Public Law 95–87 require applicants to submit operations and reclamation plans for coal mining activities. Information collection is needed to determine whether the plans will achieve the reclamation and environmental protections pursuant to the Surface Mining Control and Reclamation Act. Without this information, Federal and State regulatory authorities cannot review and approve permit application requests.

*Bureau Form Number:* None.

*Frequency of Collection:* Once.

*Description of Respondents:* Applicants for surface coal mine permits.

*Total Annual Responses:* 325.

*Total Annual Burden Hours:* 186,556.

Dated: April 5, 2002.

**Richard G. Bryson,**

*Chief, Division of Regulatory Support.*

[FR Doc. 02–10643 Filed 4–30–02; 8:45 am]

BILLING CODE 4310–05–M

## INTERNATIONAL TRADE COMMISSION

### Submission for OMB Review; Comment Request

**AGENCY:** United States International Trade Commission.

**ACTION:** Agency proposal for the collection of information submitted to the Office of Management and Budget (OMB) for review; comment request.

**SUMMARY:** In accordance with the provisions of the Paperwork Reduction Act of 1995 (P.L. 104–13), the Commission has submitted a proposal for the collection of information to OMB for approval. The proposed information collection is a 3-year extension of the current ''generic clearance'' (approved by the Office of Management and Budget under control No. 3117–0016) under which the Commission can issue information collections (specifically, producer, importer, purchaser, and foreign producer questionnaires and certain institution notices) for the following types of import injury investigations: antidumping, countervailing duty, escape clause, market disruption, NAFTA safeguard, and ''interference with programs of the USDA.'' Any comments submitted to OMB on the proposed information collection should be specific, indicating which part of the questionnaires or study plan are objectionable, describing the problem in detail, and including specific revisions or language changes.

**DATES:** To be assured of consideration, comments should be submitted to OMB within 30 days of the date this notice appears in the **Federal Register**.

**ADDRESSES:** Comments about the proposal should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Attention: David Rostker, Desk Officer for U.S. International Trade Commission. Copies of any comments should be provided to Robert Rogowsky (United States International Trade Commission, 500 E Street, SW., Washington, DC 20436).

**FOR FURTHER INFORMATION CONTACT:** Copies of the proposed collection of information and supporting documentation may be obtained from Debra Baker, (USITC, tel. no. 202–205–3180). Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

**SUPPLEMENTARY INFORMATION:**

(1) The proposed information collection consists of five forms, namely the *Sample Producers', Sample Importers', Sample Purchasers', and Sample Foreign Producers' questionnaires* (separate forms are provided for questionnaires issued for the five-year reviews) and *Sample Notice of Institution for Five-Year Reviews.*

(2) The types of items contained within the sample questionnaires and institution notice are largely determined by statute. Actual questions formulated for use in a specific investigation depend upon such factors as the nature of the industry, the relevant issues, the ability of respondents to supply the data, and the availability of data from secondary sources.

(3) The information collected through questionnaires issued under the generic clearance for import injury investigations are consolidated by Commission staff and form much of the statistical base for the Commission's determinations. Affirmative Commission determinations in antidumping and countervailing duty investigations result in the imposition of additional duties on imports entering the United States. If the Commission makes an affirmative determination in a five-year review, the existing antidumping or countervailing duty order will remain in place. The data developed in escape-clause, market disruption, and interference-with-USDA-program investigations (if the Commission finds affirmatively) are used by the President/U.S. Trade Representative to determine the type of relief, if any, to be provided to domestic industries. The submissions made to the Commission in response to the notices of institution of five-year reviews form the basis for the Commission's determination whether a full or expedited review should be conducted.

(4) Likely respondents consist of businesses (including foreign businesses) or farms that produce, import, or purchase products under

investigation. Estimated total annual reporting burden for the period August 2002–July 2005 that will result from the collection of information is presented below.

TABLE 1.—PROJECTED ANNUAL BURDEN DATA, BY TYPE OF INFORMATION COLLECTION, AUGUST 2002–JULY 2005

| Item | Producer questionnaires | Importer questionnaires | Purchaser questionnaires | Foreign producer questionnaires | Institution notices for 5-year reviews | Total |
|---|---|---|---|---|---|---|
| **Estimated burden hours imposed annually for August 2002–July 2005** | | | | | | |
| Number of respondents | 887 | 1,186 | 778 | 639 | 24 | 3,514 |
| Frequency of response | 1 | 1 | 1 | 1 | 1 | 1 |
| Total annual responses | 887 | 1,186 | 778 | 639 | 24 | 3,514 |
| Hours per response | 57.5 | 44.0 | 28.0 | 28.0 | 7.4 | 40.7 |
| Total hours | 51,002 | 52,184 | 21,784 | 17,892 | 178 | 143,040 |
| **Estimated burden hours imposed for August 2004–July 2005** [1] | | | | | | |
| Number of respondents | 1,278 | 1,708 | 1,264 | 920 | 46 | 5,216 |
| Frequency of response | 1 | 1 | 1 | 1 | 1 | 1 |
| Total annual responses | 1,278 | 1,708 | 1,264 | 920 | 46 | 5,216 |
| Hours per response | 57.5 | 44.0 | 28.0 | 28.0 | 7.4 | 40.3 |
| Total hours | 73,485 | 75,152 | 35,392 | 25,760 | 340 | 210,129 |

[1] Twelve-month period during which the greatest response burden is anticipated; it is these figures that are listed on the OMB Form 83–I to ensure that the Commission response burden will remain below the approved burden total in any one year.

No record keeping burden is known to result from the proposed collection of information.

By order of the Commission.

Issued: April 25, 2002.

**Marilyn R. Abbott,**

*Secretary.*

[FR Doc. 02–10776 Filed 4–30–02; 8:45 am]

BILLING CODE 7020–02–P

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–748 (Review)]**

## Gas Turbo-Compressor Systems From Japan

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of a five-year review concerning the antidumping duty order on gas turbo-compressor systems from Japan.

**SUMMARY:** The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on gas turbo-compressor systems from Japan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is June 20, 2002. Comments on the adequacy of responses may be filed with the Commission by July 15, 2002. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

**EFFECTIVE DATE:** May 1, 2002.

**FOR FURTHER INFORMATION CONTACT:** Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

**SUPPLEMENTARY INFORMATION:**

*Background.*—On June 16, 1997, the Department of Commerce issued an antidumping duty order on imports of gas turbo-compressor systems from Japan (62 FR 32584). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

*Definitions.*—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Japan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission defined the Domestic Like Product as engineered process gas turbo-compressor systems, coextensive with the scope of the investigation (i.e., whether assembled or unassembled, and

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 02–5–070, expiration date July 31, 2002. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, NW, Washington, DC 20436.

whether complete or incomplete, excluding revamps, replacement parts, and repairs).

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the Domestic Industry as all producers of the domestic like product defined above.

(5) The *Order Date* is the date that the antidumping duty order under review became effective. In this review, the Order Date is June 16, 1997.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

*Participation in the review and public service list.*—Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. § 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. § 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Certification.*—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

*Written submissions.*—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is June 20, 2002. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is July 15, 2002. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

*Inability to provide requested information.*—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

*Information to be provided in response to this Notice of Institution:* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. § 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section

771(4)(B) of the Act (19 U.S.C. § 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since 1996.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 2001 (report value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity in thousands of work-hours) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) The quantity (in number of trains) and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity (in number of trains) and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2001 (report value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports;

(b) The quantity (in number of trains) and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) the quantity (in number of trains) and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2001 (report quantity data in thousands of work-hours and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) The value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

**Authority:** This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.
Issued: April 25, 2002.

**Marilyn R. Abbott,**

*Secretary.*

[FR Doc. 02–10768 Filed 4–30–02; 8:45 am]

BILLING CODE 7020–02–P

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–446]**

## In the Matter of Certain Ink Jet Print Cartridges and Components Thereof; Notice of Issuance of Limited Exclusion Order and Cease and Desist Orders; Termination of the Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission determined to reverse-in-part the presiding administrative law judge's (''ALJ'') initial determination (''ID'') of January 25, 2002, in the above-captioned investigation, and determined that the accused devices infringe claim 4 of U.S. Letters Patent 4,635,073 (''the '073 patent''), and that complainant Hewlett-Packard Company (''HP'') has satisfied the technical prong of the domestic industry requirement with respect to the '073 patent. Having found a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, the Commission issued a limited exclusion order and cease and desist orders, and terminated the investigation.

**FOR FURTHER INFORMATION CONTACT:** Peter L. Sultan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3094. Copies of the limited exclusion order and cease and desist order and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol.public.* Hearing-impaired persons are advised

that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on the basis of a complaint filed by HP, alleging a violation of section 337 of the Tariff Act of 1930 in the importation and sale of certain ink jet print cartridges and components thereof by reason of infringement of U.S. Letters Patent 4,827,294; 4,635,073 (''the '073 patent''); 4,680,859; 4,872,027; 4,992,802; and 5,409,134. The complaint named five respondents: Microjet Technology Co., Ltd. of Taipei, Taiwan; Printer Essentials of Reno, Nevada; Price-Less Inkjet Cartridge Company of Port Charlotte, Florida (''Price Less''); Cartridge Hut and Paperwork Plus of Sun City, California (''Cartridge Hut''); and ABCCo.net, Inc. of Port Charlotte, Florida (''ABC''). The investigation was later terminated on the basis of consent order agreements with respect to Printer Essentials and Cartridge Hut.

The ALJ issued his final ID, along with a recommended determination on remedy and bonding, on January 25, 2002. He concluded that there was a violation of section 337, based on the following findings: (a) that the asserted claims of all of the patents at issue, except for claim 4 of the '073 patent, are infringed by respondents Microjet, Price-Less and ABC; and (b) that an industry exists in the United States that exploits each of the patents in issue, except the '073 patent. The ALJ recommended a bond of 100% of entered value during the Presidential review period, and a limited exclusion order issue against Microjet, and cease and desist orders against Price-Less and ABC.

On March 7, 2002, the Commission determined (1) to review the ALJ's construction of claim 4 of the '073 patent and his findings of no infringement and no domestic industry with respect to the '073 patent; (2) not to review the remainder of the ID. On review, the Commission determined that the accused devices infringe claim 4 of the '073 patent, and that complainant HP has satisfied the technical prong of the domestic industry requirement with respect to the '073 patent.

The Commission found that each of the statutory requirements has been met for the issuance of a limited exclusion order with respect to respondent Microjet, and for the issuance of a cease and desist order with respect to respondents Price-Less and ABC. The Commission further determined that the public interest factors enumerated in section 337(g)(1) did not preclude the issuance of such relief. Finally, the Commission determined that bond under the limited exclusion order during the Presidential review period shall be in the amount of one hundred (100) percent of the entered value of the imported articles.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and section 210.45 of the Commission's Rules of Practice and Procedure, 19 CFR 210.45.

Issued: April 25, 2002.
By order of the Commission.

**Marilyn R. Abbott,**
*Secretary.*

[FR Doc. 02–10775 Filed 4–30–02; 8:45 am]

**BILLING CODE 7020–02–P**

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## DEPARTMENT OF JUSTICE

### National Institution of Corrections

### Solicitation for a Cooperative Agreement: Implementing Effective Correctional Management of Offenders in the Community

**AGENCY:** National Institute of Corrections, Department of Justice.

**ACTION:** Solicitation for a Cooperative Agreement.

[The National Institute of Corrections awards cooperative agreements to fund the planning, development and implementation of its strategic plan. Unlike grants and other types of funding, cooperative agreements require that NIC work closely with awardee to achieve the stated goals. Announcements for cooperative agreements are posted in the **Federal Register** and on the NIC Web site: *www.nicic.org.*]

*Overview:* Since the mid 1990's the National Institute of Corrections (NIC) has promoted an awareness of evidence-based correctional practices that promote pro-social behavior by offenders and reduce victimization. These practices, based on cognitive behavioral and social learning theories, have become adopted internationally under the terminology of ''What Works''.

NIC is seeking an organization (awardee) to work with the Institute to implement effective interventions in selected statewide correctional systems over a four federal fiscal-year period, based on availability of funds and the awardee's satisfactory performance. For the purpose of this document, statewide systems are defined as state agency(s) or organization of county government agencies covering all geographic regions of the state with continuous custody and supervision of offenders for the full term of their legal disposition. The project will also include appropriate external stakeholders involved with offenders during the period of legal disposition. The awardee must possess a working knowledge of the research, principles and practices associated with effective interventions (including special needs and various responsivity issues), and organizational change.

Working jointly with the NIC—Community Corrections Division, the awardee will help market the program to all 50 states and the District of Columbia, assist with the development of criteria for selection, assess organizational readiness based on each state's application, and recommend the statewide systems that can be assisted at one time given the available resources. Once the target jurisdictions have been selected, the awardee will assist the state systems in conducting an in-depth self-assessment of their current status and readiness to change regarding evidence based practice. The awardee will assist the state system in preparing an organizational change and development plan for the implementation of effective strategies for the management of offenders. The implementation strategy will include leadership identification, role definition, a full continuum of program components and staff competency development at all levels of the organization. NIC and the awardee will work with selected systems for up to three years as long as they are making progress with their planned implementation.

*Background:* The elements of responsible, informed and effective correctional practice are no longer regarded as opinion but are grounded in evidence. In recent years, a large body of research, referred to as the ''What Works'' literature has identified the common characteristics of successful intervention. The characteristics of effective interventions include:

1. Support by community and policymaker partnerships.
2. Support by qualified and involved leadership who understand program objectives.
3. Design and implementation based on proven theoretical models beginning with assessment and continuing through aftercare.
4. Use of standardized and objective assessments of risk and need factors to make appropriate program assignment for offenders.
5. Targeting of crime-producing attributes and use of proven treatment

models to prepare offenders for return into the community.

6. Delivery in a manner consistent with the ability and learning style of the individuals being treated.

7. Implementation by well-trained employees or contractors who deliver proven programs as designed.

8. Evaluations to ensure quality.

9. Targeting high-risk offenders.

It is worthy to note in regard to evidence based practice that 'evidence based' means a process of testing theories and practice, never intended to be a closed body of knowledge and always open to new information.

Success in offender change requires an agency infrastructure with an informed, supportive leadership and culture that models the principles and practices of the research based, data driven service approaches. Optimum outcomes are dependent upon the full range of staff competency; knowledge, skill, experience, aptitude, and attitude in service delivery. An organization's decision making, personnel practices, problem solving, and all other functions related to intervention must be evaluated and measured against evidence based standards. Administration must understand, serve, and support the vision, principles, and practices of evidence-based programming if it is to be successful. Similarly, criminal justice partners entrusted with autonomous authority and/or control, i.e., paroling authorities, law enforcement agencies, the judiciary, and independent service providers both public and private must also understand the responsibilities and boundaries appropriate to evidence-based practice and their respective roles in successful offender change. Although there are many aspects of offender change that are now clearly based on evidence, the successful awardee must demonstrate the process by which they will build consensus within statewide systems. This is particularly important in regard to the various stakeholders and autonomous bodies associated with the full process of offender change.

Many local jurisdictions have come to accept the elements of effective intervention, while they remain frustrated in their ability to combine these ''best practices'' into an integrated system of services that form a continuum from assessment through aftercare. Systematically integrating the various elements of effective offender intervention requires many non-traditional approaches to service delivery. The successful awardee will be required to demonstrate an understanding of the process and problems associated with assisting agencies to move from traditional to non-traditional approaches. Particularly those non-traditional approaches associated with custody and administrative involvement in offender intervention practices. The successful awardee will work with the NIC to insure that appropriate non-traditional approaches are identified and addressed.

*Purpose:* Because correctional administrators are increasingly expected to reduce, not just control, risk they must introduce the wide range of correctional practices already mentioned. The purpose of the project is to allow jurisdictions committed to the principles of effective intervention but facing challenges in initiating and sustaining corresponding systematic change to receive the assistance they need to produce intended results. The overriding goal of the agreement is to implement evidence-based program and management practices, and to develop an organizational culture that promote pro-social behavior in offenders and reduces victimization. This project will provide technical assistance to address the variety of complex needs inherent in developing and implementing research based approaches to effective intervention. The project will support the type of multi disciplinary and collaborative effort shown to be most effective in enhancing and sustaining the desired changes in practices. In that these intervention strategies are in many cases non-traditional this project will also address issues that develop as individual program elements and are then to be integrated into the system.

*Application Requirements:* Applicants must submit using OMB Standard Form 424, Federal Assistance and attachments. The applications must be concisely written, typed double spaced and referenced to the project by the numbered title given in this announcement. Applicants must prepare a proposal that describes their plan to address the project purpose and objectives. The plan must include methodology, deliverables, management plan, and an overall project budget for the full duration of the project. The management plan and budget for the initial 15 months should be extensively detailed. The management plans and budgets for subsequent 12 month periods are expected to be less detailed given the greater the lead time projected. Applicants must identify their key project staff, the amount of time projected for this initiative and the relevant expertise and experience of each, as well as the manner in which they would perform all tasks in collaboration with an NIC Project Manager.

The proposal must include the following six elements;

1. A description of the process and content of the applicants approach to a comprehensive assessment of a jurisdiction that will obtain a clear understanding of the current status of the organization in regard to the principles of effective intervention including the steps necessary for development, implementation and program evaluation and assessment of the organizational culture in relationship to supporting change;

2. A description of the process to be used in assisting the selected state systems in developing a plan for creating and/or further developing system-wide delivery of essential evidence based principles and practices including; offender assessment, cognitive-behavioral/social learning curriculums, and quality assurance as well as management processes and leadership initiatives that support such practices (Each of these items should be addressed separately and with sufficient detail to effectively communicate both content and process.);

3. A description of the process for ongoing development and program modifications, include content and process for system evaluation;

4. A description of the process and methods to be used to build workgroups and leadership teams, include process and methods to be used to ensure the organizational culture supports the principles and practices of intervention;

5. A description of a reporting process for both the selected state systems and the awardee; and

6. An estimated budget based on the above elements. Given the estimated budget and appropriation parameters outlined below applications will also include an estimated number of state systems that should be able to receive assistance.

**Authority:** Public Law 93–415

*Funds Available:* The award will be limited to $100,000 from Fiscal Year 2002. In addition there will be a $300,000 per year from Fiscal year 2003 thru 2005 for an anticipated total of $1 million over the full term of the initiative, dependent upon yearly funding received by NIC and the performance of the awardee. This funding will cover both direct and indirect costs. NIC plans to make an initial award in the Fiscal Year 2002 followed by supplemental awards for year 2003–2005. Funds may only be used for activities that are linked to the desired objectives and outcomes of the

project. This project will be a collaborative venture with the selected state systems, the awardee and the NIC—Community Corrections Division. All products from this funding effort will be in the public domain and available to interested agencies through the NIC. No funds are transferred to state or local governments. Nothing contained herein shall be construed to obligate the parties to any expenditure or obligation of funds in excess or in advance of appropriation in accordance with the Antideficiency Act, 31 U.S.C. 1341.

*Deadline for Receipt of Applications:* All applications should be submitted in one original and 5 copies and must be received no later than 4 p.m., Friday, June 21, 2002. At least one copy must have the applicant's original signature in blue ink. A cover letter must identify the responsible audit agency for the applicant's financial accounts. The NIC application number should be written on the outside of the mail or courier envelop. Applicants are encouraged to use Federal Express, UPS, or similar service to ensure delivery by the due date as mail at the national Institute of Corrections is still being delayed due to recent events. Applications mailed or submitted by express delivery should be sent to: National Institute of Corrections, 320 First Street, NW., Room 5007, Washington, DC 20534, Attn: Director. Hand delivered applications can be brought to 500 First Street, NW., Washington, DC 20534. The security office will call our front desk at (202) 307–3106 to come to the security desk for pickup. Faxed or e-mailed applications will not be accepted.

*Addresses and Further Information:* A copy of this announcement and the required application forms can be downloaded from the NIC web page at *www.nicic.org* (Click on Cooperative Agreements). Any specific questions regarding the application process or a request for a hard copy of the announcement should be directed to Judy Evens, Cooperative Agreement Control Office, National Institute of Corrections, 320 First Street, NW., Room 5007, Washington, DC 20534 or by calling 800–995–6423 ext. 44222, metro area 202–307–3106, ext. 44222, or e-mail: *jevens@bop.gov.* All technical and/or programmatic questions concerning this announcement should be directed to Mark Gornik at National Institute of Corrections, 320 First Street, NW., Room 5007, Washington, DC 20534 or by calling 800–995–6423 ext 43066 metro area 202–514–3066 or by e-mail: *mgornik@bop.gov.*

*Eligible Applicants:* An eligible applicant is any private group of individuals, company, organization, educational institution, individual or team with the requisite skills necessary to successfully meet the outcome objectives of the project. Such requisite skills must include but are not limited to expertise in the principles of effective intervention for offenders as referenced in ''What Works'' literature. Requisite skills must also include knowledge of correctional operations with particular attention to offender assessment, cognitive-behavioral/social learning, and evaluation methods and the application of such elements into a coordinated management process. The ability to promote organizational development and readiness to change within a ''What Works'' context is also required.

*Review Considerations:* Applications received under this announcement will be subjected to an NIC Peer Review Process.

*Number of Awards:* One (1).

*NIC Application Number 02C05:* This number should appear as a reference line in the cover letter and also in box 11 of Standard Form 424 and on the outside of the envelope in which the application is sent.

*Executive Order:* This program is subject to the provisions of Executive Order 12372. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. Applicants (other than Federally-recognized Indian Tribal Governments) should contact their State Single Point of Contact (SPOC), a list of which is included in the application kit (and the web page) along with further instructions on proposed projects serving more than one State.

*Catalog of Federal Domestic Assistance Number:* 16.603

Technical Assistance/Clearinghouse.

Dated: April 24, 2002.

**Morris L. Thigpen,**

*Director, National Institute of Corrections.*

[FR Doc. 02–10697 Filed 4–30–02; 8:45 am]

**BILLING CODE 4410–36–M**

## DEPARTMENT OF LABOR

### Office of the Assistant Secretary for Veterans' Employment and Training Homeless Veterans' Reintegration Program Competitive Grants for FY 2002

**AGENCY:** Office of the Assistant Secretary for Veterans' Employment and Training, Labor.

**ACTION:** Notice of availability of funds and solicitation for grant applications (SGA) for Homeless Veterans' Reintegration Programs (SGA 02–09)

**SUMMARY:** All applicants for grant funds should read this notice in its entirety. The U.S. Department of Labor, Veterans' Employment and Training Service (VETS), announces a grant competition for Homeless Veterans' Reintegration Programs (HVRP) authorized under the Homeless Veterans Comprehensive Assistance Act of 2001. This notice contains all of the necessary information and forms needed to apply for grant funding. Such programs will assist eligible veterans who are homeless by providing employment, training and support services assistance. Under this solicitation, VETS anticipates that up to $1.5 million will be available for grant awards in Program Year (PY) 2002 and expects to award up to eleven grants. The HVRP programs are designed to be flexible in addressing the universal as well as local or regional problems barring homeless veterans from the workforce. The program in PY 2002 will continue to strengthen the provision of comprehensive services through a case management approach, the attainment of supportive service resources for homeless veterans entering the labor force, and strategies for employment and retention.

This notice describes the background, application process, description of program activities, evaluation criteria, and reporting requirements for this SGA. The information and forms contained in the Supplementary Information Section constitute the official application package. All necessary information and forms needed to apply for grant funding are included.

*Forms or Amendments:* If another copy of a Standard form is needed, go online to *http://www.nara.gov.* To receive amendments to this Solicitation (Please reference SGA 02–09), all applicants must register their name and address with the Grant Officer at the following address: U. S. Department of Labor, Procurement Services Center, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210.

*Closing Date:* Applications are to be submitted, including those hand delivered, to the address below by no later than 4:45 p.m., Eastern Standard Time, May 31, 2002.

**ADDRESSES:** Applications must be directed to the U.S. Department of Labor, Procurement Services Center, Attention: Cassandra Willis, Reference SGA 02–09, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** All applicants are advised that U.S. mail delivery in the Washington, DC area has been erratic due to the recent concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline. It is recommended that you confirm receipt of your application by contacting Cassandra Willis, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570, prior to the closing deadline. It is recommended to meet the application deadline. [This is not a toll-free number].

**SUPPLEMENTARY INFORMATION**

## Homeless Veterans' Reintegration Program Solicitation

*I. Purpose*

The U.S. Department of Labor (DOL), Veterans' Employment and Training Service (VETS) is requesting grant applications for the provision of employment and training services in accordance with the Homeless Veterans Reintegration Program at section 5 of the Homeless Veterans Comprehensive Assistance Act of 2001 (HVCAA), Pub. L. No. 107–95 (2001). These instructions contain general program information, requirements, and forms for application for funds to operate a Homeless Veterans' Reintegration Program (HVRP).

*II. Background*

Section 5 of the Homeless Veterans' Comprehensive Assistance Act of 2001 amended the Homeless Veterans Reintegration Programs at 38 U.S.C. § 2021, and provides ''the Secretary * * * shall conduct, directly or through grant or contract, such programs as the Secretary determines appropriate to provide job training, counseling, and placement services (including job readiness and literacy and skills training) to expedite the reintegration of homeless veterans into the labor force.''

In accordance with the HVCAA, the Assistant Secretary for Veterans' Employment and Training (ASVET) is making approximately $1.5 million of the funds available to award grants for HVRPs in selected cities in FY 2002 under this competition. The Homeless Veterans' Reintegration Project was the first nationwide Federal program that focused on placing homeless veterans into jobs. Both types of projects, urban and rural, in the past have provided valuable information on approaches that work in the different environments.

*III. Application Process*

A. Potential Jurisdictions To Be Served

Due to the demonstration nature of the Act, the amount of funds available, and the emphasis on establishing or strengthening existing linkages with other recipients of funds under the HVCAA, the only potential jurisdictions which will be served through this non-urban competition for HVRPs in PY 2002 are the areas outside of the 75 U.S. cities largest in population and the city of San Juan, Puerto Rico. The 75 U.S. cities largest in population are listed in Appendix G.

B. Eligible Applicants

Applications for funds will be accepted from State and local workforce investment boards, local public agencies, and nonprofit organizations, including faith-based and community organizations, which have familiarity with the area and population to be served and can administer an effective program. Eligible applicants will fall into one of the following categories:

1. State and Local Workforce Investment Boards (WIBS) as defined in Section 111 and 117 of the Workforce Investment Act, are eligible applicants, as well as State and local public agencies.

2. Local public agency, meaning any public agency of a general purpose political subdivision of a State which has the power to levy taxes and spend funds, as well as general corporate and police powers. (This typically refers to cities and counties). A State agency may propose in its application to serve one or more of the potential jurisdictions located in its State. This does not preclude a city or county agency from submitting an application to serve its own jurisdiction.

Applicants are encouraged to utilize, through sub-awards, experienced public agencies, private nonprofit organizations, and private businesses and faith-based and community organizations that have an understanding of unemployment and the barriers to employment unique to homeless veterans, a familiarity with the area to be served, and the capability to effectively provide the necessary services.

3. Also eligible to apply are private nonprofit organizations that have operated an HVRP or similar employment and training program for the homeless or veterans and proven a capacity to manage grants and have or will provide the necessary linkages with other service providers. Entities described in Section 501(c)(4) of the Internal Revenue Codes that engage in lobbying activities are not eligible to receive funds under this announcement as Section 18 of the Lobbying Disclosure Act of 1995, Public Law No. 104–65, 109 Stat. 691, prohibits the award of Federal funds to these entities.

C. Funding Levels

The total amount of funds available for this solicitation is $1.5 million. It is anticipated that up to 11 awards may be made under this solicitation. Awards are expected to range from $125,000 to $150,000. The Department of Labor reserves the right to negotiate the amounts to be awarded under this competition. Please be advised that requests exceeding the $150,000 will be considered non-responsive.

D. Period of Performance

The period of performance will be for twelve (12) months from date of award. It is expected that successful applicants will commence program operations under this solicitation by July 1, 2002.

E. Second-Year Option

As stated in Section II of this Part, the Homeless Veterans' Reintegration Program is authorized and codified by statute at Pub. L. No. 107–95, § 5 (2001). Should there be action by Congress to appropriate funds for this purpose, a second-year option may be considered. The Government does not, however, guarantee second year funding for any awardee. Should VETS decide that an option year for funding be exercised, the grantees' performance during the first period of operations will be taken into consideration as follows:

1. By the end of the third quarter, the grantee must achieve at least 75% of the twelve month total goals for Federal expenditures, enrollments, and placements, or

2. The grantee must meet 85% of goals for Federal expenditures, enrollments, and placements if planned activity is NOT evenly distributed in each quarter; and

3. The Grantee is in compliance with all terms identified in the solicitation for grant applications.

4. All program and fiscal reports were submitted by the established due date and may be verified for accuracy.

All instructions for modifications and announcement of fund availability will be issued at a later date. The HVRP funds for this competition are for a maximum period of one year with a second year funding option. The period of performance will be for twelve months from the date of the award. VETS expects that successful applicants will commence program operations under this solicitation on July 1, 2002.

Program funds must be expended by June 30, 2003, not including the 6-month follow up period referred to in the budget narrative.

F. Submission of Proposal

A cover letter, an original and two (2) copies of the proposal must be submitted to the U.S. Department of Labor, Procurement Service Office, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210. To aid with the review of applications, USDOL also encourages Applicants to submit one additional paper copy of the application (four total). Applicants who do not provide additional copies will not be penalized. The proposal must consist of two (2) separate and distinct parts: (1) one completed, blue ink-signed original SF 424 grant application with two (2) copies of the Technical Proposal; and two (2) copies of the Cost Proposal.

G. Acceptable Methods of Submission

The grant application package must be received at the designated place by the date and time specified or it will not be considered. Any application received at the Office of Procurement Services after 4:45 p.m. ET, May 31, 2002, will not be considered unless it is received before the award is made and:

1. It was sent by registered or certified mail not later than the fifth calendar day before May 31, 2002;
2. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated; or
3. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two (2) working days, excluding weekends and Federal holidays, prior to May 31, 2002.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. ''Postmark'' means a printed, stamped or otherwise placed impression (not a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore applicants should request that the postal clerk place a legible hand cancellation ''bull's-eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the Post Office receiving clerk on the ''Express Mail Next Day Service-Post Office to Addressee'' label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. ''Postmark'' has the same meaning as defined above. Therefore, applicants should request that the postal clerk place a legible hand cancellation ''bull's-eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Procurement Services Center on the application wrapper or other documentary evidence or receipt maintained by that office. Applications sent by other delivery services, such as Federal Express, UPS, etc., will also be accepted; however, the applicant bears the responsibility of timely submission.

All applicants are advised that U.S. mail delivery in the Washington, DC area has been erratic due to the recent concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline, as you assume the risk for ensuring a timely submission; that is, if, because of these mail problems, the Department does not receive an application or receives it too late to give proper consideration, even if it was timely mailed, the Department is not required to consider the application.

H. Required Content

There are four program activities that all applications must contain to be found technically acceptable under this SGA. These activities are:

—Pre-Enrollment Assessments;
—Employment Development Plans for all clients;
—Case Management
—Job Placement and job retention follow-up (at 90 and 180 days) after individual enters employment.

The proposal will consist of two (2) separate and distinct parts, a Technical proposal and a Cost Proposal:

**PART 1—THE TECHNICAL PROPOSAL** will consist of a narrative proposal that demonstrates: the applicant's knowledge of the need for this particular grant program; an understanding of the services and activities proposed to obtain successful outcomes for the homeless veterans served; and the capability to accomplish the expected outcomes of the proposed project design. The technical proposal will consist of a narrative not to exceed fifteen (15) pages double-spaced, font size no less than 11pt. and typewritten on one side of the paper only. [The applicant must complete the forms, i.e. Quarterly Technical Performance Goals chart provided in the SGA.]

1. *The proposal should include an outreach component.* It is recommended that the applicants coordinate these activities through veteran service providers and community-based and faith-based organizations who have experience working and serving the veteran population. This requirement can be modified to allow the project to utilize veterans in other positions where there is direct client contact if extensive outreach is not needed, such as intake, counseling, peer coaching, and follow up. This requirement applies to projects funded under this solicitation.

2. *Projects will be required to show linkages with other programs and services which provide support to homeless veterans.* Coordination with the Disabled Veterans' Outreach Program (DVOP) Specialists and Local Veterans' Employment Representatives (LVER) in the jurisdiction is required.

3. *Projects will be ''employment focused''.* The services provided will be directed toward (a) increasing the employability of homeless veterans through training or arranging for the provision of services which will enable them to work; and (b) matching homeless veterans with potential employers.

The following format is strongly recommended:

1. Need for the project: the applicant must identify the geographical area to be served and provide an estimate of the number of homeless veterans and their needs, poverty and unemployment rates in the area, the gaps in the local community infrastructure that contribute to the employment and other barriers faced by the targeted veterans, and how the project would respond to these needs. Include the outlook for job opportunities in the service area.

2. Approach or strategy to increase employment and job retention: Applicants must be responsive to the Rating Criteria contained in Section VIII and address all of the rating factors as thoroughly as possible in the narrative. The applicant must: (a) provide the length of training, the training curriculum and how the training will enhance the eligible veterans' employment opportunities within that geographical area; (b) describe the specific supportive, employment and training services to be provided under this grant and the sequence or flow of

such services—flow charts may be provided; (c) provide a plan for follow up to address retention after 90 and 180 days with participants who entered employment. (See discussion on results in Section VI. D.); and (d) include the required chart of proposed performance goals and planned expenditures listed in Appendix D.

3. Linkages with other providers of employment and training services to the homeless veterans: Describe the linkages this program will have with other providers of services to homeless veterans outside of the HVRP grant; include a description of the relationship with other employment and training programs such as Disabled Veterans' Outreach Program (DVOP), the Local Veterans' Employment Representatives (LVER) program, and programs under the Workforce Investment Act; and list the type of services provided by each. Note the type of agreement in place, if applicable. Linkages with the workforce development system [including State Employment Security Agencies (State Workforce Agencies)] must be delineated. Describe any linkages with any other resources and/or other programs for Homeless veterans. Indicate how the program will be coordinated with any efforts for the homeless that are conducted by agencies in the community.

4. Linkages with other federal agencies: Describe any program and resource linkages with Department of Housing and Urban Development (HUD), Department of Health and Human Services (HHS), and Department of Veterans Affairs (DVA) for the homeless, to include the Compensated Work Therapy (CWT) and Per Diem programs. Indicate how the applicant will coordinate with any ''continuum of care'' efforts for the homeless among agencies in the community.

5. Proposed supportive service strategy for veterans: Describe how supportive service resources for veterans will be obtained and used. If resources are provided by other sources or linkages, such as Federal, State, local or faith-based and community programs, the applicant must fully explain the use of these resources and why they are necessary.

6. Organizational capability in providing required program activities: The applicant's relevant current or prior experience in operating employment and training programs should be clearly described. The applicant must provide information showing outcomes of all past programs in terms of enrollments and placements. An applicant which has operated a HVRP or other Homeless Veterans' Employment and Training (HVET) program, JTPA IV–C program, or VWIP program, must include final or most recent technical performance reports. For those applicants with no prior grant experience, a summary narrative of program experience and employment and training performance outcomes is required. The applicant must also provide evidence of key staff capability.

7. Proposed housing strategy for homeless veterans: Describe how housing resources for homeless veterans will be obtained or accessed. These resources should be from linkages or sources other than the HVRP grant such as HUD, HHS, community housing resources, DVA leasing, or other programs. The applicant must explain whether HVRP resources will be used and why this is necessary.

Nonprofit organizations must submit evidence of satisfactory financial management capability, which must include recent financial and/or audit statements.

(This information is subject to verification by the government—Veterans' Employment and Training Service reserves the right to have a representative within each State provide programmatic and fiscal information about applicants and forward those findings to the National Office during the review of the applications).

**Note:** Resumes, charts, standard forms, transmittal letters, and letters of support are not included in the page count. [If provided include these documents as attachments to the technical proposal.]

**PART 2—COST PROPOSAL** must contain: (1) the Standard Form (SF) 424, ''Application for Federal Assistance'', (2) the Standard Form (SF) 424A ''Budget Information Sheet'' in Appendix B, and (3) a detailed cost break out of each line item on the Budget Information Sheet. Please label this page or pages the ''Budget Narrative'' and ensure that costs reported on the SF 424A correspond accurately with the Budget Narrative. In addition to the cost proposal the applicants must include the Assurance and Certification signature page, Appendix C. Copies of all required forms with instructions for completion are provided as appendices to this SGA.

The Catalog of Federal Domestic Assistance number for this program is 17.805. It must be entered on the SF 424, Block 10.

*IV. Budget Narrative Information*

As an attachment to the Budget Information Sheet (SF 424A), the applicant must provide, at a minimum, and on separate sheet(s), the following information:

A. A breakout of all personnel costs by position, title, salary rates, and percent of time of each position to be devoted to the proposed project (including sub-awardees);

B. An explanation and breakout of extraordinary fringe benefit rates and associated charges (i.e., rates exceeding 35% of salaries and wages);

C. An explanation of the purpose and composition of, and method used to derive the costs of each of the following: travel, equipment, supplies, sub-awards/ contracts, and any other costs. The applicant must include costs of any required travel described in this Solicitation. Mileage charges will not exceed 36.5 cents per mile;

D. A plan, which includes all associated costs, for retaining participant information pertinent to a longitudinal follow up survey, six (6) months after the program performance period ends;

E. Description/specification of and justification for equipment purchases, if any. Tangible, non-expendable, personal property having a useful life of more than one year and a unit acquisition cost of $5,000 or more per unit must be specifically identified; and

F. Identification of all sources of leveraged or matching funds and an explanation of the derivation of the value of matching/in-kind services. If resources/matching funds and/or the value of in-kind contributions are made available please show in Section B of the Budget Information Sheet.

*V. Participant Eligibility*

To be eligible for participation under HVRP, an individual must be homeless and a veteran defined as follows:

A. The term ''homeless or homeless individual'' includes persons who lack a fixed, regular, and adequate nighttime residence. It also includes persons whose primary nighttime residence is either a supervised public or private shelter designed to provide temporary living accommodations; an institution that provides a temporary residence for individuals intended to be institutionalized; or a private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. (Reference 42 U.S.C. section 11302 (a)).

B. The term ''veteran'' means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable. [Reference 38 U.S.C. Section 101(2)]

*VI. Project Summary*

A. Program Concept and Emphasis

The HVRP grants under Section 5 of the Homeless Veterans Comprehensive Assistance Act of 2001 are intended to address two objectives:

(1) to provide services to assist in reintegrating homeless veterans into meaningful employment within the labor force; and (2) to stimulate the development of effective service delivery systems that will address the complex problems facing homeless veterans.

These programs are designed to be flexible in addressing the universal as well as local or regional problems barring homeless veterans from the workforce. The program in PY 2002 will continue to strengthen the development of effective service delivery systems, to provide comprehensive services through a case management approach that will address the complex problems facing eligible veterans trying to transition into gainful employment, and improve strategies for employment and retention.

B. Scope of Program Design

The project design must provide for the following services:

—Outreach, intake, assessment, counseling to the degree practical and employment services. Outreach must be provided at shelters, day centers, soup kitchens, VA medical centers, and other programs for the homeless. Program staff providing outreach services should be a veteran who has experience in dealing with, and an understanding of the needs of the homeless.

Coordination with veterans' services programs and organizations such as:

—Disabled Veterans' Outreach Program (DVOP) Specialists, Local Veterans' Employment Representatives (LVERs) in the State Employment Security/Job Service Agencies (SESAs) or in the newly instituted workforce development system's One-Stop Centers, and Veterans' Workforce Investment Programs (VWIPs);
—Department of Veterans' Affairs (DVA) services, including its Health Care for Homeless Veterans, Domiciliary, and other programs, including those offering transitional housing; and
—Veteran service organizations such as The American Legion, Disabled American Veterans, the Veterans of Foreign Wars, Vietnam Veterans of America, and the American Veterans (AMVETS);

Referral to necessary treatment services, rehabilitative services, and counseling including, but not limited to:

—Alcohol and drug;
—Medical;
—Post Traumatic Stress Disorder;
—Mental Health;
—Coordinating with MHAA Title VI programs for health care for the homeless [health care programs under the HVCAA];

Referral to housing assistance provided by, for example:

—Local shelters;
—Federal Emergency Management Administration (FEMA) food and shelter programs;
—Transitional housing programs and single room occupancy housing programs funded under MHAA Title IV [and under the HVCAA];
—Permanent housing programs for the handicapped homeless funded under MHAA Title IV [and under the HVCAA];
—Department of Veterans' Affairs programs that provide for leasing or sale of acquired homes to homeless providers; and
—Transitional housing leased by HVRP funds (HVRP funds cannot be used to purchase housing or vehicles);

Employment and training services such as:

—Basic skills instruction;
—Basic literacy instruction;
—Remedial education activities;
—Job search activities, including job search workshops;
—Job counseling;
—Job preparatory training, including resume writing and interviewing skills;
—Subsidized trial employment (Work Experience);
—On-the-Job Training;
—Classroom Training;
—Job placement in unsubsidized employment;
—Placement follow up services; and
—Services provided under WIA Program Titles.

C. Results-Oriented Model

No model is mandatory, but the applicant must design a program that is responsive to local needs, and will carry out the objectives of the program to successfully reintegrate homeless veterans into the workforce.

With the advent of implementing the Government Performance and Results Act (GPRA), Congress and the public are looking for program results rather than program processes. While entering employment is a viable outcome, it will be necessary to measure results over a longer term (retention) to determine the success of programs.

The following program discussion must be considered in a program model. The first phase of activity must consist of the level of outreach that is necessary to reach eligible veterans. Such outreach will also include establishing contact with other agencies that encounter homeless veterans. Once the eligible participants have been identified, an assessment must be made of their abilities, interests and needs. In some cases, these participants may require referrals to services such as social rehabilitation, drug or alcohol treatment or a temporary shelter before they can be enrolled into core training. When the individual is stabilized, the assessment should focus on the employability of the individual and their enrollment into the program. A determination should be made as to whether they would benefit from pre-employment preparation such as resume writing, job search workshops, related counseling and case management, and initial entry into the job market through temporary jobs, sheltered work environments, or entry into classroom or on-the-job training. Such services should also be noted in an Employability Development Plan so that successful completion of the plan may be monitored by the staff. Entry into full-time employment or a specific job training program should follow, in keeping with the objective of HVRP to bring the participant closer to self-sufficiency. Supportive services may assist the participant at this stage or even earlier. Job development is a crucial part of the employability process. Wherever possible, DVOP and LVER staff must be utilized for job development and placement activities for veterans who are ready to enter employment or who are in need of intensive case management services. Many of these staff members have received training in case management at the National Veterans' Training Institute and have a priority of focus, assisting those most at a disadvantage in the labor market. VETS urges working hand-in-hand with DVOP/LVER staff to achieve economies of resources.

The following program discussion emphasizes that follow up is an integral program component. *Follow up to determine whether the veteran is in the same or similar job at the 90 and 180 day period after entering employment is required.* It is important that the grantee maintain contact with the veterans after placement to assure that employment related problems are addressed. *The 90 and 180 day follow up is fundamental to assessing the results of the program success.* Grantees need to budget for this activity so that follow up can and will occur for those placed at or near the end of the grant performance period. Such

results will be reported in the final technical performance report.

Retention of records will be reflected in the Special Grant Provisions to be provided at the time of any award.

*VII. Related HVRP Program Development Activities*

Community Awareness Activities

In order to promote linkages between the program and local service providers (and thereby eliminate gaps or duplication in services and enhance provision of assistance to participants), the grantee must provide project orientation and/or service awareness activities that it determines are the most feasible for the types of providers listed below. Project orientation workshops conducted by grantees have been an effective means of sharing information and revealing the availability of other services; they are encouraged but not mandatory. Rather, the grantee will have the flexibility to attend service provider meetings, seminars, conferences, outstation staff, develop individual service contracts, and involve other agencies in program planning. This list is not exhaustive. The grantee will be responsible for providing appropriate awareness, information sharing, and orientation activities to the following:

A. *Providers of hands-on services to the homeless veteran,* such as shelter and soup-kitchen operators, to make them fully aware of services available to homeless veterans to make them job-ready and place them in jobs.

B. *Federal, State and local entitlement services* such as the Social Security Administration (SSA), Department of Veterans' Affairs (DVA), State Employment Security Agencies (SESAs) and their local Job Service offices, One-Stop Centers (which integrate WIA, labor exchange, and other employment and social services), detoxification facilities, etc., to familiarize them with the nature and needs of homeless veterans.

C. *Civic and private sector groups,* and especially veterans' service and community-based (including faith-based organizations), to describe homeless veterans and their needs.

D. *Stand Down Support.* A ''Stand Down'' as it relates to homeless veterans is an event held in a locality usually for three days where services are provided to homeless veterans along with shelter, meals, clothing, and medical attention. This type of event is mostly volunteer effort, which is organized within a community and brings service providers together such as the DVA, Disabled Veterans Outreach Program Specialists, Local Veterans' Employment Representatives from the State Employment Service Agencies, veteran service organization, military personnel, civic leaders, and a variety of other interested persons and organizations. Many services are provided on-site with referrals also made for continued assistance after the event. This can often be the catalyst that enables the homeless veterans to get back into mainstream society. The Department of Labor has supported replication of this event. Many such events have been held throughout the nation.

In areas where an HVRP is operating, the grantees are encouraged to participate fully and offer their services for any planned Stand Down event. Towards this end, up to $5,000 of the currently requested HVRP grant funds may be used to supplement the Stand Down effort where funds are not otherwise available, and should be reflected in the budget and budget narrative.

*VIII. Rating Criteria for Award*

Applications will be reviewed by a DOL panel using the point scoring system specified below. Applications will be ranked based on the score assigned by the panel after careful evaluation by each panel member. The ranking will be the primary basis to identify applicants as potential grantees. Although the Government reserves the right to award on the basis of the initial proposal submissions, the Government may establish a competitive range, based upon the proposal evaluation, for the purpose of selecting qualified applicants. The panel's conclusions are advisory in nature and not binding on the Grant Officer. The government reserves the right to ask for clarification or hold discussions, but is not obligated to do so. The Government further reserves the right to select applicants out of rank order if such a selection would, in its opinion, result in the most effective and appropriate combination of funding, program and administrative costs e.g., cost per enrollment and placement, demonstration models, and geographical service areas. While points will not be assessed for cost issues, cost per entered employment will be given serious consideration in the selecting of awards. The Grant Officer's determination for award under SGA 02–09 is the final agency action. The submission of the same proposal from any prior year HVRP or Homeless Veterans' Employment and Training (HVET) competition does not guarantee an award under this Solicitation.

*Panel Review Criteria*

A. Need for the Project: 15 points

The applicant will document the extent of need for this project, as demonstrated by: (1) the potential number or concentration of homeless individuals and homeless veterans in the proposed project area relative to other similar areas of jurisdiction; (2) the high rates of poverty and/or unemployment in the proposed project area as determined by the census or other surveys; and (3) the extent of gaps in the local infrastructure to effectively address the employment barriers that characterize the target population.

B. Overall Strategy to Increase Employment and Retention: 40 points

The application must include a description of the proposed approach to providing comprehensive employment and training services, including job training, job development, any employer commitments to hire, placement, and post placement follow up services. Applicants must address their intent to target occupations in expanding industries, rather than declining industries. The supportive services to be provided as part of the strategy of promoting job readiness and job retention must be indicated. The applicant must identify the local human resources and sources of training to be used for participants. A description of the relationship, if any, with other employment and training programs such as SESAs (DVOP and LVER Programs), VWIP, other WIA programs, and Workforce Investment or Development Boards or entities where in place, must be presented. Applicant must indicate how the activities will be tailored or responsive to the needs of homeless veterans. A participant flow chart may be used to show the sequence and mix of services.

**Note:** The applicant MUST complete the chart of proposed program outcomes to include participants served, entered employment/placements and job retention. (See Appendix D) Of the 40 points possible in the strategy to increase employment and retention, 10 points will be awarded to grant proposals that plan on a six month employment retention rate of 50 percent, or 15 points will be awarded to proposals that show a six month employment retention rate of 70 percent.

C. Quality and Extent of Linkages With Other Providers of Services to the Homeless and to Veterans: 10 points

The application must provide information on the quality and extent of the linkages this program will have with other providers of services to benefit the homeless veterans in the local

community outside of the HVRP grant. For each service, the applicant must specify who the provider is, the source of funding (if known), and the type of linkages/referral system established or proposed. [Describe, to the extent possible, how the project would fit into the community's continuum of care approach to respond to homelessness and any linkages to HUD, HHS or DVA programs or resources to benefit the proposed program.]

D. Demonstrated Capability in Providing Required Program Services: 20 points

The applicant must describe its relevant prior experience in operating employment and training programs and providing services to participants similar to that which is proposed under this solicitation. Specific outcomes achieved by the applicant must be described in terms of clients placed in jobs, etc. The applicant must also address its capability and ability for timely startup of the program. The applicant should delineate its staff capability and ability to manage the financial aspects of a grant program, including a recent (within the last 12 months), financial statement or audit if available. Final or most recent technical reports for other relevant programs must be submitted if applicable. Because prior grant experience is not a requirement for this grant, some applicants may not have any technical reports to submit.

E. Quality of Overall Housing Strategy: 15 points

The application must demonstrate how the applicant proposes to obtain or access housing resources for veterans in the program and entering the labor force. This discussion should specify the provisions made to access temporary, transitional, and permanent housing for participants through community resources, HUD, DVA lease, or other means. HVRP funds will not be used to purchase housing or vehicles.

Applicants can expect that the cost proposal will be reviewed for allowability, allocation of costs, and reasonableness of placement and enrollment costs.

*IX. Post Award Conference*

A post-award conference will be held for those grantees awarded PY 2002 HVRP funds from the competition. It is expected to be held in August or September 2002. Up to two grantee representatives must be present; a fiscal and a program representative is recommended. The site of the Post-Award conference has not yet been determined, for planning and budgeting purposes, please plan on five days and use Washington, DC as the conference location. The conference will focus on providing information and assistance on reporting, record keeping, and grant requirements, and also include best practices from past projects. Costs associated with attending this conference for up to two grantee representatives will be allowed as long as they were incurred in accordance with Federal travel regulations. Such costs must be charged as administrative costs and reflected in the proposed budget.

*X. Reporting Requirements*

The grantee will submit the reports and documents listed below:

A. Financial Reports

The grantee must report outlays, program income, and other financial information on a quarterly basis using SF 269A, Financial Status Report, Short Form. This form will cite the assigned grant number and be submitted to the appropriate State Director for Veterans' Employment and Training (DVET) no later than 30 days after the ending date of each Federal fiscal quarter (i.e., October 30, January 30, April 30 and July 30) during the grant period.

B. Program Reports

Grantees must submit a Quarterly Technical Performance Report 30 days after the end of each Federal fiscal quarter to the DVET that contains the following:

1. a comparison of actual accomplishments to established goals for the reporting period and any findings related to monitoring efforts;

2. An explanation for variances of plus or minus 15% of planned program and/or expenditure goals, to include: (i) identification of corrective action which will be taken to meet the planned goals, and (ii) a timetable for accomplishment of the corrective action.

*C. 90 Days Report Package*

The grantee must submit no later than 90 days after the grant expiration date a final report containing the following:

1. Financial Status Report (SF–269A) (copy to be provided following grant awards)

2. Technical Performance Report—(Program Goals)

3. Narrative Report identifying—(a) major successes of the program; (b) obstacles encountered and actions taken (if any) to overcome such obstacles; (c) the total combined number of veterans placed in employment during the entire grant period; (d) the number of veterans still employed at the end of the grant period; (e) an explanation regarding why those veterans placed during the grant period, but not employed at the end of the grant period, are not employed; and (f) any recommendations to improve the program.

D. Six (6) Month Final Report

No later than 210 days after the grant performance period ends, the grantee must submit a follow up report containing the following:

1. Final Financial Status Report (SF–269A).

2. Final Narrative Report identifying—(a) the total combined (directed/assisted) number of veterans placed during the entire grant period; (b) the number of veterans still employed during follow up; (c) are the veterans still employed at the same or similar job, if not what are the reasons; (d) was the training received applicable to jobs held; (e) wages at placement and during follow up period; (f) an explanation regarding why those veterans placed during the grant, but not employed at the end of the follow up period, are not so employed; and (g) any recommendations to improve the program.

*XI. Administration Provisions*

A. Limitation on Administrative and Indirect Costs

1. Direct Costs for administration, plus any indirect charges claimed.

2. Indirect costs claimed by the applicant must be based on a federally approved rate. A copy of the negotiated, approved, and signed indirect cost negotiation agreement must be submitted with the application.

3. If the applicant does not presently have an approved indirect cost rate, a proposed rate with justification may be submitted. Successful applicants will be required to negotiate an acceptable and allowable rate with the appropriate DOL Regional Office of Cost Determination within 90 days of grant award.

4. Rates traceable and trackable through the State Workforce Agency's Cost Accounting System represent an acceptable means of allocating costs to DOL and, therefore, can be approved for use in grants to State Workforce Agencies.

B. Allowable Costs

Determinations of allowable costs will be made in accordance with the following applicable Federal cost principles:

State and local government—OMB Circular A–87.

Nonprofit organizations—OMB Circular A–122.

C. Administrative Standards and Provisions

Accept as specifically provided, DOL acceptance of a proposal and an award of federal funds to sponsor any program(s) does not provide a waiver of any grant requirements and/or procedures. For example, the OMB circulars require and an entity's procurement procedures must require that all procurement transactions will be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide the services, the DOL award does not provide the justification or basis to sole-source the procurement, i.e., avoid competition.

All grants will be subject to the following administrative standards and provisions:

1. 29 CFR part 93—Lobbying.
2. 29 CFR part 95—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-profit Organizations, and with Commercial Organizations.
3. 29 CFR Part 96—Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements. This rule implements, for State and local governments and Indian tribes that receive Federal Assistance from the DOL, Office of Management and Budget (OMB) Circular A–128 ''Audits of State and Local Governments'' which was issued pursuant to the Single Audit Act of 1984, 31 U.S.C. Section 7501–7507. It also consolidates the audit requirements currently contained throughout the DOL regulations.
4. 29 CFR part 97—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
5. 29 CFR part 98—Government wide Debarment and Suspension (Nonprocurement) and Government wide Requirements for Drug-Free Workplace (Grants).
6. 29 CFR part 99—Audit Of States, Local Governments, and Non-profit Organization.
7. Section 168(b) of WIA—Administration of Programs Please note that Sections 181–195 may also apply.
8. 29 CFR parts 30, 31, 32, 33 and 34—Equal Employment Opportunity in Apprenticeship and Training; Nondiscrimination in Federally-Assisted Programs of the Department of Labor, Effectuation of Title VI of the Civil Rights Act of 1964; and Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefitting from Federal Financial Assistance (Incorporated by Reference). These rules implement, for recipients of federal assistance, non-discrimination provisions on the basis of race, color, national origin, and handicapping condition, respectively.
9. Appeals from non-designation will be handled under 20 CFR part 667.260
10. 29 CFR part 97—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Government.

Signed at Washington, DC. this 23rd day of April, 2002.

**Lawrence J. Kuss,**

*Grant Officer.*

## Appendices

Appendix A: Application for Federal Assistance SF Form 424
Appendix B: Budget Information Sheet
Appendix C: Assurances and Certifications Signature Page
Appendix D: Technical Performance Goals Form
Appendix E: Direct Cost Descriptions for Applicants and Sub-Applicants
Appendix F: The Glossary of Terms
Appendix G: List of 75 largest U.S. Cities

BILLING CODE 4510–79–P

(A)

**APPLICATION FOR FEDERAL ASSISTANCE**

OMB Approval No. 0348-0043

| | | |
|---|---|---|
| **2. DATE SUBMITTED** | Applicant Identifier | |
| **3. DATE RECEIVED BY STATE** | State Application Identifier | |
| **4. DATE RECEIVED BY FEDERAL AGENCY** | Federal Identifier | |

**1. TYPE OF SUBMISSION:**

Application
- ☐ **Construction**
- ☐ **Non-Construction**

Preapplication
- ☐ **Construction**
- ☐ **Non-Construction**

**5. APPLICANT INFORMATION**

Legal Name:

Organizational Unit:

Address *(give city, county, State, and zip code)*:

Name and telephone number of person to be contacted on matters involving this application *(give area code)*

**6. EMPLOYER IDENTIFICATION NUMBER** *(EIN)*:

☐☐ — ☐☐☐☐☐☐☐

**7. TYPE OF APPLICANT:** *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

**8. TYPE OF APPLICATION:**

☐ **New** ☐ **Continuation** ☐ **Revision**

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify)*:

_____

**9. NAME OF FEDERAL AGENCY:**

**10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:**

☐☐ — ☐☐☐

TITLE:

**11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:**

**12. AREAS AFFECTED BY PROJECT** *(Cities, Counties, States, etc.)*:

**13. PROPOSED PROJECT**

| Start Date | Ending Date |
|---|---|
| | |

**14. CONGRESSIONAL DISTRICTS OF:**

a. Applicant

b. Project

**15. ESTIMATED FUNDING:**

| | |
|---|---|
| a. Federal | $ .00 |
| b. Applicant | $ .00 |
| c. State | $ .00 |
| d. Local | $ .00 |
| e. Other | $ .00 |
| f. Program Income | $ .00 |
| g. TOTAL | $ .00 |

**16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?**

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

**17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?**

☐ **Yes** **If "Yes," attach an explanation.** ☐ **No**

**18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.**

| | | |
|---|---|---|
| a. Type Name of Authorized Representative | b. Title | c. Telephone Number |
| d. Signature of Authorized Representative | | e. Date Signed |

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Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

## INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

| Item: | Entry: |
|---|---|
| 1. | Self-explanatory. |
| 2. | Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable). |
| 3. | State use only (if applicable). |
| 4. | If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank. |
| 5. | Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application. |
| 6. | Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service. |
| 7. | Enter the appropriate letter in the space provided. |
| 8. | Check appropriate box and enter appropriate letter(s) in the space(s) provided:<br>-- "New" means a new assistance award.<br>-- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.<br>-- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. |
| 9. | Name of Federal agency from which assistance is being requested with this application. |
| 10. | Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested. |
| 11. | Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project. |
| 12. | List only the largest political entities affected (e.g., State, counties, cities). |
| 13. | Self-explanatory. |
| 14. | List the applicant's Congressional District and any District(s) affected by the program or project. |
| 15. | Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15. |
| 16. | Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. |
| 17. | This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes. |
| 18. | To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.) |

(B)

## BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

**SECTION A - BUDGET SUMMARY**

| Grant Program Function or Activity (a) | Catalog of Federal Domestic Assistance Number (b) | Estimated Unobligated Funds | | New or Revised Budget | | |
|---|---|---|---|---|---|---|
| | | Federal (c) | Non-Federal (d) | Federal (e) | Non-Federal (f) | Total (g) |
| 1. | | $ | $ | $ | $ | $ |
| 2. | | | | | | |
| 3. | | | | | | |
| 4. | | | | | | |
| 5. Totals | | $ | $ | $ | $ | $ |

**SECTION B - BUDGET CATEGORIES**

| 6. Object Class Categories | GRANT PROGRAM, FUNCTION OR ACTIVITY | | | | Total |
|---|---|---|---|---|---|
| | (1) | (2) | (3) | (4) | (5) |
| a. Personnel | $ | $ | $ | $ | $ |
| b. Fringe Benefits | | | | | |
| c. Travel | | | | | |
| d. Equipment | | | | | |
| e. Supplies | | | | | |
| f. Contractual | | | | | |
| g. Construction | | | | | |
| h. Other | | | | | |
| i. Total Direct Charges *(sum of 6a-6h)* | | | | | |
| j. Indirect Charges | | | | | |
| k. TOTALS *(sum of 6i and 6j)* | $ | $ | $ | $ | $ |
| | | | | | |
| 7. Program Income | $ | $ | $ | $ | $ |

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| SECTION C - NON-FEDERAL RESOURCES | | | | |
|---|---|---|---|---|
| (a) Grant Program | (b) Applicant | (c) State | (d) Other Sources | (e) TOTALS |
| 8. | $ | $ | $ | $ |
| 9. | | | | |
| 10. | | | | |
| 11. | | | | |
| 12. TOTAL *(sum of lines 8-11)* | $ | $ | $ | $ |

| SECTION D - FORECASTED CASH NEEDS | | | | | |
|---|---|---|---|---|---|
| | Total for 1st Year | 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter |
| 13. Federal | $ | $ | $ | $ | $ |
| 14. Non-Federal | | | | | |
| 15. TOTAL *(sum of lines 13 and 14)* | $ | $ | $ | $ | $ |

| SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT | | | | |
|---|---|---|---|---|
| (a) Grant Program | FUTURE FUNDING PERIODS (Years) | | | |
| | (b) First | (c) Second | (d) Third | (e) Fourth |
| 16. | $ | $ | $ | $ |
| 17. | | | | |
| 18. | | | | |
| 19. | | | | |
| 20. TOTAL *(sum of lines 16-19)* | $ | $ | $ | $ |

| SECTION F - OTHER BUDGET INFORMATION | |
|---|---|
| 21. Direct Charges: | 22. Indirect Charges: |
| 23. Remarks: | |

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**Standard Form 424A (Rev. 7-97) Page 2**

## INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

**General Instructions**

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

**Section A. Budget Summary Lines 1-4 Columns (a) and (b)**

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

**Lines 1-4, Columns (c) through (g)**

*For new applications*, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

*For continuing grant program applications*, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

*For supplemental grants and changes* to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

**Line 5** - Show the totals for all columns used.

**Section B Budget Categories**

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

**Line 6a-i** - Show the totals of Lines 6a to 6h in each column.

**Line 6j** - Show the amount of indirect cost.

**Line 6k** - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

**Line 7** - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, Show under the program

**INSTRUCTIONS FOR THE SF-424A** (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

**Section C. Non-Federal Resources**

**Lines 8-11** Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

**Column (a)** - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

**Column (b)** - Enter the contribution to be made by the applicant.

**Column (c)** - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

**Column (d)** - Enter the amount of cash and in-kind contributions to be made from all other sources.

**Column (e)** - Enter totals of Columns (b), (c), and (d).

**Line 12** - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

**Section D. Forecasted Cash Needs**

**Line 13** - Enter the amount of cash needed by quarter from the grantor agency during the first year.

**Line 14** - Enter the amount of cash from all other sources needed by quarter during the first year.

**Line 15** - Enter the totals of amounts on Lines 13 and 14.

**Section E. Budget Estimates of Federal Funds Needed for Balance of the Project**

**Lines 16-19** - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

**Line 20** - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

**Section F. Other Budget Information**

**Line 21** - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

**Line 22** - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

**Line 23** - Provide any other explanations or comments deemed necessary.

(C)

**CERTIFICATIONS AND ASSURANCES**

**ASSURANCES AND CERTIFICATIONS SIGNATURE PAGE**

The Department of Labor will not award a grant or agreement where the grantee/recipient has failed to accept the ASSURANCES AND CERTIFICATIONS contained in this section. By signing and returning this signature page, the grantee/recipient is providing the certifications set forth below:

A. Certification Regarding Lobbying, Debarment, Suspension, Other Responsibility Matters - Primary Covered Transactions and Certifications Regarding Drug-Free/Tobacco-Free Workplace,

B. Certification of Release of Information

C. Assurances - Non-Construction Programs

D. Applicant is not a 501(c)(4) organization

APPLICANT NAME and LEGAL ADDRESS:

If there is any reason why one of the assurances or certifications listed cannot be signed, please explain. Applicant need only submit and return this signature page with the grant application. All other instruction shall be kept on file by the applicant.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL TITLE

APPLICANT ORGANIZATION DATE SUBMITTED

**Please Note:** **This signature page and any pertinent attachments which may be required by these assurances and certifications shall be attached to the applicant's Cost Proposal.**

(D)

## RECOMMENDED FORMAT FOR PLANNED QUARTERLY TECHNICAL PERFORMANCE GOALS

(data entered cumulatively)

***Performance Goals***

| | 1ST QTR | 2ND QTR | 3RD QTR | 4TH QTR |
|---|---|---|---|---|
| **Assessments** | | | | |
| **Participants Enrolled** | | | | |
| **Placed Into Transitional Or Permanent Housing** | | | | |
| **Direct Placements Into Unsubsidized Employment** | | | | |
| **Assisted Placements Into Unsubsidized Employment** | | | | |
| **Combined Placements Into Unsubsidized Employment (Direct & Assisted)** | | | | |
| **Cost Per Placement** | | | | |
| **Number Retaining Jobs For 90 Days** | | | | |
| **Number Retaining Jobs For 180 Days** | | | | |
| **Rate of Placement Into Unsubsidized Employment** | | | | |
| **Average Hourly Wage At Placement** | | | | |

***Employability Development Services - (As Applicable)***

| | | | | |
|---|---|---|---|---|
| **Classroom Training** | | | | |
| **On-The-Job Training** | | | | |
| **Remedial Education** | | | | |
| **Vocational Counseling** | | | | |
| **Pre-employment Services** | | | | |
| **Occupational Skills Training** | | | | |
| _____ | | | | |
| _____ | | | | |
| _____ | | | | |
| _____ | | | | |

***Planned Expenditures***

| | 1st Qtr | 2nd Qtr | 3rd Qtr | 4th Qtr |
|---|---|---|---|---|
| **Total Expenditures** | $ | $ | $ | $ |
| **Administrative Costs** | $ | $ | $ | $ |
| **Participant Services*** | $ | $ | $ | $ |

*Services may include training and/or supportive.

(E)

Direct Cost Descriptions For Applicants and Sub-Applicants*

| Position Title(s ) | Annual Salary/Wage Rate | % of Time Charged to Grant | Proposed Administration Costs ** | Proposed Program Costs |
|---|---|---|---|---|
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

| | Administration | Program |
|---|---|---|
| Sub-Total | | |
| Fringe Benefits For All Positions | | |
| Contractual | | |
| Travel | | |
| Indirect Costs | | |
| Equipment | | |
| Supplies | | |
| Total Costs ---------- | | |

** Administrative costs are associated with the supervision and management of the program and do not directly or immediately affect participants.

* Direct costs for all funded positions for both applicant and sub-applicant(s) must be provided.

(F)

HVRP PERFORMANCE GOAL DEFINITIONS

1. Assessments. This process includes addressing the supportive services and employability and training needs of individuals before enrolling them in an HVRP program. Generally, this includes an evaluation and/or measurement of vocational interests and aptitudes, present abilities, previous education and work experience, income requirements, addressing supportive service needs, substance abuse treatment needs, counseling needs, temporary or transitional housing needs, personal circumstances and other related services.

2. Participants Enrolled. A client should be recorded as having been enrolled when an intake form has been completed, and services, referral, or employment has been received through the HVRP program. This should be an unduplicated count over the year: i.e., each participant is recorded only once, regardless of the number of times she or he receives assistance.

3. Placed Into Transitional Or Permanent Housing. A placement into transitional or permanent housing should be recorded when a veteran served by the program upgrades his/her housing situation during the reporting period from shelter/streets to transitional housing or permanent housing or from transitional housing to permanent housing. Placements resulting from referrals by HVRP staff shall be counted. This item is however an unduplicated count over the year, except that a participant may be counted once upon entering transitional housing and again upon obtaining permanent housing.

4. Direct Placements Into Unsubsidized Employment. A direct placement into unsubsidized employment must be a placement made directly by HVRP-funded staff with an established employer who covers all employment costs for 20 or more hours per week at or above the minimum wage. Day labor and other very short-term placements should not be recorded as placements into unsubsidized employment.

5. Assisted Placements Into Unsubsidized Employment. Assisted placements into unsubsidized employment should be recorded where the definition for placement with unsubsidized employment above is met, but the placement was arranged by an agency to which the HVRP referred the homeless veteran, such as a Job Training Partnership Act (JTPA) program.

6. Cost Per Placement. The cost per placement into unsubsidized employment is obtained by dividing the total HVRP funds expended by the total of direct placements plus assisted placements.

7. Number Retaining Job For 30 Days. To be counted as retaining a job for 30 days, continuous employment with one or more employers for at least 30 days must be verified and the definition for either direct placement or assisted placement into unsubsidized employment above is met. This allows clients who have moved into a position with a different employer to be recorded as retaining the job for 30 days as long as the client has been steadily employed for that length of time.

8. Number Retaining Job For 90 Days. To be counted as retaining a job for 90 days, continuous employment with one or more employers for at least 90 days must be verified, and the definition for either placement or assisted placement into unsubsidized employment above is met. This allows clients who have moved into a position with a different employer to be recorded as retaining the job for 90 days as long as the client has been steadily employed for that length of time.

9. Rate of Placement Into Unsubsidized Employment. The rate of placement into unsubsidized employment is obtained by dividing the number placed into unsubsidized employment (HVRP), plus the number of assisted placements into unsubsidized employment by the number of clients enrolled.

10. Average Hourly Wage At Placement. The average hourly wage at placement is the average hourly wage rates at placement of all assisted placements plus direct placements.

11. Employability Development Services. This includes services and activities which will develop or increase the employability of the participant. Generally, this includes vocational counseling, classroom and on-the-job training, pre-employment services (such as job seeking skills and job search workshops), temporary or trial employment, sheltered work environments and other related services and activities. Planned services should assist the participant in addressing specific barriers to employment and finding a job. These activities may be provided by the applicant or by a subgrantee, contractor or another source such as the local Job Partnership Training Act program or the Disabled Veterans'Outreach Program (DVOP) personnel or Local Veterans' Employment Representatives (LVERs). Such services are not mandatory but entries should reflect the services described in the application and the expected number of participants receiving or enrolled in such services during each quarter. Participants may be recorded more than once if they receive more than one service.

12. Total Planned Expenditures. Total funds requested. Identify forecasted expenditures needed for each fiscal quarter.

13. Administrative Costs. Administrative costs shall consist of all direct and indirect costs associated with the supervision and management of the program. These costs shall include the administrative costs, both direct and indirect, of subrecipients and contractors.

14. Participant Services. This cost includes supportive, training, or social rehabilitation services which will assist in stabilizing the participant. This category should reflect all costs other than administrative.

(G)

| Rank | Area Name | Census Population | |
|---|---|---|---|
| | | April 1, 2000 | April 1, 1990 |
| 1 | New York--Northern New Jersey--Long Island, NY--NJ--CT--PA CMSA | 21,199,865 | 19,549,649 |
| 2 | Los Angeles--Riverside--Orange County, CA CMSA | 16,373,645 | 14,531,529 |
| 3 | Chicago--Gary--Kenosha, IL--IN--WI CMSA | 9,157,540 | 8,239,820 |
| 4 | Washington--Baltimore, DC--MD--VA--WV CMSA | 7,608,070 | 6,727,050 |
| 5 | San Francisco--Oakland--San Jose, CA CMSA | 7,039,362 | 6,253,311 |
| 6 | Philadelphia--Wilmington--Atlantic City, PA--NJ--DE--MD CMSA | 6,188,463 | 5,892,937 |
| 7 | Boston--Worcester--Lawrence, MA--NH--ME--CT CMSA | 5,819,100 | 5,455,403 |
| 8 | Detroit--Ann Arbor--Flint, MI CMSA | 5,456,428 | 5,187,171 |
| 9 | Dallas--Fort Worth, TX CMSA | 5,221,801 | 4,037,282 |
| 10 | Houston--Galveston--Brazoria, TX CMSA | 4,669,571 | 3,731,131 |
| 11 | Atlanta, GA MSA | 4,112,198 | 2,959,950 |
| 12 | Miami--Fort Lauderdale, FL CMSA | 3,876,380 | 3,192,582 |
| 13 | Seattle--Tacoma--Bremerton, WA CMSA | 3,554,760 | 2,970,328 |
| 14 | Phoenix--Mesa, AZ MSA | 3,251,876 | 2,238,480 |
| 15 | Minneapolis--St. Paul, MN--WI MSA | 2,968,806 | 2,538,834 |
| 16 | Cleveland--Akron, OH CMSA | 2,945,831 | 2,859,644 |
| 17 | San Diego, CA MSA | 2,813,833 | 2,498,016 |
| 18 | St. Louis, MO--IL MSA | 2,603,607 | 2,492,525 |
| 19 | Denver--Boulder--Greeley, CO CMSA | 2,581,506 | 1,980,140 |
| 20 | San Juan--Caguas--Arecibo, PR CMSA | 2,450,292 | 2,270,808 |
| 21 | Tampa--St. Petersburg--Clearwater, FL MSA | 2,395,997 | 2,067,959 |
| 22 | Pittsburgh, PA MSA | 2,358,695 | 2,394,811 |
| 23 | Portland--Salem, OR--WA CMSA | 2,265,223 | 1,793,476 |
| 24 | Cincinnati--Hamilton, OH--KY--IN CMSA | 1,979,202 | 1,817,571 |
| 25 | Sacramento--Yolo, CA CMSA | 1,796,857 | 1,481,102 |
| 26 | Kansas City, MO--KS MSA | 1,776,062 | 1,582,875 |
| 27 | Milwaukee--Racine, WI CMSA | 1,689,572 | 1,607,183 |
| 28 | Orlando, FL MSA | 1,644,561 | 1,224,852 |
| 29 | Indianapolis, IN MSA | 1,607,486 | 1,380,491 |
| 30 | San Antonio, TX MSA | 1,592,383 | 1,324,749 |
| 31 | Norfolk--Virginia Beach--Newport News, VA--NC MSA | 1,569,541 | 1,443,244 |
| 32 | Las Vegas, NV--AZ MSA | 1,563,282 | 852,737 |
| 33 | Columbus, OH MSA | 1,540,157 | 1,345,450 |
| 34 | Charlotte--Gastonia--Rock Hill, NC--SC MSA | 1,499,293 | 1,162,093 |
| 35 | New Orleans, LA MSA | 1,337,726 | 1,285,270 |
| 36 | Salt Lake City--Ogden, UT MSA | 1,333,914 | 1,072,227 |
| 37 | Greensboro--Winston-Salem--High Point, NC MSA | 1,251,509 | 1,050,304 |
| 38 | Austin--San Marcos, TX MSA | 1,249,763 | 846,227 |
| 39 | Nashville, TN MSA | 1,231,311 | 985,026 |
| 40 | Providence--Fall River--Warwick, RI--MA MSA | 1,188,613 | 1,134,350 |
| 41 | Raleigh--Durham--Chapel Hill, NC MSA | 1,187,941 | 855,545 |
| 42 | Hartford, CT MSA | 1,183,110 | 1,157,585 |
| 43 | Buffalo--Niagara Falls, NY MSA | 1,170,111 | 1,189,288 |
| 44 | Memphis, TN--AR--MS MSA | 1,135,614 | 1,007,306 |

| | | | |
|---|---|---|---|
| 45 | West Palm Beach--Boca Raton, FL MSA | 1,131,184 | 863,518 |
| 46 | Jacksonville, FL MSA | 1,100,491 | 906,727 |
| 47 | Rochester, NY MSA | 1,098,201 | 1,062,470 |
| 48 | Grand Rapids--Muskegon--Holland, MI MSA | 1,088,514 | 937,891 |
| 49 | Oklahoma City, OK MSA | 1,083,346 | 958,839 |
| 50 | Louisville, KY--IN MSA | 1,025,598 | 948,829 |
| 51 | Richmond--Petersburg, VA MSA | 996,512 | 865,640 |
| 52 | Greenville--Spartanburg--Anderson, SC MSA | 962,441 | 830,563 |
| 53 | Dayton--Springfield, OH MSA | 950,558 | 951,270 |
| 54 | Fresno, CA MSA | 922,516 | 755,580 |
| 55 | Birmingham, AL MSA | 921,106 | 840,140 |
| 56 | Honolulu, HI MSA | 876,156 | 836,231 |
| 57 | Albany--Schenectady--Troy, NY MSA | 875,583 | 861,424 |
| 58 | Tucson, AZ MSA | 843,746 | 666,880 |
| 59 | Tulsa, OK MSA | 803,235 | 763,954 |
| 60 | Syracuse, NY MSA | 732,117 | 742,177 |
| 61 | Omaha, NE--IA MSA | 716,998 | 639,580 |
| 62 | Albuquerque, NM MSA | 712,738 | 589,131 |
| 63 | Knoxville, TN MSA | 687,249 | 585,960 |
| 64 | El Paso, TX MSA | 679,622 | 591,610 |
| 65 | Bakersfield, CA MSA | 661,645 | 543,477 |
| 66 | Allentown--Bethlehem--Easton, PA MSA | 637,958 | 595,081 |
| 67 | Harrisburg--Lebanon--Carlisle, PA MSA | 629,401 | 587,986 |
| 68 | Scranton--Wilkes-Barre--Hazleton, PA MSA | 624,776 | 638,466 |
| 69 | Toledo, OH MSA | 618,203 | 614,128 |
| 70 | Baton Rouge, LA MSA | 602,894 | 528,264 |
| 71 | Youngstown--Warren, OH MSA | 594,746 | 600,895 |
| 72 | Springfield, MA MSA | 591,932 | 587,884 |
| 73 | Sarasota--Bradenton, FL MSA | 589,959 | 489,483 |
| 74 | Little Rock--North Little Rock, AR MSA | 583,845 | 513,117 |
| 75 | McAllen--Edinburg--Mission, TX MSA | 569,463 | 383,545 |

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## DEPARTMENT OF LABOR

### Office of the Assistant Secretary for Veterans' Employment and Training

### Homeless Veterans' Reintegration Program Competitive Grants for FY 2002

**AGENCY:** Office of the Assistant Secretary for Veterans' Employment and Training, Labor.

**ACTION:** Notice of availability of funds and solicitation for grant applications (SGA) for Homeless Veterans' Reintegration Programs (SGA 02–10).

**SUMMARY:** All applicants for grant funds should read this notice in its entirety. The U.S. Department of Labor, Veterans' Employment and Training Service (VETS), announces a grant competition for Homeless Veterans Reintegration Programs (HVRP) authorized under the Homeless Veterans' Comprehensive Assistance Act of 2001 (HVCAA). This notice contains all of the necessary information and forms needed to apply for grant funding. Such programs will assist eligible veterans who are homeless by providing employment, training and support services assistance. Under this solicitation, VETS anticipates that up to $5.5 million will be available for grant awards in Program Year (PY) 2002 and expects to award up to thirty grants. The HVRP programs are designed to be flexible in addressing the universal as well as local or regional problems barring homeless veterans from the workforce. The program in PY 2002 will continue to strengthen the provision of comprehensive services through a case management approach, the attainment of supportive service resources for homeless veterans entering the labor force, and strategies for employment and retention.

This notice describes the background, application process, description of program activities, evaluation criteria, and reporting requirements for this SGA. The information and forms contained in the Supplementary Information Section constitute the official application package. All necessary information and forms needed to apply for grant funding are included.

*Forms or Amendments:* If another copy of a Standard form is needed, go online to *http://www.nara.gov.* To receive amendments to this Solicitation (Please reference SGA 02–10), *all applicants must register their name and address with the Grant Officer at the following address:* U. S. Department of Labor, Procurement Services Center,

Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210.

*Closing Date:* Applications are to be submitted, including those hand delivered, to the address below by no later than 4:45 p.m., Eastern Standard Time, May 31, 2002.

**ADDRESSES:** Applications must be directed to the U.S. Department of Labor, Procurement Services Center, Attention: Cassandra Willis, Reference SGA 02–10, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** All applicants are advised that U.S. mail delivery in the Washington, DC area has been erratic due to the recent concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline. It is recommended that you confirm receipt of your application by contacting Cassandra Willis, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570, prior to the closing deadline. [This is not a toll-free number].

**SUPPLEMENTARY INFORMATION:**

## Homeless Veterans' Reintegration Program Solicitation

### *I. Purpose*

The U.S. Department of Labor (DOL), Veterans' Employment and Training Service, (VETS) is requesting grant applications for the provision of employment and training services in accordance with the Homeless Veterans' Reintegration Program at section 5 of the Homeless Veterans' Comprehensive Assistance Act of 2001 (HVCAA), Pub. L. No. 107–95 (2001). These instructions contain general program information, requirements, and forms for application for funds to operate a Homeless Veterans Reintegration Program (HVRP).

### *II. Background*

Section 5 of the Homeless Veterans Comprehensive Assistance Act of 2001 amended the Homeless Veterans' Reintegration Programs at 38 U.S.C. § 2021, and provides ''the Secretary * * * shall conduct, directly or through grant or contract, such programs as the Secretary determines appropriate to provide job training, counseling, and placement services (including job readiness and literacy and skills training) to expedite the reintegration of homeless veterans into the labor force.''

In accordance with the HVCAA, the Assistant Secretary for Veterans' Employment and Training (ASVET) is making approximately $5.5 million of the funds available to award grants for HVRPs in selected cities in PY 2002 under this competition. The Homeless Veterans' Reintegration Project was the first nationwide Federal program that focused on placing homeless veterans into jobs. Both types of projects, urban and rural, in the past have provided valuable information on approaches that work in the different environments.

### *III. Application Process*

#### A. Potential Jurisdictions To Be Served

Due to the demonstration nature of the Act, the amount of funds available, and the emphasis on establishing or strengthening existing linkages with other recipients of funds under the HVCAA, the only potential jurisdictions which will be served through this urban competition for HVRPs in PY 2002 are the metropolitan areas of the 75 U.S. cities largest in population and the city of San Juan, Puerto Rico. All potential HVRP jurisdictions are listed in Appendix G.

#### B. Eligible Applicants

Applications for funds will be accepted from State and Local workforce investment boards, local public agencies, and nonprofit organizations, including faith-based and community organizations, which have familiarity with the area and population to be served and can administer an effective program. Eligible applicants will fall into one of the following categories:

1. State and Local Workforce Investment Boards (WIBS) as defined in Section 111 and 117 of the Workforce Investment Act, are eligible applicants, as well as State and local public agencies.

2. Local public agency, meaning any public agency of a general purpose political subdivision of a State which has the power to levy taxes and spend funds, as well as general corporate and police powers. (This typically refers to cities and counties.) A State agency may propose in its application to serve one or more of the potential jurisdictions located in its State. This does not preclude a city or county agency from submitting an application to serve its own jurisdiction.

Applicants are encouraged to utilize, through sub-awards, experienced public agencies, private nonprofit organizations, and private businesses and faith-based and community organizations that have an understanding of unemployment and the barriers to employment unique to homeless veterans, a familiarity with the area to be served, and the capability to effectively provide the necessary services.

3. Also eligible to apply are private nonprofit organizations that have operated an HVRP or similar employment and training program for the homeless or veterans and proven a capacity to manage grants and have or will provide the necessary linkages with other service providers. *Entities described in Section 501(c)(4) of the Internal Revenue Codes that engage in lobbying activities are not eligible to receive funds under this announcement* as Section 18 of the Lobbying Disclosure Act of 1995, Public Law No. 104–65, 109 Stat. 691, prohibits the award of Federal funds to these entities.

#### C. Funding Levels

The total amount of funds available for this solicitation is $5.5 million. It is anticipated that up to 30 awards may be made under this solicitation. Awards are expected to range from $200,000 to $250,000. The Department of Labor reserves the right to negotiate the amounts to be awarded under this competition. Please be advised that requests exceeding the $250,000 will be considered non-responsive.

#### D. Period of Performance

The period of performance will be for twelve (12) months from date of award. It is expected that successful applicants will commence program operations under this solicitation by July 1, 2002.

#### E. Second-Year Option

As stated in Section II of this Part, the Homeless Veterans' Reintegration Program is authorized and codified by statute at Pub. L. No. 107–95, § 5 (2001). Should there be action by Congress to appropriate funds for this purpose, a second-year option may be considered. The Government does *not,* however, guarantee second year funding for any awardee. Should VETS decide that an option year for funding be exercised, the grantees' performance during the first period of operations will be taken into consideration as follows:

1. By the end of the third quarter, the grantee must achieve at least 75% of the twelve month total goals for Federal expenditures, enrollments, and placements, or

2. The grantee must meet 85% of goals for Federal expenditures, enrollments, and placements if planned activity is NOT evenly distributed in each quarter; and

3. The grantee is in compliance with all terms identified in the solicitation for grant applications.

4. All program and fiscal reports were submitted by the established due date and may be verified for accuracy.

All instructions for modifications and announcement of fund availability will be issued at a later date. The HVRP funds for this competition are for a maximum period of one year with a second year funding option. The period of performance will be for twelve months from the date of the award. VETS expects that successful applicants will commence program operations under this solicitation on July 1, 2002. Program funds must be expended by June 30, 2003, not including the 6-month follow-up period referred to in the budget narrative.

F. Submission of Proposal

A cover letter, an original and two (2) copies of the proposal must be submitted to the U.S. Department of Labor, Procurement Service Office, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210. To aid with the review of applications, USDOL also encourages Applicants to submit one additional paper copy of the application (four total). Applicants who do not provide additional copies *will not* be penalized. The proposal must consist of two (2) separate and distinct parts: (1) One completed, blue ink-signed original SF 424 grant application with two (2) copies of the Technical Proposal; and two (2) copies of the Cost Proposal.

G. Acceptable Methods of Submission

The grant application package must be received at the designated place by the date and time specified or it will *not* be considered. Any application received at the Office of Procurement Services after 4:45 p.m. ET, May 31, 2002, will *not* be considered unless it is received before the award is made and:

1. It was sent by registered or certified mail not later than the fifth calendar day before May 31, 2002;

2. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated; or

3. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two (2) working days, excluding weekends and Federal holidays, prior to May 31, 2002.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. ''Postmark'' means a printed, stamped or otherwise placed impression (*not* a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore applicants should request that the postal clerk place a legible hand cancellation ''bull's-eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the Post Office receiving clerk on the ''Express Mail Next Day Service-Post Office to Addressee'' label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. ''Postmark'' has the same meaning as defined above. Therefore, applicants should request that the postal clerk place a legible hand cancellation ''bull's-eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Procurement Services Center on the application wrapper or other documentary evidence or receipt maintained by that office. Applications sent by other delivery services, such as Federal Express, UPS, etc., will also be accepted; however, the applicant bears the responsibility of timely submission.

All applicants are advised that U.S. mail delivery in the Washington, DC area has been erratic due to the recent concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline, as you assume the risk for ensuring a timely submission; that is, if, because of these mail problems, the Department does not receive an application or receives it too late to give proper consideration, even if it was timely mailed, the Department is not required to consider the application.

H. Required Content

There are four program activities that all applications must contain in order to be found technically acceptable under this SGA. These activities are:

Pre-Enrollment Assessments;
Employment Development Plans for all clients;
Case Management
Job Placement and job retention follow up (at 90 and 180 days) after individual enters employment.

The proposal will consist of two (2) separate and distinct parts, a technical proposal and a cost proposal:

*PART 1—THE TECHNICAL PROPOSAL* will consist of a narrative proposal that demonstrates: the applicant's knowledge of the need for this particular grant program; an understanding of the services and activities proposed to obtain successful outcomes for the homeless veterans served; and the capability to accomplish the expected outcomes of the proposed project design. The technical proposal will consist of a narrative not to exceed fifteen (15) pages double-spaced, font size no less than 11pt. and typewritten on one side of the paper only. [The applicant must complete the forms, i.e. Quarterly Technical Performance Goals chart provided in the SGA.]

1. *The proposal should include an outreach component.* It is recommended that the applicants coordinate these activities through veteran service providers and community-based and faith-based organizations that have experience working and serving the veteran population. This requirement can be modified to allow the project to utilize veterans in other positions where there is direct client contact if extensive outreach is not needed, such as intake, counseling, peer coaching, and follow up. This requirement applies to projects funded under this solicitation.

2. *Projects will be required to show linkages with other programs and services which provide support to homeless veterans.* Coordination with the Disabled Veterans' Outreach Program (DVOP) Specialists and Local Veterans' Employment Representatives (LVER) in the jurisdiction is required.

3. *Projects will be ''employment focused''.* The services provided will be directed toward (a)increasing the employability of homeless veterans through training or arranging for the provision of services which will enable them to work; and (b) matching homeless veterans with potential employers.

The following format is strongly recommended:

1. Need for the project: the applicant must identify the geographical area to be served and provide an estimate of the number of homeless veterans and their needs, poverty and unemployment rates in the area, the gaps in the local community infrastructure that contribute to the employment and other barriers faced by the targeted veterans, and how the project would respond to these needs. Include the outlook for job opportunities in the service area.

2. Approach or strategy to increase employment and job retention:

Applicants must be responsive to the Rating Criteria contained in Section VIII and address all of the rating factors as thoroughly as possible in the narrative. The applicant must: (a) provide the length of training, the training curriculum and how the training will enhance the eligible veterans' employment opportunities within that geographical area; (b) describe the specific supportive, employment and training services to be provided under this grant and the sequence or flow of such services—flow charts may be provided; (c) provide a plan for follow up to address retention after 90 and 180 days with participants who entered employment. (See discussion on results in Section VI. D.); and (d) include the required chart of proposed performance goals and planned expenditures listed in Appendix D.

3. Linkages with other providers of employment and training services to the homeless veterans: Describe the linkages this program will have with other providers of services to homeless veterans outside of the HVRP grant; include a description of the relationship with other employment and training programs such as Disabled Veterans' Outreach Program (DVOP), the Local Veterans' Employment Representative (LVER) program, and programs under the Workforce Investment Act; and list the type of services provided by each. Note the type of agreement in place, if applicable. Linkages with the workforce development system [including State Employment Security Agencies (State Workforce Agencies)] must be delineated. Describe any linkages with any other resources and/or other programs for Homeless veterans. Indicate how the program will be coordinated with any efforts for the homeless that are conducted by agencies in the community.

4. Linkages with other federal agencies: Describe any program and resource linkages with Department of Housing and Urban Development (HUD), Department of Health and Human Services (HHS), and Department of Veterans Affairs (DVA) for the homeless, to include the Compensated Work Therapy (CWT) and Per Diem programs. Indicate how the applicant will coordinate with any ''continuum of care'' efforts for the homeless among agencies in the community.

5. Proposed supportive service strategy for veterans: Describe how supportive service resources for veterans will be obtained and used. If resources are provided by other sources or linkages, such as Federal, State, local or faith-based and community programs, the applicant must fully explain the use of these resources and why they are necessary.

6. Organizational capability in providing required program activities: The applicant's relevant current or prior experience in operating employment and training programs should be clearly described. The applicant must provide information showing outcomes of all past programs in terms of enrollments and placements. An applicant which has operated a HVRP or other Homeless Veterans' Employment and Training program, JTPA IV-C program, or VWIP program, must include final or most recent technical performance reports. For those applicants with no prior grant experience, a summary narrative of program experience and employment and training performance outcomes is required. The applicant must also provide evidence of key staff capability.

7. Proposed housing strategy for homeless veterans: Describe how housing resources for homeless veterans will be obtained or accessed. These resources should be from linkages or sources other than the HVRP grant such as HUD, HHS, community housing resources, DVA leasing, or other programs. The applicant must explain whether HVRP resources will be used and why this is necessary.

Nonprofit organizations must submit evidence of satisfactory financial management capability, which must include recent financial and/or audit statements. (This information is subject to verification by the government—Veterans' Employment and Training Service reserves the right to have a representative within each State provide programmatic and fiscal information about applicants and forward those findings to the National Office during the review of the applications).

Note: Resumes, charts, standard forms, transmittal letters, and letters of support are not included in the page count. [If provided, include these documents as attachments to the technical proposal.]

*PART 2—COST PROPOSAL* must contain: (1) The Standard Form (SF) 424, ''Application for Federal Assistance'', (2) the Standard Form (SF) 424A ''Budget Information Sheet'' in Appendix B, and (3) a detailed cost break out of each line item on the Budget Information Sheet. Please label this page or pages the ''Budget Narrative'' and ensure that costs reported on the SF 424A correspond accurately with the Budget Narrative. In addition to the cost proposal the applicants must include the Assurance and Certification signature page, Appendix C. Copies of all required forms with instructions for completion are provided as appendices to this SGA.

The Catalog of Federal Domestic Assistance number for this program is 17.805. It must be entered on the SF 424, Block 10.

*IV. Budget Narrative Information*

As an attachment to the Budget Information Sheet (SF 424A), the applicant must provide, at a minimum, and on separate sheet(s), the following information:

A. A breakout of all personnel costs by position, title, salary rates, and percent of time of each position to be devoted to the proposed project (including subawardees);

B. An explanation and breakout of extraordinary fringe benefit rates and associated charges (i.e., rates exceeding 35% of salaries and wages);

C. An explanation of the purpose and composition of, and method used to derive the costs of each of the following: travel, equipment, supplies, subawards/contracts, and any other costs. The applicant must include costs of any required travel described in this Solicitation. Mileage charges will not exceed 36.5 cents per mile;

D. A plan, which includes all associated costs, for retaining participant information pertinent to a longitudinal follow up survey, six (6) months after the program performance period ends;

E. Description/specification of and justification for equipment purchases, if any. Tangible, non-expendable, personal property having a useful life of more than one year and a unit acquisition cost of $5,000 or more per unit must be specifically identified; and

F. Identification of all sources of leveraged or matching funds and an explanation of the derivation of the value of matching/in-kind services. If resources/matching funds and/or the value of in-kind contributions are made available please show in Section B of the Budget Information Sheet.

*V. Participant Eligibility*

To be eligible for participation under HVRP, an individual must be homeless and a veteran defined as follows:

A. The term ''homeless or homeless individual'' includes persons who lack a fixed, regular, and adequate nighttime residence. It also includes persons whose primary nighttime residence is either a supervised public or private shelter designed to provide temporary living accommodations; an institution that provides a temporary residence for individuals intended to be institutionalized; or a private place not

designed for, or ordinarily used as, a regular sleeping accommodation for human beings. (Reference 42 U.S.C. section 11302 (a)).

B. The term ''veteran'' means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable. [Reference 38 U.S.C. Section 101(2)]

*VI. Project Summary*

A. Program Concept and Emphasis

The HVRP grants under Section 5 of the Homeless Veterans Comprehensive Assistance Act of 2001 are intended to address two objectives: (1) To provide services to assist in reintegrating homeless veterans into meaningful employment within the labor force; and (2) to stimulate the development of effective service delivery systems that will address the complex problems facing homeless veterans.

These programs are designed to be flexible in addressing the universal as well as local or regional problems barring homeless veterans from the workforce. The program in FY 2002 will continue to strengthen the development of effective service delivery systems, to provide comprehensive services through a case management approach that will address the complex problems facing eligible veterans trying to transition into gainful employment, and improve strategies for employment and retention.

B. Scope of Program Design

The project design must provide for the following services:

—Outreach, intake, assessment, counseling to the degree practical, and employment services. Outreach must be provided at shelters, day centers, soup kitchens, VA medical centers, and other programs for the homeless. Program staff providing outreach services should be a veteran who has experience in dealing with, and an understanding of the needs of the homeless.

Coordination with veterans' services programs and organizations such as:

—Disabled Veterans' Outreach Program (DVOP) Specialists, Local Veterans' Employment Representatives (LVERs) in the State Employment Security/Job Service Agencies (SESAs) or in the newly instituted workforce development system's One-Stop Centers, and Veterans' Workforce Investment Programs (VWIPs);
—Department of Veterans' Affairs (DVA) services, including its Health Care for Homeless Veterans, Domiciliary, and other programs, including those offering transitional housing; and
—Veteran service organizations such as The American Legion, Disabled American Veterans, the Veterans of Foreign Wars, Vietnam Veterans of America, and the American Veterans (AMVETS);

Referral to necessary treatment services, rehabilitative services, and counseling including, but not limited to:

—Alcohol and drug;
—Medical;
—Post Traumatic Stress Disorder;
—Mental Health;
—Coordinating with MHAA Title VI programs for health care for the homeless or [health care programs under the HVCAA];

Referral to housing assistance provided by, for example:

—Local shelters;
—Federal Emergency Management Administration (FEMA) food and shelter programs;
—Transitional housing programs and single room occupancy housing programs funded under MHAA Title IV [and under HVCAA];
—Permanent housing programs for the handicapped homeless funded under MHAA Title IV [and under HVCAA];
—Department of Veterans' Affairs programs that provide for leasing or sale of acquired homes to homeless providers; and
—Transitional housing leased by HVRP funds (HVRP funds cannot be used to purchase housing or vehicles);

Employment and training services such as:

—Basic skills instruction;
—Basic literacy instruction;
—Remedial education activities;
—Job search activities, including job search workshops;
—Job counseling;
—Job preparatory training, including resume writing and interviewing skills;
—Subsidized trial employment (Work Experience);
—On-the-Job Training;
—Classroom Training;
—Job placement in unsubsidized employment;
—Placement follow up services; and
—Services provided under WIA Program Titles.

C. Results-Oriented Model

No model is mandatory, but the applicant must design a program that is responsive to local needs, and will carry out the objectives of the program to successfully reintegrate homeless veterans into the workforce.

With the advent of implementing the Government Performance and Results Act (GPRA), Congress and the public are looking for program results rather than program processes. While entering employment is a viable outcome, it will be necessary to measure results over a longer term to determine the success of programs. The following program discussion must be considered in a results-oriented model. The first phase of activity must consist of the level of outreach that is necessary to reach eligible veterans. Such outreach will also include establishing contact with other agencies that encounter homeless veterans. Once the eligible participants have been identified, an assessment must be made of their abilities, interests and needs. In some cases, these participants may require referrals to services such as social rehabilitation, drug or alcohol treatment or a temporary shelter before they can be enrolled into core training. When the individual is stabilized, the assessment should focus on the employability of the individual and their enrollment into the program. A determination should be made as to whether they would benefit from pre-employment preparation such as resume writing, job search workshops, related counseling and case management, and initial entry into the job market through temporary jobs, sheltered work environments, or entry into classroom or on-the-job training. Such services should also be noted in an Employability Development Plan so that successful completion of the plan may be monitored by the staff. Entry into full-time employment or a specific job training program should follow, in keeping with the objective of HVRP to bring the participant closer to self-sufficiency. Supportive services may assist the participant at this stage or even earlier. Job development is a crucial part of the employability process. Wherever possible, DVOP and LVER staff must be utilized for job development and placement activities for veterans who are ready to enter employment or who are in need of intensive case management services. Many of these staff members have received training in case management at the National Veterans' Training Institute and have a priority of focus, assisting those most at a disadvantage in the labor market. VETS urges working hand-in-hand with DVOP/LVER staff to achieve economies of resources.

The following program discussion emphasizes that follow-up is an integral program component. *Follow-up to determine whether the veteran is in the same or similar job at the 90 and 180 day period after entering employment is required.* It is important that the grantee maintain contact with the veterans after

placement to assure that employment related problems are addressed. *The 90 and 180 day follow-up is fundamental to assessing the results of the program success.* Grantees need to budget for this activity so that follow-up can and will occur for those placed at or near the end of the grant performance period. Such results will be reported in the final technical performance report.

Retention of records will be reflected in the Special Grant Provisions to be provided at the time of any award.

*VII. Related HVRP Program Development Activities*

Community Awareness Activities

In order to promote linkages between the program and local service providers (and thereby eliminate gaps or duplication in services and enhance provision of assistance to participants), the grantee must provide project orientation and/or service awareness activities that it determines are the most feasible for the types of providers listed below. Project orientation workshops conducted by grantees have been an effective means of sharing information and revealing the availability of other services; they are encouraged but not mandatory. Rather, the grantee will have the flexibility to attend service provider meetings, seminars, conferences, outstation staff, develop individual service contracts, and involve other agencies in program planning. This list is not exhaustive. The grantee will be responsible for providing appropriate awareness, information sharing, and orientation activities to the following:

A. *Providers of hands-on services to the homeless veteran,* such as shelter and soup-kitchen operators, to make them fully aware of services available to homeless veterans to make them job-ready and place them in jobs.

B. *Federal, State and local entitlement services* such as the Social Security Administration (SSA), Department of Veterans' Affairs (DVA), State Employment Security Agencies (SESAs) and their local Job Service offices, One-Stop Centers (which integrate WIA, labor exchange, and other employment and social services), detoxification facilities, etc., to familiarize them with the nature and needs of homeless veterans.

C. *Civic and private sector groups,* and especially veterans' service and community-based organizations (including faith-based organizations), to describe homeless veterans and their needs.

D. *Stand Down Support*

A ''Stand Down'' as it relates to homeless veterans is an event held in a locality usually for three days where services are provided to homeless veterans along with shelter, meals, clothing, and medical attention. This type of event is mostly volunteer effort, which is organized within a community and brings service providers together such as the DVA, Disabled Veterans' Outreach Program Specialists, Local Veterans' Employment Representatives from the State Employment Service Agencies, veteran service organization, military personnel, civic leaders, and a variety of other interested persons and organizations. Many services are provided on-site with referrals also made for continued assistance after the event.

This can often be the catalyst that enables the homeless veterans to get back into mainstream society. The Department of Labor has supported replication of this event. Many such events have been held throughout the nation.

In areas where an HVRP is operating, the grantees are encouraged to participate fully and offer their services for any planned Stand Down event. Towards this end, up to $5,000 of the currently requested HVRP grant funds may be used to supplement the Stand Down effort where funds are not otherwise available, and should be reflected in the budget and budget narrative.

*VIII. Rating Criteria for Award*

Applications will be reviewed by a DOL panel using the point scoring system specified below. Applications will be ranked based on the score assigned by the panel after careful evaluation by each panel member. The ranking will be the primary basis to identify applicants as potential grantees. Although the Government reserves the right to award on the basis of the initial proposal submissions, the Government may establish a competitive range, based upon the proposal evaluation, for the purpose of selecting qualified applicants. The panel's conclusions are advisory in nature and not binding on the Grant Officer. The government reserves the right to ask for clarification or hold discussions, but is not obligated to do so.

The Government further reserves the right to select applicants out of rank order if such a selection would, in its opinion, result in the most effective and appropriate combination of funding, program and administrative costs e.g., cost per enrollment and placement, demonstration models, and geographical service areas. While points will not be assessed for cost issues, cost per entered employment will be given serious consideration in the selecting of awards. The Grant Officer's determination for award under SGA 02–10 is the final agency action. The submission of the same proposal from any prior year HVRP or Homeless Veterans Employment and Training (HVET) competition does not guarantee an award under this Solicitation.

Panel Review Criteria

1. Need for the Project: 15 points

The applicant will document the extent of need for this project, as demonstrated by: (1) the potential number or concentration of homeless individuals and homeless veterans in the proposed project area relative to other similar areas of jurisdiction; (2) the rates of poverty and/or unemployment in the proposed project area as determined by the census or other surveys; and (3) the extent of gaps in the local infrastructure to effectively address the employment barriers that characterize the target population.

2. Overall Strategy to Increase Employment and Retention: 40 points

The application must include a description of the proposed approach to providing comprehensive employment and training services, including job training, job development, any employer commitments to hire, placement, and post placement follow-up services. Applicants must address their intent to target occupations in expanding industries, rather than declining industries. The supportive services to be provided as part of the strategy of promoting job readiness and job retention must be indicated. The applicant must identify the local human resources and sources of training to be used for participants. A description of the relationship, if any, with other employment and training programs such as SESAs (DVOP and LVER Programs), VWIP, other WIA programs, and Workforce Investment or Development Boards or entities where in place, must be presented. Applicant must indicate how the activities will be tailored or responsive to the needs of homeless veterans. A participant flow chart may be used to show the sequence and mix of services.

Note: The applicant MUST complete the chart of proposed program outcomes to include participants served, placement/entered employments and job retention. (See Appendix D). Of the 40 points possible in the strategy to increase employment and retention, 10 points will be awarded to grant proposals that plan on a six-month employment retention rate of 50 percent, or 15 points will be awarded to proposals that show a six-month

employment retention rate of 70 percent.

3. Quality and Extent of Linkages with Other Providers of Services to the Homeless and to Veterans: 10 points

The application must provide information on the quality and extent of the linkages this program will have with other providers of services to benefit the homeless veterans in the local community outside of the HVRP grant. For each service, the applicant must specify who the provider is, the source of funding (if known), and the type of linkages/referral system established or proposed. Describe, to the extent possible, how the project would fit into the community's continuum of care approach to respond to homelessness and any linkages to HUD, HHS or DVA programs or resources to benefit the proposed program.

4. Demonstrated Capability in Providing Required Program Services: 20 points

The applicant must describe its relevant prior experience in operating employment and training programs and providing services to participants similar to that which is proposed under this solicitation. Specific outcomes achieved by the applicant must be described in terms of clients placed in jobs, etc. The applicant must also address its capacity for timely startup of the program. The applicant should delineate its staff capability and ability to manage the financial aspects of a grant program, including a recent (within the last 12 months), financial statement or audit if available. Final or most recent technical reports for other relevant programs must be submitted if applicable. Because prior grant experience is not a requirement for this grant, some applicants may not have any technical reports to submit.

5. Quality of Overall Housing Strategy: 15 points

The application must demonstrate how the applicant proposes to obtain or access housing resources for veterans in the program and entering the labor force. This discussion should specify the provisions made to access temporary, transitional, and permanent housing for participants through community resources, HUD, DVA lease, or other means. HVRP funds will not be used to purchase housing or vehicles.

Applicants can expect that the cost proposal will be reviewed for allowability, allocation of costs, and reasonableness of placement and enrollment costs.

*IX. Post Award Conference*

A post-award conference will be held for those grantees awarded PY 2002 HVRP funds from the competition. It is expected to be held in August or September 2002. Up to two grantee representatives must be present; a fiscal and a program representative is recommended. The site of the Post-Award conference has not yet been determined, for planning and budgeting purposes, please use five days and use Washington, DC as the conference location. The conference will focus on providing information and assistance on reporting, record keeping, and grant requirements, and also include best practices from past projects. Costs associated with attending this conference for up to two grantee representatives will be allowed as long as they were incurred in accordance with Federal travel regulations. Such costs must be charged as administrative costs and reflected in the proposed budget.

*X. Reporting Requirements*

The grantee will submit the reports and documents listed below:

A. Financial Reports

The grantee must report outlays, program income, and other financial information on a quarterly basis using SF 269A, Financial Status Report, Short Form. This form will cite the assigned grant number and be submitted to the appropriate State Director for Veterans' Employment and Training (DVET) no later than 30 days after the ending date of each Federal fiscal quarter (i.e., October 30, January 30, April 30 and July 30) during the grant period.

B. Program Reports

Grantees must submit a Quarterly Technical Performance Report 30 days after the end of each Federal fiscal quarter to the DVET that contains the following:

1. A comparison of actual accomplishments to established goals for the reporting period and any findings related to monitoring efforts;

2. An explanation for variances of plus or minus 15% of planned program and/or expenditure goals, to include: (i) Identification of corrective action which will be taken to meet the planned goals, and (ii) a timetable for accomplishment of the corrective action.

C. 90 Days Report Package

The grantee must submit no later than 90 days after the grant expiration date a final report containing the following:

1. Financial Status Report (SF–269A) (copy to be provided following grant awards).

2. Technical Performance Report—(Program Goals).

3. Narrative Report identifying—(a) major successes of the program; (b) obstacles encountered and actions taken (if any) to overcome such obstacles; (c) the total combined number of veterans placed in employment during the entire grant period; (d) the number of veterans still employed at the end of the grant period; (e) an explanation regarding why those veterans placed during the grant period, but not employed at the end of the grant period, are not employed; and (f) any recommendations to improve the program.

D. Six (6) Month Final Report

No later than 210 days after the grant performance period ends, the grantee must submit a follow up report containing the following:

1. Final Financial Status Report (SF–269A).

2. Final Narrative Report identifying—(a) the total combined (directed/assisted) number of veterans placed during the entire grant period; (b) the number of veterans still employed during follow up; (c) are the veterans still employed at the same or similar job, if not what are the reasons; (d) was the training received applicable to jobs held; (e) wages at placement and during follow up period; (f) an explanation regarding why those veterans placed during the grant, but not employed at the end of the follow up period, are not so employed; and (g) any recommendations to improve the program.

*XI. Administration Provisions*

A. Limitation on Administrative and Indirect Costs

1. Direct Costs for administration, plus any indirect charges claimed.

2. Indirect costs claimed by the applicant must be based on a federally approved rate. A copy of the negotiated, approved, and signed indirect cost negotiation agreement must be submitted with the application.

3. If the applicant does not presently have an approved indirect cost rate, a proposed rate with justification may be submitted. Successful applicants will be required to negotiate an acceptable and allowable rate with the appropriate DOL Regional Office of Cost Determination within 90 days of grant award.

4. Rates traceable and trackable through the State Workforce Agency's Cost Accounting System represent an acceptable means of allocating costs to DOL and, therefore, can be approved for use in grants to State Workforce Agencies.

B. Allowable Costs

Determinations of allowable costs will be made in accordance with the following applicable Federal cost principles:

State and local government—OMB Circular A–87

Nonprofit organizations—OMB Circular A–122

C. Administrative Standards and Provisions

Accept as specifically provided, DOL acceptance of a proposal and an award of federal funds to sponsor any program(s) does not provide a waiver of any grant requirements and/or procedures. For example, the OMB circulars require and an entity's procurement procedures must require that all procurement transactions will be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide the services, the DOL award does not provide the justification or basis to sole-source the procurement, i.e., avoid competition.

All grants will be subject to the following administrative standards and provisions:

1. 29 CFR Part 93—Lobbying.

2. 29 CFR Part 95—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-profit Organizations, and with Commercial Organizations.

3. 29 CFR Part 96—Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements. This rule implements, for State and local governments and Indian tribes that receive Federal Assistance from the DOL, Office of Management and Budget (OMB) Circular A–128 ''Audits of State and Local Governments'' which was issued pursuant to the Single Audit Act of 1984, 31 U.S.C. Section 7501–7507. It also consolidates the audit requirements currently contained throughout the DOL regulations.

4. 29 CFR Part 97—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

5. 29 CFR Part 98—Government wide Debarment and Suspension (Nonprocurement) and Government wide Requirements for Drug-Free Workplace (Grants).

6. 29 CFR Part 99—Audit Of States, Local Governments, and Non-profit Organization.

7. Section 168(b) of WIA—Administration of Programs. Please note that Sections 181–195 may also apply.

8. 29 CFR Parts 30, 31, 32, 33 and 34—Equal Employment Opportunity in Apprenticeship and Training; Nondiscrimination in Federally-Assisted Programs of the Department of Labor, Effectuation of Title VI of the Civil Rights Act of 1964; and Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefitting from Federal Financial Assistance (Incorporated by Reference). These rules implement, for recipients of federal assistance, non-discrimination provisions on the basis of race, color, national origin, and handicapping condition, respectively.

9. Appeals from non-designation will be handled under 20 CFR Part 667.260

10. 29 CFR Part 97—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Government.

Signed at Washington, DC. this 23rd day of April, 2002.

**Lawrence J. Kuss,**

*Grant Officer.*

## Appendices

Appendix A: Application for Federal Assistance SF Form 424

Appendix B: Budget Information Sheet

Appendix C: Assurances and Certifications Signature Page

Appendix D: Technical Performance Goals Form

Appendix E: Direct Cost Descriptions for Applicants and Sub-Applicants

Appendix F: The Glossary of Terms

Appendix G: List of 75 largest U.S. Cities

BILLING CODE 4510–79–P

(A)

OMB Approval No. 0348-0043

# APPLICATION FOR FEDERAL ASSISTANCE

| | | |
|---|---|---|
| | 2. DATE SUBMITTED | Applicant Identifier |
| 1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction | 3. DATE RECEIVED BY STATE | State Application Identifier |
| | 4. DATE RECEIVED BY FEDERAL AGENCY | Federal Identifier |

**5. APPLICANT INFORMATION**

| | |
|---|---|
| Legal Name: | Organizational Unit: |
| Address *(give city, county, State, and zip code)*: | Name and telephone number of person to be contacted on matters involving this application *(give area code)* |

**6. EMPLOYER IDENTIFICATION NUMBER** *(EIN)*:

☐☐ — ☐☐☐☐☐☐☐

**7. TYPE OF APPLICANT:** *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

**8. TYPE OF APPLICATION:**

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify)*:

_____

**9. NAME OF FEDERAL AGENCY:**

**10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:**

☐☐ — ☐☐☐

TITLE:

**11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:**

**12. AREAS AFFECTED BY PROJECT** *(Cities, Counties, States, etc.)*:

| **13. PROPOSED PROJECT** | | **14. CONGRESSIONAL DISTRICTS OF:** | |
|---|---|---|---|
| Start Date | Ending Date | a. Applicant | b. Project |

**15. ESTIMATED FUNDING:**

| | |
|---|---|
| a. Federal | $ .00 |
| b. Applicant | $ .00 |
| c. State | $ .00 |
| d. Local | $ .00 |
| e. Other | $ .00 |
| f. Program Income | $ .00 |
| g. TOTAL | $ .00 |

**16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?**

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

**17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?**

☐ **Yes** **If "Yes," attach an explanation.** ☐ **No**

**18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.**

| | | |
|---|---|---|
| a. Type Name of Authorized Representative | b. Title | c. Telephone Number |
| d. Signature of Authorized Representative | | e. Date Signed |

Previous Edition Usable
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Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

## INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

| Item: | Entry: |
|---|---|
| 1. | Self-explanatory. |
| 2. | Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable). |
| 3. | State use only (if applicable). |
| 4. | If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank. |
| 5. | Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application. |
| 6. | Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service. |
| 7. | Enter the appropriate letter in the space provided. |
| 8. | Check appropriate box and enter appropriate letter(s) in the space(s) provided:<br>-- "New" means a new assistance award.<br>-- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.<br>-- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. |
| 9. | Name of Federal agency from which assistance is being requested with this application. |
| 10. | Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested. |
| 11. | Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project. |
| 12. | List only the largest political entities affected (e.g., State, counties, cities). |
| 13. | Self-explanatory. |
| 14. | List the applicant's Congressional District and any District(s) affected by the program or project. |
| 15. | Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15. |
| 16. | Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. |
| 17. | This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes. |
| 18. | To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.) |

(B)

## BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

**SECTION A - BUDGET SUMMARY**

| Grant Program Function or Activity (a) | Catalog of Federal Domestic Assistance Number (b) | Estimated Unobligated Funds | | New or Revised Budget | | |
|---|---|---|---|---|---|---|
| | | Federal (c) | Non-Federal (d) | Federal (e) | Non-Federal (f) | Total (g) |
| 1. | | $ | $ | $ | $ | $ |
| 2. | | | | | | |
| 3. | | | | | | |
| 4. | | | | | | |
| 5. Totals | | $ | $ | $ | $ | $ |

**SECTION B - BUDGET CATEGORIES**

| 6. Object Class Categories | GRANT PROGRAM, FUNCTION OR ACTIVITY | | | | Total |
|---|---|---|---|---|---|
| | (1) | (2) | (3) | (4) | (5) |
| a. Personnel | $ | $ | $ | $ | $ |
| b. Fringe Benefits | | | | | |
| c. Travel | | | | | |
| d. Equipment | | | | | |
| e. Supplies | | | | | |
| f. Contractual | | | | | |
| g. Construction | | | | | |
| h. Other | | | | | |
| i. Total Direct Charges *(sum of 6a-6h)* | | | | | |
| j. Indirect Charges | | | | | |
| k. TOTALS *(sum of 6i and 6j)* | $ | $ | $ | $ | $ |
| | | | | | |
| 7. Program Income | $ | $ | $ | $ | $ |

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| SECTION C - NON-FEDERAL RESOURCES | | | | |
|---|---|---|---|---|
| (a) Grant Program | (b) Applicant | (c) State | (d) Other Sources | (e) TOTALS |
| 8. | $ | $ | $ | $ |
| 9. | | | | |
| 10. | | | | |
| 11. | | | | |
| 12. TOTAL *(sum of lines 8-11)* | $ | $ | $ | $ |

| SECTION D - FORECASTED CASH NEEDS | | | | | |
|---|---|---|---|---|---|
| | Total for 1st Year | 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter |
| 13. Federal | $ | $ | $ | $ | $ |
| 14. Non-Federal | | | | | |
| 15. TOTAL *(sum of lines 13 and 14)* | $ | $ | $ | $ | $ |

| SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT | | | | |
|---|---|---|---|---|
| (a) Grant Program | FUTURE FUNDING PERIODS (Years) | | | |
| | (b) First | (c) Second | (d) Third | (e) Fourth |
| 16. | $ | $ | $ | $ |
| 17. | | | | |
| 18. | | | | |
| 19. | | | | |
| 20. TOTAL *(sum of lines 16-19)* | $ | $ | $ | $ |

| SECTION F - OTHER BUDGET INFORMATION | |
|---|---|
| 21. Direct Charges: | 22. Indirect Charges: |
| 23. Remarks: | |

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## INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

**General Instructions**

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

**Section A. Budget Summary Lines 1-4 Columns (a) and (b)**

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

**Lines 1-4, Columns (c) through (g)**

*For new applications*, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

*For continuing grant program applications*, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

*For supplemental grants and changes* to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

**Line 5** - Show the totals for all columns used.

**Section B Budget Categories**

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

**Line 6a-i** - Show the totals of Lines 6a to 6h in each column.

**Line 6j** - Show the amount of indirect cost.

**Line 6k** - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

**Line 7** - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, Show under the program

## INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

**Section C. Non-Federal Resources**

**Lines 8-11** Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

**Column (a)** - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

**Column (b)** - Enter the contribution to be made by the applicant.

**Column (c)** - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

**Column (d)** - Enter the amount of cash and in-kind contributions to be made from all other sources.

**Column (e)** - Enter totals of Columns (b), (c), and (d).

**Line 12** - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

**Section D. Forecasted Cash Needs**

**Line 13** - Enter the amount of cash needed by quarter from the grantor agency during the first year.

**Line 14** - Enter the amount of cash from all other sources needed by quarter during the first year.

**Line 15** - Enter the totals of amounts on Lines 13 and 14.

**Section E. Budget Estimates of Federal Funds Needed for Balance of the Project**

**Lines 16-19** - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

**Line 20** - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

**Section F. Other Budget Information**

**Line 21** - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

**Line 22** - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

**Line 23** - Provide any other explanations or comments deemed necessary.

(C)

## CERTIFICATIONS AND ASSURANCES

### ASSURANCES AND CERTIFICATIONS SIGNATURE PAGE

The Department of Labor will not award a grant or agreement where the grantee/recipient has failed to accept the ASSURANCES AND CERTIFICATIONS contained in this section. By signing and returning this signature page, the grantee/recipient is providing the certifications set forth below:

A. Certification Regarding Lobbying, Debarment, Suspension, Other Responsibility Matters - Primary Covered Transactions and Certifications Regarding Drug-Free/Tobacco-Free Workplace,

B. Certification of Release of Information

C. Assurances - Non-Construction Programs

D. Applicant is not a 501(c)(4) organization

APPLICANT NAME and LEGAL ADDRESS:

If there is any reason why one of the assurances or certifications listed cannot be signed, please explain. Applicant need only submit and return this signature page with the grant application. All other instruction shall be kept on file by the applicant.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL TITLE

APPLICANT ORGANIZATION DATE SUBMITTED

**Please Note:** **This signature page and any pertinent attachments which may be required by these assurances and certifications shall be attached to the applicant's Cost Proposal.**

(D)

## RECOMMENDED FORMAT FOR PLANNED QUARTERLY TECHNICAL PERFORMANCE GOALS

(data entered cumulatively)

***Performance Goals***

| | 1ST QTR | 2ND QTR | 3RD QTR | 4TH QTR |
|---|---|---|---|---|
| **Assessments** | | | | |
| **Participants Enrolled** | | | | |
| **Placed Into Transitional Or Permanent Housing** | | | | |
| **Direct Placements Into Unsubsidized Employment** | | | | |
| **Assisted Placements Into Unsubsidized Employment** | | | | |
| **Combined Placements Into Unsubsidized Employment (Direct & Assisted)** | | | | |
| **Cost Per Placement** | | | | |
| **Number Retaining Jobs For 90 Days** | | | | |
| **Number Retaining Jobs For 180 Days** | | | | |
| **Rate of Placement Into Unsubsidized Employment** | | | | |
| **Average Hourly Wage At Placement** | | | | |

***Employability Development Services - (As Applicable)***

| | | | | |
|---|---|---|---|---|
| **Classroom Training** | | | | |
| **On-The-Job Training** | | | | |
| **Remedial Education** | | | | |
| **Vocational Counseling** | | | | |
| **Pre-employment Services** | | | | |
| **Occupational Skills Training** | | | | |
| _____ | | | | |
| _____ | | | | |
| _____ | | | | |
| _____ | | | | |

***Planned Expenditures***

| | 1st Qtr | 2nd Qtr | 3rd Qtr | 4th Qtr |
|---|---|---|---|---|
| **Total Expenditures** | $ | $ | $ | $ |
| **Administrative Costs** | $ | $ | $ | $ |
| **Participant Services*** | $ | $ | $ | $ |

*Services may include training and/or supportive.

(E)

Direct Cost Descriptions For Applicants and Sub-Applicants*

| Position Title(s ) | Annual Salary/Wage Rate | % of Time Charged to Grant | Proposed Administration Costs ** | Proposed Program Costs |
|---|---|---|---|---|
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

| | Administration | Program |
|---|---|---|
| Sub-Total | | |
| Fringe Benefits For All Positions | | |
| Contractual | | |
| Travel | | |
| Indirect Costs | | |
| Equipment | | |
| Supplies | | |
| Total Costs ---------- | | |

** Administrative costs are associated with the supervision and management of the program and do not directly or immediately affect participants.

* Direct costs for all funded positions for both applicant and sub-applicant(s) must be provided.

(F)

HVRP PERFORMANCE GOAL DEFINITIONS

1. Assessments. This process includes addressing the supportive services and employability and training needs of individuals before enrolling them in an HVRP program. Generally, this includes an evaluation and/or measurement of vocational interests and aptitudes, present abilities, previous education and work experience, income requirements, addressing supportive service needs, substance abuse treatment needs, counseling needs, temporary or transitional housing needs, personal circumstances and other related services.

2. Participants Enrolled. A client should be recorded as having been enrolled when an intake form has been completed, and services, referral, or employment has been received through the HVRP program. This should be an unduplicated count over the year: i.e., each participant is recorded only once, regardless of the number of times she or he receives assistance.

3. Placed Into Transitional Or Permanent Housing. A placement into transitional or permanent housing should be recorded when a veteran served by the program upgrades his/her housing situation during the reporting period from shelter/streets to transitional housing or permanent housing or from transitional housing to permanent housing. Placements resulting from referrals by HVRP staff shall be counted. This item is however an unduplicated count over the year, except that a participant may be counted once upon entering transitional housing and again upon obtaining permanent housing.

4. Direct Placements Into Unsubsidized Employment. A direct placement into unsubsidized employment must be a placement made directly by HVRP-funded staff with an established employer who covers all employment costs for 20 or more hours per week at or above the minimum wage. Day labor and other very short-term placements should not be recorded as placements into unsubsidized employment.

5. Assisted Placements Into Unsubsidized Employment. Assisted placements into unsubsidized employment should be recorded where the definition for placement with unsubsidized employment above is met, but the placement was arranged by an agency to which the HVRP referred the homeless veteran, such as a Job Training Partnership Act (JTPA) program.

6. Cost Per Placement. The cost per placement into unsubsidized employment is obtained by dividing the total HVRP funds expended by the total of direct placements plus assisted placements.

7. Number Retaining Job For 30 Days. To be counted as retaining a job for 30 days, continuous employment with one or more employers for at least 30 days must be verified and the definition for either direct placement or assisted placement into unsubsidized employment above is met. This allows clients who have moved into a position with a different employer to be recorded as retaining the job for 30 days as long as the client has been steadily employed for that length of time.

8. Number Retaining Job For 90 Days. To be counted as retaining a job for 90 days, continuous employment with one or more employers for at least 90 days must be verified, and the definition for either placement or assisted placement into unsubsidized employment above is met. This allows clients who have moved into a position with a different employer to be recorded as retaining the job for 90 days as long as the client has been steadily employed for that length of time.

9. Rate of Placement Into Unsubsidized Employment. The rate of placement into unsubsidized employment is obtained by dividing the number placed into unsubsidized employment (HVRP), plus the number of assisted placements into unsubsidized employment by the number of clients enrolled.

10. Average Hourly Wage At Placement. The average hourly wage at placement is the average hourly wage rates at placement of all assisted placements plus direct placements.

11. Employability Development Services. This includes services and activities which will develop or increase the employability of the participant. Generally, this includes vocational counseling, classroom and on-the-job training, pre-employment services (such as job seeking skills and job search workshops), temporary or trial employment, sheltered work environments and other related services and activities. Planned services should assist the participant in addressing specific barriers to employment and finding a job. These activities may be provided by the applicant or by a subgrantee, contractor or another source such as the local Job Partnership Training Act program or the Disabled Veterans'Outreach Program (DVOP) personnel or Local Veterans' Employment Representatives (LVERs). Such services are not mandatory but entries should reflect the services described in the application and the expected number of participants receiving or enrolled in such services during each quarter. Participants may be recorded more than once if they receive more than one service.

12. Total Planned Expenditures. Total funds requested. Identify forecasted expenditures needed for each fiscal quarter.

13. Administrative Costs. Administrative costs shall consist of all direct and indirect costs associated with the supervision and management of the program. These costs shall include the administrative costs, both direct and indirect, of subrecipients and contractors.

14. Participant Services. This cost includes supportive, training, or social rehabilitation services which will assist in stabilizing the participant. This category should reflect all costs other than administrative.

(G)

| Rank | Area Name | Census Population | |
|---|---|---|---|
| | | April 1, 2000 | April 1, 1990 |
| 1 | New York--Northern New Jersey--Long Island, NY--NJ--CT--PA CMSA | 21,199,865 | 19,549,649 |
| 2 | Los Angeles--Riverside--Orange County, CA CMSA | 16,373,645 | 14,531,529 |
| 3 | Chicago--Gary--Kenosha, IL--IN--WI CMSA | 9,157,540 | 8,239,820 |
| 4 | Washington--Baltimore, DC--MD--VA--WV CMSA | 7,608,070 | 6,727,050 |
| 5 | San Francisco--Oakland--San Jose, CA CMSA | 7,039,362 | 6,253,311 |
| 6 | Philadelphia--Wilmington--Atlantic City, PA--NJ--DE--MD CMSA | 6,188,463 | 5,892,937 |
| 7 | Boston--Worcester--Lawrence, MA--NH--ME--CT CMSA | 5,819,100 | 5,455,403 |
| 8 | Detroit--Ann Arbor--Flint, MI CMSA | 5,456,428 | 5,187,171 |
| 9 | Dallas--Fort Worth, TX CMSA | 5,221,801 | 4,037,282 |
| 10 | Houston--Galveston--Brazoria, TX CMSA | 4,669,571 | 3,731,131 |
| 11 | Atlanta, GA MSA | 4,112,198 | 2,959,950 |
| 12 | Miami--Fort Lauderdale, FL CMSA | 3,876,380 | 3,192,582 |
| 13 | Seattle--Tacoma--Bremerton, WA CMSA | 3,554,760 | 2,970,328 |
| 14 | Phoenix--Mesa, AZ MSA | 3,251,876 | 2,238,480 |
| 15 | Minneapolis--St. Paul, MN--WI MSA | 2,968,806 | 2,538,834 |
| 16 | Cleveland--Akron, OH CMSA | 2,945,831 | 2,859,644 |
| 17 | San Diego, CA MSA | 2,813,833 | 2,498,016 |
| 18 | St. Louis, MO--IL MSA | 2,603,607 | 2,492,525 |
| 19 | Denver--Boulder--Greeley, CO CMSA | 2,581,506 | 1,980,140 |
| 20 | San Juan--Caguas--Arecibo, PR CMSA | 2,450,292 | 2,270,808 |
| 21 | Tampa--St. Petersburg--Clearwater, FL MSA | 2,395,997 | 2,067,959 |
| 22 | Pittsburgh, PA MSA | 2,358,695 | 2,394,811 |
| 23 | Portland--Salem, OR--WA CMSA | 2,265,223 | 1,793,476 |
| 24 | Cincinnati--Hamilton, OH--KY--IN CMSA | 1,979,202 | 1,817,571 |
| 25 | Sacramento--Yolo, CA CMSA | 1,796,857 | 1,481,102 |
| 26 | Kansas City, MO--KS MSA | 1,776,062 | 1,582,875 |
| 27 | Milwaukee--Racine, WI CMSA | 1,689,572 | 1,607,183 |
| 28 | Orlando, FL MSA | 1,644,561 | 1,224,852 |
| 29 | Indianapolis, IN MSA | 1,607,486 | 1,380,491 |
| 30 | San Antonio, TX MSA | 1,592,383 | 1,324,749 |
| 31 | Norfolk--Virginia Beach--Newport News, VA--NC MSA | 1,569,541 | 1,443,244 |
| 32 | Las Vegas, NV--AZ MSA | 1,563,282 | 852,737 |
| 33 | Columbus, OH MSA | 1,540,157 | 1,345,450 |
| 34 | Charlotte--Gastonia--Rock Hill, NC--SC MSA | 1,499,293 | 1,162,093 |
| 35 | New Orleans, LA MSA | 1,337,726 | 1,285,270 |
| 36 | Salt Lake City--Ogden, UT MSA | 1,333,914 | 1,072,227 |
| 37 | Greensboro--Winston-Salem--High Point, NC MSA | 1,251,509 | 1,050,304 |
| 38 | Austin--San Marcos, TX MSA | 1,249,763 | 846,227 |
| 39 | Nashville, TN MSA | 1,231,311 | 985,026 |
| 40 | Providence--Fall River--Warwick, RI--MA MSA | 1,188,613 | 1,134,350 |
| 41 | Raleigh--Durham--Chapel Hill, NC MSA | 1,187,941 | 855,545 |
| 42 | Hartford, CT MSA | 1,183,110 | 1,157,585 |
| 43 | Buffalo--Niagara Falls, NY MSA | 1,170,111 | 1,189,288 |
| 44 | Memphis, TN--AR--MS MSA | 1,135,614 | 1,007,306 |

| | | | |
|---|---|---|---|
| 45 | West Palm Beach--Boca Raton, FL MSA | 1,131,184 | 863,518 |
| 46 | Jacksonville, FL MSA | 1,100,491 | 906,727 |
| 47 | Rochester, NY MSA | 1,098,201 | 1,062,470 |
| 48 | Grand Rapids--Muskegon--Holland, MI MSA | 1,088,514 | 937,891 |
| 49 | Oklahoma City, OK MSA | 1,083,346 | 958,839 |
| 50 | Louisville, KY--IN MSA | 1,025,598 | 948,829 |
| 51 | Richmond--Petersburg, VA MSA | 996,512 | 865,640 |
| 52 | Greenville--Spartanburg--Anderson, SC MSA | 962,441 | 830,563 |
| 53 | Dayton--Springfield, OH MSA | 950,558 | 951,270 |
| 54 | Fresno, CA MSA | 922,516 | 755,580 |
| 55 | Birmingham, AL MSA | 921,106 | 840,140 |
| 56 | Honolulu, HI MSA | 876,156 | 836,231 |
| 57 | Albany--Schenectady--Troy, NY MSA | 875,583 | 861,424 |
| 58 | Tucson, AZ MSA | 843,746 | 666,880 |
| 59 | Tulsa, OK MSA | 803,235 | 763,954 |
| 60 | Syracuse, NY MSA | 732,117 | 742,177 |
| 61 | Omaha, NE--IA MSA | 716,998 | 639,580 |
| 62 | Albuquerque, NM MSA | 712,738 | 589,131 |
| 63 | Knoxville, TN MSA | 687,249 | 585,960 |
| 64 | El Paso, TX MSA | 679,622 | 591,610 |
| 65 | Bakersfield, CA MSA | 661,645 | 543,477 |
| 66 | Allentown--Bethlehem--Easton, PA MSA | 637,958 | 595,081 |
| 67 | Harrisburg--Lebanon--Carlisle, PA MSA | 629,401 | 587,986 |
| 68 | Scranton--Wilkes-Barre--Hazleton, PA MSA | 624,776 | 638,466 |
| 69 | Toledo, OH MSA | 618,203 | 614,128 |
| 70 | Baton Rouge, LA MSA | 602,894 | 528,264 |
| 71 | Youngstown--Warren, OH MSA | 594,746 | 600,895 |
| 72 | Springfield, MA MSA | 591,932 | 587,884 |
| 73 | Sarasota--Bradenton, FL MSA | 589,959 | 489,483 |
| 74 | Little Rock--North Little Rock, AR MSA | 583,845 | 513,117 |
| 75 | McAllen--Edinburg--Mission, TX MSA | 569,463 | 383,545 |

[FR Doc. 02–10495 Filed 4–30–02; 8:45 am]
BILLING CODE 4510–79–C

## DEPARTMENT OF LABOR

### Office of the Secretary

### Draft Guidelines for Ensuring and Maximizing the Quality, Objectively, Utility, and Integrity of Information Disseminated by the Department of Labor; Request for Comment

**AGENCY:** Office of the Secretary, Labor

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) draft Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Department of Labor are available for public comment on the DOL web site: *http://www2.dol.gov/dol/cio/public/programs/infoguidelines/guidelines.htm.*

**DATES:** Comments must be received on or before May 31, 2002.

**ADDRESSES:** Comments on the draft guidelines must be submitted in writing by postal mail, fax, or e-mail to Mrs. Theresa M. O'Malley, Executive Office, Information Technology Center, Department of Labor, Room N–1301, 2000 Constitution Avenue, NW., Washington, DC 20210; fax number (202) 693–4228, or e-mail *mailto:Omalley-Theresa@dol.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mrs. Theresa M. O'Malley, Executive Office, Information Technology Center, telephone (202) 693–4216 (this is not a toll-free number), fax number (202)693–4228, or e-mail*mailto:Omalley-Theresa@dol.gov.*

**SUPPLEMENTARY INFORMATION:** On February 22, 2002, the Office of Management and Budget (OMB) published a **Federal Register** Notice (67 FR 8452–8460) Guidelines for Ensuring and Maximizing the Quality, Objectively, Utility, and Integrity of Information Disseminated by Federal Agencies, Republication. The guidelines state that each agency must prepared a draft report, no later than May 1, 2002, (as amended, **Federal Register** Notice (67 FR 9797) March 4, 2002) providing the agency's information quality guidelines and explaining how such guidelines will ensure and maximize the quality, objectivity, utility, and integrity of information including statistical information disseminated by the agency. This report must also detail the administrative mechanisms developed by that agency to allow affected persons to seek and obtain

appropriate correction of information maintained and disseminated by the agency that does not comply with the OMB or the agency guidelines. Each agency must published a notice of availability of this draft report in the **Federal Register,** and post this report on the agency's website, to provide an opportunity for public comment.

The DOL has posted the draft Guidelines for Ensuring and Maximizing the Quality, Objectively, Utility, and Integrity of Information Disseminated by Department of Labor in the DOL website as referenced above in the Summary section of this notice.

Signed at Washington, DC, this 23rd day of April, 2002.

**Patrick Pizzella,**

*Assistant Secretary for Administration and Management, Chief Information Officer.*

[FR Doc. 02–10493 Filed 4–30–02; 8:45 am]

BILLING CODE 4510–23–M

## MERIT SYSTEMS PROTECTION BOARD

### Information Quality Guidelines

**AGENCY:** Merit Systems Protection Board.

**ACTION:** Notice.

**SUMMARY:** The Merit Systems Protection Board (MSPB or the Board) announces that its draft information Quality Guidelines have been posted on the MSPB Web site. The Board invites public comments on its draft Guidelines and will consider the comments received in developing its final Guidelines.

**DATES:** Comments are due on or before June 10, 2002. Final Guidelines are to be published by October 1, 2002.

**ADDRESSES:** Submit comments to the Office of the Clerk of the Board, Merit Systems Protection Board, 1615 M Street, NW, Washington, DC 20419. Comments may be submitted by e-mail to *mspb@mspb.gov* or by facsimile to (202) 653–7130.

**FOR FURTHER INFORMATION CONTACT:** Shannon McCarthy, Acting Clerk of the Board, 1615 M Street, NW., Washington, DC 20419; telephone (202) 653–7200; facsimile (202) 653–7130; e-mail to *mspb@mspb.gov.*

**SUPPLEMENTARY INFORMATION:** Section 515 of the Treasury & General Government Appropriations Act for FY 2001 (Public Law No. 106–554) requires each Federal agency to publish guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of the information it disseminates to the public. Agency guidelines must be based on government-wide guidelines issued by the Office of Management and Budget (OMB). In compliance with this statutory requirement and OMB instructions, the MSPB has posted its draft Information Quality Guidelines on the MSPB Web site (*www.mspb.gov*) under ''What's new.'' The Guidelines describe the agency's procedures for ensuring the quality of information that it disseminates to the public and the procedures by which an affected person may obtain correction of information disseminated by the MSPB that does not comply with the Guidelines. The Board invites public comments on its draft Guidelines and will consider the comments received in developing its proposed final Guidelines, which must be submitted to OMB for review by July 1, 2002. The agency's final Guidelines must be published by October 1, 2002. Persons who cannot access the draft Guidelines through the Internet may request a paper or electronic copy by contacting the Office of the Clerk of the Board.

Dated: April 25, 2002.

**Shannon McCarthy,**

*Acting Clerk of the Board.*

[FR Doc. 02–10666 Filed 4–30–02; 8:45 am]

BILLING CODE 7400–01–M

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Information Security Oversight Office; National Industrial Security Program Policy Advisory Committee: Notice of Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App.2) and implementing regulation 41 CFR 101.6, announcement is made for the following committee meeting:

*Name of Committee:* National Industrial Security Program Policy Advisory Committee (NISPPAC).

*Date of Meeting:* May 21, 2002.

*Time of Meeting:* 2 p.m. to 4 p.m.

*Place of Meeting:* Davis-Monthan Air Force Base, 5555 E. Ironwood Street, Tucson, Arizona 85707.

*Purpose:* To discuss National Industrial Security Program policy matters. This meeting will be open to the public. However, due to space limitations and access procedures, the names and telephone number of individuals planning to attend must be submitted to the Information Security Oversight Office (ISOO) no later than April 29, 2002. Written statements from the public will be accepted in lieu of an opportunity for comment.

**FOR FURTHER INFORMATION CONTACT:** Laura L.S. Kimberly, Acting Director, National Archives Building, 700 Pennsylvania Avenue, NW., Room 100, Washington, DC 20408, telephone (202) 219–5250.

Dated: April 26, 2002.

**Mary Ann Hadyka,**

*Committee Management Officer.*

[FR Doc. 02–10760 Filed 4–30–02; 8:45 am]

BILLING CODE 7515–01–P

## NATIONAL SCIENCE FOUNDATION

### Sunshine Act Meeting

**AGENCY HOLDING MEETING:** National Science Foundation, National Science Board.

**DATE AND TIME:** May 8, 2002: 11 a.m.–12 Noon Closed Session; May 9, 2002: 10 a.m.–10:30 a.m. Closed Session; May 9, 2002: 10:30 a.m.–12 Noon Open Session; May 9, 2002: 12:30 p.m.–3:30 p.m. Open Session.

**PLACE:** The National Science Foundation, Room 1235, 4201 Wilson Boulevard, Arlington, VA 22230, *www.nsf.gov/nsb.*

**STATUS:** Part of this meeting will be closed to the public. Part of this meeting will be open to the public.

**MATTERS TO BE CONSIDERED:** Wednesday, May 8, 2002

Closed Session (11 a.m.–12 Noon)

—Election NSB Chair, Vice Chair and two members of the Executive Committee
—Closed Session Minutes, March, 2002
—NSB Member Proposal

**Thursday, May 9, 2002**

*Closed Session (10 a.m.–10:30 A.M.)*

—Awards and Agreements

*Open Session (10:30 a.m.–12:00 Noon)*

—Open Session Minutes, March, 2002
—Closed Session Items for August, 2002
—Chair's Report
—Director's Report
—Annual NSB Business
  —2003 Meeting Calendar
  —Executive Committee Annual Report
—Committee Reports
—Other Business

*Open Session (12:30 p.m.–3:30 p.m.)*

—NSF Long Range Planning Environment
  —S&T Policy Context: Dr. John Marburger
  —NSF Planning

**Marta Cehelsky,**

*Executive Office.*

[FR Doc. 02–10814 Filed 4–26–02; 5:00 pm]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### National Science Foundation Information Quality Guidelines; Draft Notice and Request for Comment

**AGENCY:** National Science Foundation.

**ACTION:** Notice.

**SUMMARY:** the Office of Management and Budget (OMB) issued government-wide guidelines under section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106–554) to ensure and maximize the quality, objectivity, utility and integrity of information disseminated by Federal agencies. OMB's guidelines were published in the **Federal Register** on September 28, 2001 (66 FR 49718), and updated on January 3, 2002 (67 FR 369). A supplemental version of the guidelines was published in the **Federal Register** February 22, 2002 (67 FR 8452). Each Federal agency is responsible for issuing its own section 515 guidelines. As a result, The National Science Foundation has developed corresponding information quality guidelines. The full draft guidelines will be found at the National Science Foundation's Web site at *http://www.nsf.gov/home/pubinfo/infoqual.htm* on May 1, 2002.

**DATES:** Comments should be received no later than June 3, 2002, to receive full consideration.

**ADDRESSES:** Comments may be submitted via electronic mail to *infoqua1515@nsf.gov,* via mail to Section 515 Information Quality Officer; 4201 Wilson Blvd., Suite 305; Arlington, VA 22230; or via fax to (703) 292–9084.

**FOR FURTHER INFORMATION CONTACT:** Frederic J. Wendling; Information Quality Guidelines, Room 905; 4201 Wilson Boulevard; Arlington, VA 22230. Telephone: 703–292–8741. E-mail: *fwendlin@nsf.gov.*

Dated: April 22, 2002.

**Suzanne H. Plimpton,**

*Reports Clearance Officer, National Science Foundation.*

[FR Doc. 02–10546 Filed 4–30–02; 8:45 am]

**BILLING CODE 7555–01–M**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 040–08778]**

### Notice of Consideration of Amendment Request for Molycorp, Washington, PA, Site and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment to Source Materials License SMB–1393 issued to Molycorp, Inc., (Molycorp), to allow for an alternate decommissioning schedule for its Washington, PA, site. Molycorp's license currently requires Molycorp to decommission by August 2002, which is within 2 years of the date that the decommissioning plan was approved. Molycorp has found that a number of buildings overlie contaminated areas which affects the determination of the volume of contaminated material and, therefore, the time it will take to clean up the site. Molycorp, Inc. proposes to decommission under an alternate decommissioning schedule using a phased approach. The buildings on-site will be demolished and the soils will be characterized to determine an estimated volume of contaminated material. Molycorp, Inc. will excavate the contaminated soils and transport them off-site to an NRC approved facility. Molycorp's proposed alternate decommissioning schedule shows that all decommissioning activities will be completed by the end of 2004. Molycorp's request is contained in a letter to NRC dated February 19, 2002.

If the NRC approves this request, the approval will be documented in a license amendment to NRC License SMB–1393. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a safety evaluation report and an environmental assessment.

NRC hereby provides notice that this is a proceeding on an application for an amendment of a license falling within the scope of Subpart L, ''Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings,'' of NRC's rules of practice for domestic licensing proceedings in 10 CFR part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either by hand delivery to: Rulemaking and Adjudications Staff of the Office of the Secretary U.S. Nuclear Regulatory Commission at the White Flint North, 11555 Rockville Pike, Rockville, MD 20852, facsimile (301–415–1101) or mailing to: The Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Because of continuing disruptions in delivery of mail to U.S. government offices, it is requested that copies of requests for hearings or petitions for leave to intervene be transmitted by facsimile, as noted above, or by e-mail to *hearingdocket@nrc.gov.* In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally, or by mail, to:

1. The applicant, Molycorp, Inc., 300 Caldwell Avenue, Washington, PA 15301, Attention: George Dawes, and,

2. The NRC staff, addressed to the General Counsel, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the General Council, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Because of continuing disruptions in delivery of mail to United States government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725, or by e-mail to the *OGCmailcenter@nrc.gov.*

In addition to meeting other applicable requirements of 10 CFR part 2 of NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requester should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and,

4. The circumstance establishing that the request for a hearing is timely in accordance with § 2.1205(d).

**FOR FURTHER INFORMATION CONTACT:** The application for the license amendment and supporting documentation are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html.* Any questions with respect to this action should be referred to Tom McLaughlin, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Telephone: (301) 415–5869. Fax: (301) 415–5398.

Dated at Rockville, Maryland, this 23rd day of April 2002.

For the Nuclear Regulatory Commission.

**Tom McLaughlin,**

*Project Manager, Facilities Decommissioning Section, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 02–10694 Filed 4–30–02; 8:45 am]

BILLING CODE 7590–01–P

## OFFICE OF MANAGEMENT AND BUDGET

### Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Office of Management and Budget

**AGENCY:** Office of Management and Budget.

**ACTION:** Notice of guidelines and request for comments.

**SUMMARY:** The Office of Management and Budget (OMB) is seeking comments on its draft Information Quality Guidelines. These Information Quality Guidelines describe OMB's pre-dissemination information quality control and an administrative mechanism for requests for correction of information publicly disseminated by OMB. The draft Information Quality Guidelines are posted on OMB's Web site *http://www.whitehouse.gov/omb/inforeg/index.html.*

**DATES:** Written comments regarding OMB's draft Information Quality Guidelines are due by June 14, 2002.

**ADDRESSES:** Please submit comments to Jefferson B. Hill of the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Comments can also be e-mailed to *informationquality@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Jefferson B. Hill, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Telephone: (202) 395–3176.

Dated: April 29, 2002.

**John D. Graham,**

*Administrator, Office of Information and Regulatory Affairs.*

[FR Doc. 02–10962 Filed 4–30–02; 8:45 am]

BILLING CODE 3110–01–M

## OVERSEAS PRIVATE INVESTMENT CORPORATION

### Sunshine Act Meeting

**TIME AND DATE:** 2:00 p.m., Thursday, May 16, 2002.

**PLACE:** Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

**STATUS:** Hearing Open to the Public at 2:00 p.m.

**PURPOSE:** Hearing in conjunction with each meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

**Procedures:** Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 p.m., Friday, May 10, 2002. The notice must include the individual's name, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request to participate an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 p.m., Friday, May 10, 2002. Such statements must be typewritten, double-spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda for the hearing identifying speakers, setting forth the subject on which each participant will speak, and the time allotted for each presentation. The agenda will be available at the hearing.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

**CONTACT PERSON FOR INFORMATION:** Information on the hearing may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via email at *cdown@opic.gov.*

Dated: April 29, 2002.

**Connie M. Downs,**

*OPIC Corporate Secretary.*

[FR Doc. 02–10846 Filed 4–29–02; 11:24 am]

BILLING CODE 3210–01–M

## PENSION BENEFIT GUARANTY CORPORATION

### Notice of Availability of the Pension Benefit Guaranty Corporation Draft of Information Quality Guidelines

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice.

**SUMMARY:** The Pension Benefit Guaranty Corporation (PBGC) has made available a draft of its Information Quality Guidelines pursuant to the requirements of the Office of Management and Budget's (OMB's) Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information Disseminated by Federal Agencies. The PBGC invites comments on these draft Information Quality Guidelines. The draft guidelines are published on the PBGC's Web site (*http://www.pbgc.gov*).

**DATES:** Comments must be received on or before May 31, 2002.

**ADDRESSES:** Comments may be mailed to the Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to Suite 340 at the above address. Comments also may be sent by Internet e-mail to *reg.comments@pbgc.gov* *<mailto:reg.comments@pbgc.gov>*. Copies of comments may be obtained by writing the PBGC's Communications and Public Affairs Department (CPAD) at Suite 240 at the above address or by visiting or calling CPAD during normal business hours (202–326–4040).

**FOR FURTHER INFORMATION CONTACT:** Harold J. Ashner, Assistant General Counsel, or James L. Beller, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

**SUPPLEMENTARY INFORMATION:** Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554) directs OMB to issue government-wide guidelines that ''provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility and integrity of information (including statistical information) disseminated by Federal agencies.'' The OMB guidelines require each agency to prepare a draft report providing the agency's information quality guidelines. Each agency is required to publish a notice of availability of this draft report in the **Federal Register** and to post this report on its Web site by May 1, 2002, to provide an opportunity for public comment. The PBGC has posted its draft Information Quality Guidelines on its Web site at *www.pbgc.gov* and encourages public comment on the report.

The PBGC will consider these public comments and make appropriate

revisions to its Information Quality Guidelines before submitting them in draft form for OMB review. Under OMB guidelines, the PBGC must submit the draft for OMB review no later than July 1, 2002.

Issued in Washington, DC, on this 25th day of April, 2002.

**Steven A. Kandarian,**

*Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 02–10644 Filed 4–30–02; 8:45 am]

BILLING CODE 7708–01–P

## OFFICE OF PERSONNEL MANAGEMENT

### Federal Prevailing Rate Advisory Committee; Open Committee Meetings

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the meeting of the Federal Prevailing Rate Advisory Committee scheduled for Thursday, May 9, 2002, has been cancelled and is rescheduled to meet on Thursday, May 2, 2002.

The meeting will start at 10:00 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

This scheduled meeting will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chair to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on this meeting may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5538, 1900 E Street, NW., Washington, DC 20415 (202) 606–1500.

Dated: April 25, 2002.

**Mary M. Rose,**

*Chairperson, Federal Prevailing Rate Advisory Committee.*

[FR Doc. 02–10739 Filed 4–30–02; 8:45 am]

BILLING CODE 6325–49–P

## POSTAL SERVICE

### Postage Evidencing Product Submission Procedures

**AGENCY:** Postal Service.

**ACTION:** Notice of proposed procedure.

**SUMMARY:** The Postal Service is proposing to revise the product submission procedures for postage meters and other postage evidencing systems. The proposed procedures were originally published as interim procedures in the **Federal Register** on January 7, 1997 [Vol. 62, No. 4, pages 1001–1004], and were revised and published as draft procedures on September 2, 1998 [Vol. 63, No. 170, pages 46728–46732]. The draft procedures were again revised and published in the **Federal Register** on August 17, 1999 [Vol. 64, No. 158, pages 44760–44766], with submission of comments due by October 18, 1999. After receipt and consideration of comments, the procedures were amended and published in the **Federal Register** on April 14, 2000 [Vol. 65, No. 73, pages 20211–20218], with a request for submission of additional comments by May 15, 2000.

The proposed procedures include extensive changes. We based the changes made since the April 2000 publication on public comments and the experience we have gained in approving postage evidencing systems. We are reissuing the proposed procedures in revised form for public comment because we consider the changes from the previous version to be extensive. We will revise the proposed procedures, if required, and publish them as a final rule after we review the comments. Since all comments will be made available for public inspection, any marked ''proprietary'' or ''confidential'' will be returned to the sender without consideration.

**DATES:** The Postal Service must receive comments on or before May 31, 2002. No extensions on the comment period will be granted.

**ADDRESSES:** Mail or deliver written comments to Manager, Postage Technology Management, United States Postal Service, 1735 N Lynn Street, Room 5011, Arlington, VA 22209–6050. You can view and copy all written comments at the same address between 9 a.m. and 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Wayne Wilkerson, manager, Postage Technology Management, by fax at 703–292–4050.

**SUPPLEMENTARY INFORMATION:** With the expansion of postage application methods and technologies, it is essential that the product submission procedures for all postage evidencing products be clearly stated and defined, while remaining flexible enough to accommodate evolving technologies. The Postal Service evaluation process can be effective and efficient if all suppliers follow these procedures. In this way, secure and convenient technology will be made available to the mailing public with minimal delay and with the complete assurance that all Postal Service technical, quality, and security requirements have been met. These procedures apply to all proposed postage evidencing products and systems, whether the provider is new or is currently authorized by the Postal Service.

Title 39, Code of Federal Regulations (CFR) section 501.9, Security Testing, states, ''The Postal Service reserves the right to require or conduct additional examination and testing at any time, without cause, of any meter submitted to the Postal Service for approval or approved by the Postal Service for manufacture and distribution.'' For products meeting the performance criteria for postage evidencing systems that generate an information-based indicia (IBI), including PC Postage® products, the equivalent section is 39 CFR section 502.10, Security Testing, published as a proposed rule in the **Federal Register** on October 2, 2000. When the Postal Service elects to retest a previously approved product, the

provider will be required to resubmit the product for evaluation according to part or all of the proposed procedures. The Postal Service will determine full or partial compliance with the procedures prior to resubmission by the provider.

The proposed submission procedures will be referenced in 39 CFR part 501 and will be published as a separate document titled ''Postage Technology Management, Postage Evidencing Product Submission Procedures.''

**Product Submission Procedures for Postage Meters (Postage Evidencing Systems)**

*1. General Information*

1.1 Independent Testing Laboratory

To receive authorization from the Postal Service to manufacture, produce, or distribute a postage meter (postage evidencing system) under 39 CFR part 501, Authorization to Manufacture and Distribute Postage Meters, the provider must obtain approval under these product submission procedures. These procedures also apply to providers requesting approval to manufacture, produce, or distribute a product under proposed 39 CFR part 502, Authority to Produce and Distribute Postage-Evidencing Systems that Generate Information-Based Indicia (IBI) (65 FR 58689).

The provider must select an independent testing laboratory, such as one accredited by the National Institutes of Standards and Technology (NIST) under the National Voluntary Laboratory Accreditation Program (NVLAP) to conduct the detailed product review and testing required by these procedures. When the product contains a postal security device (PSD) or cryptographic module, the laboratory must be a NVLAP-accredited cryptographic modules testing laboratory.

Technical documentation (section 4) and production systems (section 5) must be provided to the selected test laboratory in sufficient detail to support testing. The testing laboratory will submit an executive summary containing the information referenced in the Required Documentation table set forth in paragraph 4.2, and the results of the product evaluation directly to the Postal Service. All supporting documentation, products, PSDs and cryptographic modules, and other materials used or generated during testing will be maintained by the testing laboratory for the life of the test. At the time of product approval, the manager, Postage Technology Management (PTM), will determine the ongoing disposition of all supporting documentation, products, PSDs and cryptographic modules, and other materials used or generated during testing.

During the product's life cycle, the provider may choose to use a different laboratory. In that event, all materials used or generated during testing and product evaluation must be transferred to the new laboratory.

Upon completion of the testing, the Postal Service may require that any or all of the following categories of information be forwarded directly from the accredited laboratory to the manager, PTM:

(1) A copy of all information that the provider gives to the laboratory, including a summary of all information transmitted orally.

(2) A copy of all instructions from the provider to the testing laboratory with respect to what is and what is not to be tested.

(3) Copies of all proprietary and nonproprietary reports and recommendations generated during the test process.

(4) Written full disclosure identifying any contribution by the test laboratory to the design, development, or ongoing maintenance of the system.

1.2 Product Submission Procedures

To submit a postage meter (postage evidencing system) for Postal Service approval, the provider will complete the following steps:

(1) Submit a letter of intent (section 2).

(2) Complete and sign the nondisclosure agreements (section 3).

(3) Submit the required documentation (section 4).

(4) Submit the postage evidencing system for evaluation (section 5).

(5) Enable USPS to review the provider's system infrastructure (section 6).

(6) Place the product into limited distribution for field testing (section 7), after completing any additional security testing that the Postal Service requires.

1.3 Additional Security Testing

The Postal Service may choose to use resources under direct contract to the Postal Service to support the product review for additional security testing. The activities of these resources are independent of the testing laboratory selected by the provider and must be covered by nondisclosure agreements (section 3).

1.4 Product Approval Process

When the field testing (section 7) is completed successfully, the Postal Service performs an administrative review of the test and evaluation results and, when appropriate, grants authorization to distribute the product, as described in section 8.

At each stage of the product submission process, the manager, PTM, reserves the right to terminate testing if a review shows that the system as proposed will adversely impact Postal Service processes. The provider may resubmit the product after the problems have been resolved.

The provider can avoid unnecessary delays in the review and evaluation process by testing the product thoroughly prior to submitting it to the independent testing laboratory and to the Postal Service. If the Postal Service determines that there are significant deficiencies in the product or in the required supporting materials, then the Postal Service will return the submission to the provider without reviewing it further.

*2. Letter of Intent*

The provider must submit a letter of intent to Manager, Postage Technology Management (PTM), United States Postal Service, 1735 N. Lynn Street, Room 5011, Arlington, VA 22209–6050. The manager, PTM, will assign a point of contact to coordinate the submission and review process. The letter of intent must be dated and must include the following:

(1) Name and address of all parties involved in the proposal, with a name, e-mail address, and telephone number of an official point of contact for each party identified. In addition to the provider, the parties listed must include those responsible for assembly, distribution, product management, and hardware/firmware/software development and testing, and other organizations involved (or expected to be involved) with the product, including all suppliers of significant product components.

(2) Provider's business qualifications, including proof of financial viability and proof of the provider's ability to be responsive and responsible.

(3) System concept narrative, including the provider's infrastructure that will support the product.

(4) The target Postal Service market segment the proposed system is envisioned to serve.

When there is a significant change to any aspect or name of the product described in the letter of intent prior to submission of the concept of operations (section 4), the provider must revise the letter of intent and resubmit it.

*3. Nondisclosure Agreements*

When the Postal Service uses resources under direct contract to the Postal Service to support the product review, the provider must establish a nondisclosure agreement with these resources. These nondisclosure agreements may require extension to third-party suppliers or others identified in the letter of intent (section 2). Providers are encouraged to share copies of nondisclosure agreements provided by the Postal Service with all parties identified in the letter of intent, to ensure that these parties will execute the agreement if needed to support Postal Service review of the product. Failure to sign nondisclosure agreements, provided by the Postal Service to support review activities, might adversely affect a product submission. Questions regarding this process should be directed to the manager, PTM.

*4. Technical Documentation*

4.1 Introduction

The provider must submit the materials listed in the Required Documentation table. If the provider considers that a given requirement is not applicable to the product, the provider should note this in the document submission. The table is not meant to be an exhaustive list of all possible areas that need to be documented to support the evaluation of a postage meter (postage evidencing system). Ongoing advances and changes in technology and new approaches to providing postage evidencing can add other components that must be considered. The provider should submit any additional information that it considers necessary or desirable to describe the product fully. The independent testing laboratory may determine the level of detail that must be submitted to meet its test and evaluation requirements. The laboratory or the Postal Service may request additional information if needed for a complete evaluation.

Documentation must be submitted to the independent laboratory and the Postal Service as indicated in the Required Documentation table. The laboratory will prepare an executive summary and submit it to the Postal Service when required. Documentation must be in English and must be formatted for standard letter size (8.5″ × 11″) paper, except for engineering drawings, which must be folded to letter size. Where appropriate, documentation must be marked as ''Confidential.'' The document recipient will determine the number of paper copies and the format of electronic copies of each document at the time of submission based on current technology and review requirements.

The manager, PTM, will acknowledge the product concept as understood by the Postal Service based on the concept of operations (CONOPS) documentation. The provider should schedule a meeting with PTM staff shortly after or simultaneously with the submission of technical data to permit full discussion and understanding of the technical concepts being presented for evaluation. The manager, PTM, will indicate Postal Service agreement or concerns relevant to the concept, as appropriate.

4.2 Required Documentation

The following table details all documents that the provider must prepare. The table shows the submission requirements for the Postal Service and for the independent testing laboratory.

| Document/section | Submit to test laboratory? | Postal service requirement |
|---|---|---|
| **Required Documentation** | | |
| Concept of Operations (CONOPS): | | |
| System overview, including: | | |
| • Concept overview and business model | Yes | Provider submits in full. Executive summary prepared by laboratory. |
| • Postal security device (PSD) implementation, features, and components, including the digital signature algorithm. | | |
| • System life cycle overview. | | |
| • Adherence to industry standards, such as FIPS PUB 140–1 or 140–2 (after May 25, 2002), as required by Postal Service. | | |
| System design details, including: | Yes | Executive summary prepared by laboratory. Laboratory report on indicium barcode compliance with postal requirements as given in the performance criteria. |
| • PSD features and functions. | | |
| • All aspects of key management. | | |
| • Client (host) system features and functions. | | |
| • Other components required for system use including, but not limited to, the proposed indicia design and label stock. | | |
| System life cycle, including: | Yes | Provider submits in full. Executive summary prepared by laboratory. |
| • Manufacturing. | | |
| • Postal Service certification of the system. | | |
| • Production. | | |
| • Distribution. | | |
| • Meter licensing. | | |
| • Initialization. | | |
| • System authorization and installation. | | |
| • Postage value download or resetting process. | | |
| • System and support system audits. | | |
| • Inspections. | | |
| • Procedures for system withdrawal and replacement, including procedures for system malfunctions. | | |
| • Procedures to destroy scrapped systems. | | |

| Document/section | Submit to test laboratory? | Postal service requirement |
|---|---|---|
| Finance overview, including:<br>• Customer account management (payment methods, statements, and refunds).<br>• Individual product finance account management (resetting or postage value download, refunds).<br>• Daily account reconciliation (provider reconciliation, Postal Service detailed transaction reporting).<br>• Periodic summaries (monthly reconciliation, other reporting as required by the Postal Service). | Yes | Provider submits in full. Executive summary prepared by laboratory. |
| Interfaces, including:<br>• Communications and message interfaces with the Postal Service infrastructure for resetting or postage value downloads, refunds, inspections, product audits, and lost or stolen product procedures.<br>• Communications and message interfaces with Postal Service financial functions for resetting or postage value downloads, daily account reconciliation, and refunds.<br>• Communications and message interfaces with customer infrastructure for cryptographic key management, product audits, and inspections.<br>• Message error detection and handling. | Yes | Provider submits in full. Executive summary prepared by laboratory. |
| Configuration management and detailed change control procedures for all components, including, but not limited to:<br>• Software.<br>• Hardware and firmware.<br>• Indicia.<br>• Provider infrastructure.<br>• Postal rate change procedures.<br>• Interfaces. | Yes | Executive summary prepared by laboratory. |
| Physical security | Yes | Executive summary prepared by laboratory. |
| Personnel/site security | Yes | Executive summary prepared by laboratory. |
| **Software and Documentation** | | |
| Detailed design | Yes | Executive summary prepared by laboratory. |
| Executable code | Yes | On request. |
| Source code | Yes | On request. |
| Operations manuals | Yes | Executive summary prepared by laboratory. |
| Communications interfaces | Yes | Executive summary prepared by laboratory. |
| Maintenance manuals | Yes | Executive summary prepared by laboratory. |
| Schematics | Yes | Executive summary prepared by laboratory. |
| Product initialization procedures | Yes | Executive summary prepared by laboratory. |
| Finite state machine models/diagrams | Yes | Executive summary prepared by laboratory. |
| Block diagrams | Yes | Executive summary prepared by laboratory. |
| Details of security features | Yes | Executive summary prepared by laboratory. |
| Description of cryptographic operations, as required by FIPS PUB 140–1 or 140–2 (after May 25, 2002), Appendix A. | Yes | Executive summary prepared by laboratory. |
| **Test Plan** | | |
| Postal Service requirements | Yes | Executive summary prepared by laboratory. |
| FIPS PUB 140–1 or 140–2 (after May 25, 2002) requirements. | Yes | Executive summary prepared by laboratory. |
| Physical security of provider's Internet server, administrative site, and firewall. | Yes | Executive summary prepared by laboratory. |
| Security for remote administrative access and configuration control. | Yes | Executive summary prepared by laboratory. |
| Secure distribution or transmission of software and cryptographic keys. | Yes | Executive summary prepared by laboratory. |
| Test plan for system infrastructure:<br>• Test parameters.<br>• Infrastructure systems.<br>• Interfaces.<br>• Reporting requirements. | Yes | Executive summary proeared by laboratory. |
| Test plan for limited distribution field tests:<br>• Test parameters.<br>• System quantities. | Yes | Executive summary prepared by laboratory. |

| Document/section | Submit to test laboratory? | Postal service requirement |
|---|---|---|
| • Geographic location.<br>• Test participants.<br>• Test duration.<br>• Test milestones.<br>• System recall plan | | |
| **Provider Infrastructure Plan** | | |
| Public key infrastructure | Yes | Executive summary prepared by laboratory. |
| Procedures for enforcement of all provider-related, customer-related, and Postal Service-related processes, procedures, and interfaces discussed in CONOPS or required by Postal Service regulations. | Yes | Executive summary prepared by laboratory. |

*5. Product Submission and Testing*

5.1 General Submission Requirements

The provider must submit complete production systems to the independent testing laboratory for evaluation. The laboratory will determine how many systems are needed for a complete evaluation. The provider must also provide any equipment and consumables required to use the submitted systems in the manner described in the CONOPS. The provider must also submit complete production systems, supporting equipment, and consumables directly to the Postal Service, if requested. The Postal Service may test these for compliance with Postal Service regulations and processes under section 6, System Infrastructure Testing.

5.2 Submission Requirements for Products Containing a Postal Security Device or Cryptographic Module

The NVLAP-accredited cryptographic modules testing (CMT) laboratory must evaluate all postal security devices (PSDs) and cryptographic modules for FIPS PUB 140–1 or 140–2 certification, or equivalent, as authorized by the Postal Service. After May 25, 2002, FIPS PUB 140–2 certification will be required. The Postal Service requires that the PSD or cryptographic module receive FIPS PUB 140–1 or 140–2 certification as it is implemented. That is, the PSD or cryptographic module and the installed application must be considered as a whole in determining whether or not it receives FIPS certification. The FIPS certification of the PSD or cryptographic module is dependent on the application. Since any certification could be in question once any noncertified or untested software is installed, the PSD or cryptographic module must be certified as it will be implemented, and the accredited CMT lab must reevaluate any changes that would risk the certification.

Upon completing FIPS PUB 140–1 or 140–2 certification, or equivalent, the CMT laboratory must forward the following documentation directly to the manager, PTM:

(1) A copy of the letter of recommendation for certification of the PSD or cryptographic module that the laboratory submitted to the National Institute of Standards and Technology (NIST) of the United States of America.

(2) A copy of the certificate, if any, issued by NIST for the PSD or cryptographic module.

*6. System Infrastructure Testing and Provider System Security Testing*

To achieve Postal Service approval of a postage evidencing system, the provider must demonstrate that the system satisfies all applicable postal regulations and reporting requirements and that it is compatible with Postal Service mail processing functions and all other functions with which the product or its users interface. The tests must involve all entities in the proposed architecture, including the postage evidencing system, the provider infrastructure, the financial institution, and Postal Service infrastructure systems and interfaces. The tests may be conducted in a laboratory environment in accordance with the test plan for system infrastructure testing. Test and approval of system infrastructure functions must be completed before the postage evidencing system can be field tested under section 7. The functions to be tested include, but are not limited to, the following:

(1) Meter licensing, including license application, license update, and license revocation.

(2) System status activity reporting.

(3) System distribution and initialization, including system authorization, system initialization, customer authorization, and system maintenance.

(4) Total system population inventory, including leased and unleased systems, new system stock, and system installation, withdrawal, and replacement.

(5) Irregularity reporting.

(6) Lost and stolen reporting.

(7) Financial transactions, including cash management, individual system financial accounting, account reconciliation, and refund management.

(8) Financial transaction reporting, including daily summary reports, daily transaction reporting, and monthly summary reports.

(9) System initialization.

(10) Cryptographic key changes and public key management.

(11) Postal rate table changes.

(12) Print quality assurance.

(13) Device authorization.

(14) Postage evidencing system examination and inspection, including physical and remote inspections.

In addition to testing the system infrastructure, the Postal Service must be assured that the provider's support systems and infrastructure are secure and not vulnerable to security breaches. This will require site reviews of provider manufacturing, distribution, and other support facilities, and reviews of network security and system access controls.

*7. Limited Distribution Field Test*

To achieve Postal Service approval of a postage evidencing system, the provider must demonstrate that the system satisfies all applicable postal processing and interface requirements in a real-world environment. This is achieved by placing a limited number of systems in distribution for field testing. The Postal Service will determine the number of systems to be tested. The test will be conducted in accordance with the Postal Service-approved test plan for limited distribution field testing. The purpose of the limited-distribution field test is to demonstrate the product's utility, security, audit and control, functionality, and compatibility with other systems, including mail entry,

acceptance, and processing when in use. The field test will employ available communications and will interface with current operational systems to exercise all system functions.

The manager, PTM, will review the executive summary of the provider-proposed test plan for limited distribution field testing. The review will be based on, but not limited to, the assessed revenue risk of the system, system impact on Postal Service operations, and requirements for Postal Service resources. Approval may be based in whole or in part on the anticipated mail volume, mail characteristics, and mail origination and destination patterns of the proposed system. For systems designed for use by an individual meter user, product users engaged in field testing must be approved by the Postal Service before they are allowed to participate in the test. These participants must sign a nondisclosure/confidentiality agreement when reporting system security, audit and control issues, deficiencies, or failures to the provider and the Postal Service. This requirement does not apply to users of systems designed for public use.

*8. Postage Evidencing System Approval*

Postal Service approval of the postage meter (postage evidencing system) is based on the results of an administrative review of the materials and test results generated during the product submission and approval process. In preparation for the administrative review, the provider must update all documentation submitted in compliance with these procedures to ensure accuracy. The Postal Service will prepare a product approval letter detailing the conditions under which the specific product may be manufactured, distributed, and used. The provider must submit the following materials for the Postal Service administrative review:

(1) Materials prepared for the Postal Service by the independent testing laboratory.

(2) The final certificate of evaluation from the NVLAP laboratory, where required.

(3) The results of system infrastructure testing.

(4) The results of field testing of a limited number of systems.

(5) The results of any other Postal Service testing of the system.

(6) The results of provider site security reviews.

*9. Intellectual Property*

Providers submitting postage evidencing systems to the Postal Service for approval are responsible for obtaining all intellectual property licenses that may be required to distribute their product in commerce and to allow the Postal Service to process mail bearing the indicia produced by the product.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 02–10782 Filed 4–30–02; 8:45 am]

BILLING CODE 7710–12–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–45843; File No. S7–12–02]**

## Draft Data Quality Assurance Guidelines

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice of draft guidelines and request for comments.

**SUMMARY:** The Securities and Exchange Commission has posted on its website at *www.sec.gov* draft data quality assurance guidelines. The guidelines describe procedures for ensuring and maximizing the quality of information before it is disseminated to the public, and the procedures by which an affected person may obtain correction, where appropriate, of disseminated information that does not comply with the guidelines. Comments will be considered in developing final data quality assurance guidelines.

**DATES:** Comments must be received on or before June 3, 2002.

**ADDRESSES:** You should send three copies of your comments to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. You also may submit your comments electronically to the following address: *dataquality@sec.gov.* All comment letters should refer to File No. S7–12–02; this file number should be included in the subject line if you use electronic mail. Comment letters will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549–0102. We will post electronically submitted comment letters on the Commission's Internet Web site (*http://www.sec.gov*). We do not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions. Submit only information you wish to make publicly available.

**FOR FURTHER INFORMATION CONTACT:** Questions about the draft guidelines should be referred to David Fredrickson or Monette Dawson, Office of the General Counsel (202) 942–0890 or (202) 942–0870, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0606.

By the Commission.

Dated: April 29, 2002.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 02–10931 Filed 4–29–02; 2:49 pm]

BILLING CODE 8010–01–U

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–45817; File No. SR–CBOE–2002–19]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated To Amend Its Rules Relating to the Limitation of Liability for Index Licensors

April 24, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on April 19, 2002, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its rules to make clear that its disclaimer provisions for index licensors apply to any licensor that grants the Exchange a license to use an index or portfolio in connection with the trading of options on exchange-traded funds (''ETFs'').

Below is the text of the proposed rule change. Proposed new language is *italicized.*

* * * * *

### Chicago Board Options Exchange, Incorporated Rules

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*Rule 6.15 Limitation on the Liability of Index Licensors for Options on Units*

*(a) The term ''index licensor'' as used in this rule refers to any entity that grants the Exchange a license to use one or more indexes or portfolios in connection with the trading of options on Units (as defined in Interpretation .06 to Rule 5.3).*

*(b) No index licensor with respect to any index pertaining to Units underlying an option traded on the Exchange makes any warranty, express or implied, as to the results to be obtained by any person or entity from the use of such index, any opening, intra-day or closing value therefor, or any data included therein or relating thereto, in connection with the trading of any option contract on Units based thereon or for any other purpose. The index licensor shall obtain information for inclusion in, or for use in the calculation of, such index from sources it believes to be reliable, but the index licensor does not guarantee the accuracy or completeness of such index, any opening, intra-day or closing value therefor, or any data included therein or related thereto. The index licensor hereby disclaims all warranties of merchantability or fitness for a particular purpose or use with respect to any such index, any opening, intra-day or closing value therefor, any data included therein or relating thereto, or any option contract on Units based thereon. The index licensor shall have no liability for any damages, claims, losses (including any indirect or consequential losses), expenses or delays, whether direct or indirect, foreseen or unforeseen, suffered by any person arising out of any circumstance or occurrence relating to the person's use of such index, any opening, intra-day or closing value therefor, any data included therein or relating thereto, or any option contract on Units based thereon, or arising out of any errors or delays in calculating or disseminating such index.*

* * * * *

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The CBOE proposes to add a new CBOE Rule 6.15 to CBOE's rules to state liability disclaimers expressly for the benefit of any index owner that grants the Exchange a license to use an index or portfolio in connection with the trading of options on ETFs. ETFs may be traded on CBOE pursuant to listing standards in CBOE Rule 5.3, Interpretation and Policy .06.

CBOE Rule 24.14 currently states liability disclaimers for the benefit of ''reporting authorities'' with respect to indexes underlying options traded on the Exchange. Proposed new CBOE Rule 6.15 is substantively identical to CBOE Rule 24.14, except that it uses the term ''index licensor'' in place of the term ''reporting authority.'' [3]

Like index options, options on ETFs are based on indexes and, indeed, index options and options on ETFs may be based on the same underlying indexes. CBOE believes that the protections afforded to an index licensor in connection with trading options on an index should also apply to an index licensor in connection with trading options on ETFs.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [4] in general and furthers the objectives of Section 6(b)(5) of the Act [5] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the proposed rule change would eliminate an apparent discrepancy in its rules between the provisions applicable to index options and those applicable to options on ETFs. The Exchange also believes that the proposed rule change would eliminate an impediment to the listing and trading of options on ETFs.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [6] and Rule 19b–4(f)(6) thereunder.[7]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[8] the Commission may designate a shorter time if such action is consistent with the protection of investors and public interest. The Exchange requests that the Commission waive the 30-day operative date and seeks to have the proposed rule change become operative as of April 19, 2002, in order to immediately afford protection for index licensors from liability. In addition, under Rule 19b–4(f)(6)(iii), the Exchange is required to provide the Commission with written notice of its intent to file the proposed rule change at least five business days

[3] The term ''reporting authority'' is defined in CBOE Rule 24.1(h) as, with respect to a particular index, ''the institution or reporting service designated by the Exchange as the official source for calculating the level of the index from the reported prices of the underlying securities that are the basis of the index and reporting such level.'' In practice, the Exchange designates the owner/licensor of an index as the reporting authority for that index, and the owner/licensor therefore receives the benefit of the disclaimers in CBOE Rule 24.14. The CBOE believes that the concept of a ''reporting authority'' is not relevant for options on an ETF, because The Options Clearing Corporation does not directly use the values of the underlying index for purposes of settlement and margin calculations. Instead, the values of the ETF itself are used for these purposes. Proposed CBOE Rule 6.15 therefore uses the term ''index licensor'' in place of the term ''reporting authority'' used in CBOE Rule 24.14.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6).

[8] 17 CFR 240.19b–4(f)(6)(iii).

prior to the filing date or such shorter time as designated by the Commission.[9]

The Commission, consistent with the protection of investors and the public interest, has waived the thirty-day operative date requirements for this proposed rule change, and has determined to designate the proposed rule change operative as of April 19, 2002.[10] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–2002–19 and should be submitted by May 22, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–10715 Filed 4–30–02; 8:45 am]

**BILLING CODE 8010–01–P**

[9] The CBOE provided the Commission with notice of intent to file at least five days prior to filing the proposed rule change.

[10] For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rules impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–45819; File No. SR–CHX–2002–11]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated To Extend Pilot Rules for Decimals

April 24, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 12, 2002, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and II below, which Items have been prepared by the CHX. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6)[4] thereunder, which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend through September 30, 2002, the pilot rules amending certain CHX rules that were impacted by the securities industry transition to a decimal pricing environment. The two pilots containing these rules were due to expire on April 15, 2002. The CHX does not propose any substantive or typographical changes to the pilot; the only change is an extension of each pilot's expiration date through September 30, 2002. The text of the proposed rule change is available at the Commission and at the CHX.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

On August 24, 2000, the Commission approved, on a pilot basis through February 28, 2001, changes proposed by the Exchange to amend certain CHX rules that would be impacted by the securities industry transition to a decimal pricing environment, including the Exchange's crossing rule.[6] By a series of subsequent submissions, the pilots were extended four times.[7] The Exchange now requests an extension of the current pilots through September 30, 2002. The CHX does not propose to make any substantive or typographical changes to the pilot.

2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[8] The CHX believes the proposal is consistent with Section 6(b)(5) of the Act[9] in that it is designed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange requested, and the Commission agreed, to waive the 5-day prefiling notice requirement.

[6] These changes were proposed in two separate CHX submissions, the second of which dealt solely with decimal-related changes to the Exchange's crossing rule, Article XX, Rule 23. *See* Securities Exchange Act Release No. 43204 (August 24, 2000), 65 FR 53065 (August 31, 2000) (SR–CHX–2000–22) (approving changes to various CHX rules on a pilot basis (''Omnibus Decimal Pilot'')); *see also* Securities Exchange Act Release No. 43203 (August 24, 2000), 65 FR 53067 (August 31, 2000) (SR–CHX–2000–13) (approving changes to the CHX crossing rule on a pilot basis (''Crossing Rule Decimal Pilot'')).

[7] *See* Securities Exchange Act Release Nos. 43974 (February 16, 2001), 66 FR 11621 (February 26, 2001) (SR–CHX–2001–03) (extending Omnibus Decimal Pilot through July 9, 2001); 44488 (June 28, 2001), 66 FR 35684 (July 6, 2001) (SR–CHX–2001–13) (extending Omnibus Decimal Pilot through November 5, 2001); 45059 (November 15, 2001), 66 FR 58543 (November 21, 2001) (SR–CHX–2001–20) (extending Omnibus Decimal Pilot through January 14, 2002); and 45482 (February 27, 2002), 67 FR 10243 (March 3, 2002) (SR–CHX–2002–01) (extending Omnibus Decimal Pilot through April 15, 2002); *see also,* Securities Exchange Act Release Nos. 44000 (February 23, 2001), 66 FR 13361 (March 5, 2001) (SR–CHX–00–27) (extending Crossing Rule Decimal Pilot through July 9, 2001); 45010 (November 1, 2001), 66 FR 56585 (November 8, 2001) (SR–CHX–2001–22) (extending Crossing Rule Decimal Pilot through January 14, 2002); and 45481 (February 27, 2002), 67 FR 10244 (March 3, 2002) (SR–CHX–2002–03) (extending Crossing Rule Decimal Pilot through April 15, 2002).

[8] 15 U.S.C. 78(f)(b).

[9] 15 U.S.C. 78f(b)(5).

to promote just and equitable principles of trade, to remove impediments, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments On the Proposed Rule Change Received From Members, Participants or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Because operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission waive the 5-day pre-filing requirement and accelerate the operative date of the proposed rule change. The Commission finds good cause to waive the 5-day pre-filing requirement and to designate for proposal to become operative immediately because such designation is consistent and waiver of the 5-day pre-filing requirement will allow the pilot to continue uninterrupted through September 30, 2002. For these reasons, the Commission finds good cause to designate that the proposal in both effective and operative upon filing with the Commission.[12]

[10] U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–2002–11 and should be submitted by May 22, 2002.

For the Commission, by the division of Market Regulation, pursuant to delegated authority.[13]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–10714 Filed 4–30–02; 8:45 am]

**BILLING CODE 8010–01–M**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–45811; File No. SR–ISE–2001–34]**

## Self Regulatory Organizations; Notice of Filing of Proposed Rule Change by the International Securities Exchange LLC Amending Its Obvious Error Rule

April 24, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 19, 2001, the International Securities Exchange LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange is proposing to amend the definition of the term ''obvious error'' contained in ISE Rule 720 for options with a theoretical price of less than $3.00. With respect to such options, an obvious error will be deemed to have occurred when the execution price of a transaction is higher or lower than the theoretical price for the series by an amount of $0.25 or more. Proposed new language is *italicized*; proposed deletions are in brackets.

* * * * *

Rule 720. Obvious Errors

The Exchange shall either bust a transaction or adjust the execution price of a transaction that results from an Obvious Error as provided in this Rule.

(a) Definition of Obvious Error. For purposes of this Rule only, an Obvious Error will be deemed to have occurred when:

(1) *if the Theoretical Price of the option is less than $3.00, the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount of 25 cents or more; or*

*(2) if the Theoretical Price of the option is $3.00 or higher:*

*(i)* during regular market conditions (including rotations), the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least two (2) times the maximum bid/ask spread allowed for the option, so long as such amount is 50 cents or more; or

*(ii)*[(2)] during fast market conditions (i.e., the Exchange has declared a fast market status for the option in question), the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least three (3) times the maximum bid/ask spread allowed for the option, so long as such amount is 50 cents or more.

* * * * *

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The

Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

ISE Rule 720 gives the Exchange authority to bust or adjust trades that result from an obvious error. The rule contains objective standards regarding the definition of an ''obvious error,'' the circumstances under which a trade should be adjusted or busted, and the price to which a trade should be adjusted if adjustment is appropriate. The Rule currently defines an obvious error based upon the market conditions and the difference between the execution price and the ''theoretical price'' of the options series. To be an obvious error, the difference in execution and theoretical price must be the greater of $0.50 or two times the allowable spread in regular market conditions (three times the allowable spread in ''fast market'' conditions).

The current rule does not directly consider the price at which the particular options series is trading in determining whether there has been an obvious error (although the allowable spread does increase as an option's price increases). The ISE represents that in administering the Rule, it has found that (1) the price of an option is a significant factor in determining when there is an obvious error; and (2) a pricing error in an options series trading at less than $3.00 can often be significant even if it does not meet the current $0.50 minimum requirement. The Exchange thus proposes that the standard for determining the existence of an obvious error for options series trading at less than $3.00 be whether the difference between the execution price and the theoretical price is at least $0.25.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [3] in general, and furthers the objectives of Section 6(b)(5) [4] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange did not solicit or receive written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–ISE–2001–34 and should be submitted by May 22, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–10713 Filed 4–30–02; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–45818; File No. SR–NASD–2002–15]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Situations in Which a Suspended, Terminated, or Otherwise Defunct Member or Associated Person Fails To Answer or Participate in an Arbitration Proceeding

April 24, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 1, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. (''NASD Dispute Resolution''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Dispute Resolution. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

NASD Dispute Resolution is proposing to amend Rule 10314 of the NASD Code of Arbitration Procedure (''Code'') to provide default procedures for situations in which a suspended, terminated, or otherwise defunct member or associated person fails to answer or participate in an arbitration proceeding, and the claimant nevertheless elects to pursue arbitration. Below is the text of the proposed rule change. Proposed new language is in italics.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

**Code of Arbitration Procedure**

10314. Initiation of Proceedings

Except as otherwise provided herein, an arbitration proceeding under this Code shall be instituted as follows:

(a) Statement of Claim

Unchanged.

(b) Answer—Defenses, Counterclaims, and/or Cross-Claims

(1) Unchanged.

(2) (A)–(B) Unchanged.

(C) A Respondent, Responding Claimant, Cross-Claimant, Cross-Respondent, or Third-Party Respondent who fails to file an Answer within 45 calendar days from receipt of service of a Claim, unless the time to answer has been extended pursuant to subparagraph (5), below, may, in the discretion of the arbitrators, be barred from presenting any matter, arguments, or defenses at the hearing. *Such a party may also be subject to default procedures as provided in paragraph (e) below.*

(3)–(4) Unchanged.

(5) Unchanged.

(c)–(d)

Unchanged.

(e) Default Procedures

*(1) A Respondent, Cross-Respondent, or Third-Party Respondent that fails to file an Answer within 45 calendar days from receipt of service of a Claim, unless the time to answer has been extended pursuant to paragraph (b)(5), may be subject to default procedures, as provided in this paragraph, if it is:*

*(A) a member whose membership has been terminated, suspended, canceled, or revoked;*

*(B) a member that has been expelled from the NASD;*

*(C) a member that is otherwise defunct; or*

*(D) an associated person whose registration is terminated, revoked, or suspended.*

*(2) If all Claimants elect to use these default procedures, the Claimant(s) shall notify the Director in writing and shall send a copy of such notification to all other parties at the same time and in the same manner as the notification was sent to the Director.*

*(3) If the case meets the requirements for proceeding under default procedures, the Director shall notify all parties.*

*(4) The Director shall appoint a single arbitrator pursuant to Rule 10308 to consider the Statement of Claim and other documents presented by the Claimant(s). The arbitrator may request additional information from the Claimant(s) before rendering an award. No hearing shall be held, and the default award shall have no effect on any non-defaulting party.*

*(5) The Claimant(s) may not amend the claim to increase the relief requested after the Director has notified the parties that the claim will proceed under default procedures.*

*(6) An arbitrator may not make an award based solely on the non-appearance of a party. The party who appears must present a sufficient basis to support the making of an award in that party's favor. The arbitrator may not award damages in an amount greater than the damages requested in the Statement of Claim, and may not award any other relief that was not requested in the Statement of Claim.*

*(7) If the Respondent files an Answer after the Director has notified the parties that the claim will proceed under default procedures but before an award has been rendered, the proceedings under this paragraph shall be terminated and the case will proceed under the regular procedures.*

* * * * *

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, NASD Dispute Resolution included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Dispute Resolution has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

NASD Dispute Resolution proposes to amend Rule 10314 of the Code to provide default procedures for situations in which a suspended, terminated, or otherwise defunct member or associated person (collectively referred to in this rule filing as ''defunct'') fails to answer or participate in an arbitration proceeding, and the claimant nevertheless elects to pursue arbitration. The procedures are designed to make it easier for claimants to obtain an award against a defunct party, which award can then be enforced in court.

The United States General Accounting Office (''GAO'') issued a report in June 2000 expressing concern over the number of unpaid arbitration awards issued in connection with arbitration proceedings in the securities industry arbitration forums, and making several recommendations for improvements.[3] The GAO Report observed that most of the unpaid awards resulted from broker/dealers that were no longer in business.[4] In a letter to the GAO on May 25, 2000, the NASD committed to undertake several initiatives to address the issue of unpaid awards.[5] The NASD Dispute Resolution believes that the proposed rule change will complete its implementation of all initiatives.

The GAO initiatives are listed below with a description as to the actions already taken. The last item is the proposed rule change.

*Require member firms and associated persons to notify NASD Dispute Resolution when they have satisfied an award.*

NASD Dispute Resolution issued Notice to Members 00–55, effective September 18, 2000, which requires members to certify that they have paid or otherwise complied with an award against them or their associated persons within 30 days after service of the award. Beginning September 18, 2000, NASD Dispute Resolution has been sending two new letters when awards are served. One letter is sent only to members and associated persons against whom an award has been rendered. It requires members to inform NASD Dispute Resolution whether they or their associated persons have paid awards against them. Associated persons who have changed members since the complaint was filed are required to notify NASD Dispute Resolution directly.[6] NASD Dispute Resolution begins the suspension process if the 30-day period has passed and there has been no notice that the member or associated person has paid the award.

*Request in the award service letter that claimants notify NASD Dispute Resolution if the award has not been paid within an established number of days of service.*

Notice to Members 00–55 also invites claimants to inform NASD Dispute

[3] The report is entitled, ''Securities Arbitration: Actions Needed to Address Problem of Unpaid Awards,'' Report No. GAO/GGD–00–115 (June 15, 2000) (''GAO Report''). The report is available online at *www.gao.gov.*

[4] *See* the GAO Report at page 8.

[5] The letter is reprinted in the GAO Report at page 66.

[6] The respondent may also provide a justification for non-payment: for example, that the parties have agreed to installment payments; that the award has been modified or vacated by a court; that a motion to vacate or modify the award has been timely filed with a court of competent jurisdiction and such motion has not been denied by that court; that there is a pending bankruptcy petition; or that the award has been discharged in bankruptcy.

Resolution if their awards against members or associated persons have not been paid, so that the non-summary suspension process can begin. The second letter implemented on September 18, 2000 is sent to all parties with service of their award. It restates the requirement to pay awards within 30 days of service, and requests parties who have prevailed against a member or associated person to inform NASD Dispute Resolution if their award has not been paid.

*Propose to the NASD Board and to the Commission a rule amendment that a firm that has been terminated, suspended, or barred from the NASD, or that is otherwise defunct, cannot enforce a predispute arbitration agreement against a customer in the NASD forum.*

The Boards of NASD Dispute Resolution and the NASD approved this proposal at their meetings on December 6 and 7, 2000. The Commission approved the rule change on April 6, 2001.[7] Notice to Members 01–29, announcing the Commission's approval, was published on May 10, 2001, and the rule change was effective for all claims served on or after June 11, 2001.

*Advise claimants in writing of the status of a firm or associated person (e.g., terminated, out of business, bankrupt) so they can evaluate whether to continue with arbitration.*

This procedure was implemented on June 11, 2001, in connection with the previous item.

*Propose to the NASD Board and to the Commission a rule amendment to provide streamlined default proceedings where the terminated or defunct member or associated person does not answer or appear, but the claimant affirmatively elects to pursue arbitration.*

This is the present proposed rule change. It would provide an expedited default procedure for certain cases in which a respondent is an associated person whose registration is terminated, revoked, or suspended; a member whose membership has been terminated, suspended, canceled, or revoked; a member that has been expelled from the NASD; or a member that is otherwise defunct. If a defunct respondent fails to answer the claim in a timely manner, the claimant may elect to proceed under optional default procedures as to that respondent. If there are several claimants, all must agree to use default procedures. The default procedures may be used against one or more defunct respondents while the rest of the initial arbitration proceeds against any remaining respondents.[8]

If the claimant opts to use default procedures, the case will proceed with a single arbitrator without a hearing. Under the default procedures, the arbitrator will make an award based upon the Statement of Claim and any other material submitted by the claimant. The arbitrator may request additional information from the claimant before rendering an award. In keeping with the streamlined nature of the procedures, neither the claimant nor the single arbitrator will have the option to ask that two additional arbitrators be appointed to decide the case (as is sometimes done in other single-arbitrator cases).

The procedures have several provisions to safeguard the integrity of the process and discourage abuses:

- The claimant may not amend the claim to increase the relief requested after the staff has notified the parties that the claim will proceed under default procedures.
- An arbitrator may not make an award based solely on the non-appearance of a party. The party who appears must present a sufficient basis to support the making of an award in that party's favor.
- The arbitrator may not award damages in an amount greater than the damages requested in the Statement of Claim, and may not award any other relief that was not requested in the Statement of Claim.

The proposed rule provides, however, that the default award will have no effect on the non-defaulting parties. The proposed rule would apply to all types of claimants, whether they are customers, associated persons, or member firm claimants, that are bringing a claim against a suspended or terminated member or associated person. In line with the GAO's recommendations, the proposal is designed to make it easier to obtain an award against any defunct member or associated person.

Finally, if a respondent thought to be defunct belatedly files an answer or otherwise begins to participate after the staff has notified the parties that the claim will proceed under default procedures but before an award has been rendered, the default procedures will be suspended, and the case will proceed under the regular procedures.

2 Statutory Basis

NASD Dispute Resolution believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act[9] which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Dispute Resolution believes that the proposed rule change will protect investors and the public interest by making it faster and less expensive for investors and other claimants to obtain awards against defunct members and associated persons, which awards can then be enforced in court and through the NASD suspension process, while containing several provisions to safeguard the integrity of the process and discourage abuses.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

NASD Dispute Resolution does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD Dispute Resolution consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the

[7] Securities Exchange Act Release No. 44158 (April 6, 2001), 66 FR 19267 (April 13, 2001) (File No. SR–NASD–01–08).

[8] If a case is to be bifurcated and handled under two different procedures, regular and default, each proceeding will be assigned a separate case number to avoid confusion. Proposed NASD Rule 10314(e) provides that the default award will have no effect on any non-defaulting party.

[9] 15 U.S.C. 78*o*–3(b)(6).

Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–15 and should be submitted by May 22, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–10716 Filed 4–30–02; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–45813; File No. SR–NASD–2002–55]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Minimum Life of Directed Orders in Nasdaq's SuperMontage System and the Minimum Life of SelectNet Orders

April 24, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 18, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to: (1) establish a minimum life of five seconds for Directed Orders in Nasdaq's future Order Display and Collector Facility (''NNMS'' or ''SuperMontage''), and (2) reduce from ten seconds to five seconds the minimum time period before an order entered into Nasdaq's SelectNet system may be cancelled by the entering party. If approved, Nasdaq will implement both rule changes on July 1, 2002.

Proposed new language is *italicized;* proposed deletions are in [brackets].

* * * * *

**4706. Order Entry Parameters**

(a) No Change.

(b) Directed Orders: A participant may enter a Directed Order into the NNMS to access a specific Attributable Quote/Order displayed in the Nasdaq Quotation Montage, subject to the following conditions and requirements:

(1) through (3) No Change.

*(4) a Directed Order entered into the system may not be cancelled until a minimum of five seconds has elapsed after the time of entry. This five second time period shall be measured by NNMS.*

* * * * *

**4720. SelectNet Service**

(a) Cancellation of a SelectNet Order

No member shall cancel or attempt to cancel an order, whether preferenced to a specific market maker or electronic communications network, or broadcast to all available members, until a minimum time period of [ten] *five* seconds has expired after the order to be canceled was entered. Such [ten] *five* second time period, shall be measured by the Nasdaq processing system processing the SelectNet order.

(b) through (c) No Change.

* * * * *

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

As part of its ongoing analysis of its current and future trading systems, Nasdaq continuously reviews system functionality and rules with a view to constant improvement. As a result of this review, and in consultation with industry professionals, Nasdaq has determined to: (1) establish a five-second minimum life for Directed Orders in SuperMontage, and (2) reduce from ten seconds to five seconds the minimum time period before an order entered into SelectNet may be cancelled by the entering party. Because the SuperMontage Directed Order Process will utilize an enhanced version of the current SelectNet system, Nasdaq is jointly proposing these rule changes because it believes that the rules must become effective simultaneously to ensure uniformity of minimum order life parameters across both systems during the phase-in period.[3]

a. *Creation of Five-Second Minimum Life for Directed Orders in SuperMontage*

Directed Orders are orders at any price that have been specifically dispatched to a particular market participant by the sender through the SuperMontage's Directed Order Process. Recipients of Directed Orders have an option to elect to receive such orders as either liability orders with which they must interact consistent with the Commission's Firm Quote Rule,[4] or as non-liability orders that create no obligation to respond by the recipient under the Commission's Firm Quote Rule, and instead may serve as the basis for negotiating a trade.

The minimum life of a Directed Order is the shortest period of time that a Directed Order must remain active and available for a response before an entering party may cancel it. Currently, there is no minimum life for Directed Orders in SuperMontage. Directed Orders may be cancelled immediately after entry, well before a recipient has

[3] Nasdaq intends to introduce SuperMontage through a phased roll-out process where limited numbers of securities will transition to trading in the new SuperMontage environment under new rules, while the remainder will continue to trade in Nasdaq's current environment. Nasdaq represents that, during this transition, both SuperMontage and SelectNet will continue to operate, and a single uniform minimum order cancellation time parameter will be needed governing both systems.

[4] *See* Rule 11Ac1–1 under the Act, 17 CFR 240.11Ac1–1.

had an opportunity to interact or respond to them.[5]

Currently, in SelectNet an order cancellation can occur even if the order has been accepted and executed by the recipient, if the cancellation message from the entering party reaches the Nasdaq system before the recipient's acceptance and execution. The SuperMontage will also operate in this manner. Thus, if after the five-second minimum life of a Directed Order the entering party submits a cancellation but the order has been accepted and executed by the recipient, the system would recognize whichever message, cancellation or execution, that it receives first. However, Nasdaq anticipates that, in most cases, the proposed five-second minimum life for Directed Orders will provide the recipient with ample time to accept and execute the order before the sender is eligible to submit a cancellation message.[6]

In order to ensure that recipients are given a reasonable opportunity to answer or otherwise process incoming Directed Orders, Nasdaq proposes to establish a five-second minimum life for those orders. Under this proposed rule change, a party entering a Directed Order into SuperMontage cannot cancel that order for at least five seconds. Nasdaq believes that minimum order life parameters reduce the potential for electronic gaming and system burdens that can result when orders are entered and are thereafter immediately cancelled in rapid succession, and therefore do not represent true trading interest. Conversely, Nasdaq believes that having too long a time period in which such orders must remain in force before cancellation exposes order-entry parties to the potential for inferior executions during rapid price movements. Balancing these considerations, Nasdaq proposes to adopt the five-second minimum life standard for Directed Orders. Nasdaq believes that a five-second minimum life for Directed Orders should create a proper balance between the needs of market participants to respond to the rapid, more automated nature of trading in a SuperMontage environment and the prevention of inappropriate order-entry and cancellation activity. In connection with the introduction of a five-second Directed Order minimum life parameter, Nasdaq proposes to reduce the minimum life of SelectNet orders, as set forth below.

b. *Reduction of SelectNet Minimum Time Period Before Order Cancellation*

Currently, market participants entering SelectNet orders must wait a minimum of ten seconds after entry before they may cancel them. Like the minimum life standards proposed above for SuperMontage Directed Orders, this ten-second time period was designed to give the recipients of SelectNet messages time to process and respond to those messages.

Nasdaq represents that SuperMontage's Directed Order Process will rely on a substantially improved version of Nasdaq's current SelectNet system architecture and processing functionality, including the parameter dictating the minimum life of orders. The parameter dictating the minimum life of orders is a single integrated functional and timing standard that will be shared simultaneously by both the SelectNet and SuperMontage systems. Therefore, in order for Nasdaq to implement the five-second order cancellation parameter for SuperMontage Directed Orders, it will be necessary, prior to the launch of SuperMontage, to adopt a single uniform minimum time period before orders (both SelectNet orders and SuperMontage Directed Orders) may be cancelled by entering market participants. Nasdaq therefore proposes to reduce the SelectNet pre-cancellation waiting period from ten seconds to five seconds, and use that same five-second cross-system standard going forward for Directed Orders when SuperMontage becomes operational. Nasdaq notes that the average SelectNet message response time of the overwhelming majority of order-delivery market participants is currently less than two seconds. As such, Nasdaq believes that a five-second SelectNet minimum order time period is more than sufficient to allow time for a response to incoming messages both during the transition period from SelectNet to SuperMontage, and thereafter for the Directed Order Process.

Nasdaq proposes to implement the reduction of the SelectNet order pre-cancellation minimum on July 1, 2002. As stated above, Nasdaq proposes to make the five-second pre-cancellation minimum for SuperMontage Directed Orders effective on that same date and proposes to implement the rule change upon launch of the SuperMontage system.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with Section 15A(b)(6)[7] of the Act, in that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with person engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange neither solicited nor received written comments with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW.,

[5] Nasdaq notes that the SuperMontage Directed Order Process operates differently than the process for Non-Directed Orders. If a Non-Directed Order is ''in delivery'' (delivered to a recipient), SuperMontage prevents the entering party from canceling that order. Directed Orders in SuperMontage are not subject to that processing restriction and can, under current SuperMontage rules, be cancelled immediately after entry, even if they have been already delivered to a market participant.

[6] Telephone conversation between Thomas P. Moran, Associate General Counsel, Nasdaq, and Sapna C. Patel, Attorney, Division of Market Regulation, Commission, on April 23, 2002.

[7] 15 U.S.C. 78*o*–3(b)(6).

Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–55 and should be submitted by May 22, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–10717 Filed 4–30–02; 8:45 am]

BILLING CODE 8010–01–P

## DEPARTMENT OF STATE

**[Public Notice 3999]**

### Developing Department of State Information Quality Guidelines Pursuant to OMB Information Quality Guidelines Under Section 515 of the Treasury and General Government Appropriations Act for FY 2001 (Public Law 106–554; HR 5658)

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** The Department of State (DOS) is now soliciting comments through its website on proposed Information Quality Guidelines Pursuant to OMB Information Quality Guidelines under Section 515 of the Treasury and General Government Appropriations Act for FY 2001 (Public Law 106–554; HR 5658). From May 1 through May 31, 2002, the public is invited to comment on these draft guidelines, which may be found at *http://www.state.gov/r/pa/ei/rls/infoguide/*. All comments will be considered as DOS develops Information Quality Guidelines pursuant to Office of Management and Budget Final Guidelines issued on February 22, 2002 (67 FR 8451–8460). Comments submitted in response to this notice may be disclosed in whole or part to OMB in conjunction with the DOS submission of revised guidelines for OMB review. The submitted comments become a matter of public record. Notice of the availability of DOS guidelines, as revised, will be published in the **Federal Register** and the revised guidelines will be available on the DOS web site no later than October 1, 2002.

**Authority:** Section 515 of the Treasury and General Government Appropriations Act for FY 2001 (Public Law 106–554; HR 5658) and the Office of Management and Budget Final Guidelines issued on January 3, 2002 (67 FR 369–378), as corrected and reprinted on February 22, 2002 (67 FR 8451–8460).

**DATES:** The public is invited to submit comments relative to the proposed guidelines from May 1 through May 31, 2002.

**ADDRESSES:** Comments may be submitted by electronic mail to *dnewman@pd.state.gov.*

**FOR FURTHER INFORMATION CONTACT:** David S. Newman, Attorney-Adviser, Office of the Legal Adviser, Department of State (telephone: 202/619–6982; e-mail: dnewman@pd.state.gov). The address is Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: April 26, 2002.

**William A. Eaton,**

*Assistant Secretary for Administration Department of State.*

[FR Doc. 02–10882 Filed 4–30–02; 8:45 am]

BILLING CODE 4710–08–P

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Determinations Under the African Growth and Opportunity Act

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice.

**SUMMARY:** The United States Trade Representative (USTR) has determined that Senegal has adopted an effective visa system and related procedures to prevent unlawful transshipment and the use of counterfeit documents in connection with shipments of textile and apparel articles and has implemented and follows, or is making substantial progress towards implementing and following, the customs procedures required by the African Growth and Opportunity Act (AGOA). Therefore, imports of eligible products from Senegal qualify for the textile and apparel benefits provided under the AGOA. In addition, this notice modifies the Harmonized Tariff Schedule of the United States (HTS) to add Swaziland to the list of ''lesser developed beneficiary sub-Saharan African countries.''

**DATES:** Effective April 23, 2002.

**FOR FURTHER INFORMATION CONTACT:** Chris Moore, Director for African Affairs, Office of the United States Trade Representative, (202) 395–9514.

**SUPPLEMENTARY INFORMATION:** The AGOA (Title I of the Trade and Development Act of 2000, Pub. L. No. 106–200) provides preferential tariff treatment for imports of certain textile and apparel products of ''beneficiary sub-Saharan African countries,'' provided that these countries (1) have adopted an effective visa system and related procedures to prevent unlawful transshipment and the use of counterfeit documents, and (2) have implemented and follow, or are making substantial progress toward implementing and following, certain customs procedures that assist the Customs Service in verifying the origin of the products.

In Proclamation 7350 (Oct. 2, 2000), the President designated Senegal as a ''beneficiary sub-Saharn African country.'' Proclamation 7350 delegated to the United States Trade Representative the authority to determine whether designated countries have met the two requirements described above. The President directed the USTR to announce any such determinations in the **Federal Register** and to implement them through modifications of the HTS. Based on actions that Senegal has taken, I have determined that Senegal has satisfied these two requirements.

In Proclamation 7400 (Jan. 17, 2001), the President proclaimed Swaziland a lesser developed beneficiary sub-Saharan African country for purposes of section 112(b)(3)(B) of the AGOA. Due to a technical error, Swaziland was not added to U.S. note 2(d) to subchapter XIX of chapter 98 of the HTS. USTR determined that Swaziland qualified for the textile and apparel benefits of the AGOA effective July 26, 2001. *See* 66 FR 41648.

According, pursuant to the authority vested in the USTR by Proclamation 7350, U.S. note 7(a) to subchapter II of chapter 98 of the HTS and U.S. note 1 to subchapter XIX of chapter 98 of the HSTS are each modified by inserting ''Senegal'' in alphabetical sequence in the list of countries. The foregoing modifications to the HTS are effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the effective date of this notice. Importers claiming preferential tariff treatment under the AGOA for entries of textile and apparel articles should ensure that those entries

[8] 17 CFR 200.30–3(a)(12).

meet the applicable visa requirements. *See Visa Requirements Under the African Growth and Opportunity Act*, 66 FR 7837 (2001).

Further, U.S. note 2(d) to subchapter XIX of chapter 98 of the HTS is modified by inserting ''Swaziland'' in alphabetical sequence in the list of countries. This modification to the HTS is effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after July 26, 2001, the effective date of the notice granting Swaziland textile and apparel benefits under the AGAO.

**Robert B. Zoellick,**

*United States Trade Representative.*

[FR Doc. 02–10664 Filed 4–30–02; 8:45 am]

**BILLING CODE 3190–01–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

**[FHWA Docket No. FHWA–2000–7392]**

### Transportation Equity Act for the 21st Century: Implementation Guidance for the National Corridor Planning and Development Program and the Coordinated Border Infrastructure Program

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice; closing of public docket.

**SUMMARY:** The FHWA will not be soliciting full applications for fiscal year (FY) 2002 National Corridor Planning and Development Program and the Coordinated Border Infrastructure (NCPD/CBI) Program funds. Additionally, the FHWA does not plan to solicit applications for FY 2003 NCPD/CBI Program funds until Congress completes action on the FY 2003 U.S. DOT Appropriations Act. Finally, the FHWA does not plan to solicit statements of intent to apply for FY 2003 NCPD/CBI Program before or after action on the FY 2003 U.S. DOT Appropriations Act.

**FOR FURTHER INFORMATION CONTACT:** For program issues: Mr. Martin Weiss, Office of Intermodal and Statewide Programs, HEPS–10, (202) 366–5010; or for legal issues: Mr. Robert Black, Office of the Chief Counsel, HCC–30, (202) 366–1359; Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

**Background**

The NCPD and the CBI programs are discretionary grant programs funded by a single funding source. These programs provide funding for planning, project development, construction and operation of projects that serve border regions near Mexico and Canada and high priority corridors throughout the United States. Under the NCPD program, States and metropolitan planning organizations (MPOs) are eligible for discretionary grants for: Corridor feasibility; corridor planning; multistate coordination; environmental review; and construction. Under the CBI program, border States and MPOs are eligible for discretionary grants for: transportation and safety infrastructure improvements, operation and regulatory improvements, and coordination and safety inspection improvements in a border region.

Sections 1118 and 1119 of the Transportation Equity Act for the 21st Century (TEA–21), (Public Law 105–178, 112 Stat. 107, at 161, June 9, 1998), established the NCPD and CBI programs, respectively. These programs respond to substantial interest dating from 1991. In that year, the Intermodal Surface Transportation Efficiency Act (ISTEA), (Public Law 102–240, 105 Stat. 1914, December 18, 1991), designated a number of high priority corridors. Subsequent legislation modified the corridor descriptions and designated additional corridors. Citizen and civic groups promoted many of these corridors as a means to accommodate international trade. Similarly, since 1991 a number of studies identified infrastructure and operational deficiencies near the U.S. borders with Mexico and Canada. Also various groups, some international and/or intergovernmental, studied opportunities to improve infrastructure and operations.

Funds for the NCPD and CBI are provided by a single funding source. The combined authorized funding for these two programs is $140 million in each year from FY 1999 to FY 2003 (a total of $700 million). Program funds are limited by the requirements of section 1102 (obligation ceiling) of the TEA–21.

In FY 1999, the FHWA received about 150 applications under the NCPB/CBI programs. Of those applications, the FHWA awarded fifty five. In FY 2000, the FHWA received about 150 applications. Of these applications, the FHWA awarded sixty five; however, approximately 50 percent of the program funds were awarded to projects designated by congressional appropriation committees in the reports accompanying the U.S. DOT Appropriations Act for FY 2000. In FY 2001, the FHWA received about 150 applications. Of these applications, the FHWA awarded fifty four, however about 65 percent of the funds were awarded to projects designated by congressional appropriation committees in the reports accompanying the U.S. DOT Appropriations Act for FY 2001. Of the awards in FY 1999, FY 2000 and FY 2001 most were for less than the requested funding.

On May 7, 2001, the FHWA placed a notice in the **Federal Register** at 66 FR 23073 that solicited statements of intent to apply, as opposed to full solicitations. This was done partly because the FHWA did not know how much funding would be available and by soliciting intent to apply rather than applications, it would reduce cost to grant seekers, grant reviewers and/or grant coordinators. This **Federal Register** notice also continued a docket (FHWA–2000–7392) for comments concerning the notice or the program in general. No comments were placed in that docket in the period ending April 15, 2000.

By August 2001, States and MPOs submitted about 200 statements of intent to apply for about $3 billion.

The President signed the FY 2002 U.S. DOT Appropriations Act in December 2001. Congress increased funding for the program by more than 200 percent by setting aside additional funds for the program under provisions of section 110 of title 23 U.S.Code, otherwise known as the Revenue Aligned Budget Authority (RABA). However, consistent with the trend of past years, all the FY 2002 funds will be awarded to projects designated by the congressional appropriations committee in the report accompanying the U.S. DOT Appropriations Act for FY 2002. (See H.R. Conf. Rep. No. 107–308 at 82; November 30, 2001). Notwithstanding the designation noted above, the FHWA maintains a public listing of the ''statements of intent'' on the internet at the URL: *http://www.fhwa.dot.gov/hep10/corbor/2002/intenttoapply2002.html.*

Therefore, the FHWA will not be soliciting full applications for FY 2002 NCPD/CBI program funds. Additionally, the FHWA does not plan to solicit applications for FY 2003 NCPD/CBI program funds until the Congress completes action on the FY 2003 U.S. DOT Appropriations Act. Finally, the FHWA does not plan to solicit statements of intent to apply for FY 2003 NCPD/CBI program funds either before or after congressional action on the FY 2003 U.S. DOT Appropriations Act.

States that wish to substantially modify their Statements of intent for their own reasons may, of course, do so, and similarly those who wish to send the modification to the FHWA Divisions in their State may do so.

Finally, because no comments were submitted to the docket and because of the designations noted above, the FHWA is closing the docket on this program.

Information concerning the NCPD/CBI program, including grant applications, grant selections, solicitations, maps, statutory language, etc. are available on the internet at the following URL: *http://www.fhwa.dot.gov/hep10/corbor/index.html.*

**Authority:** 23 U.S.C. 315; Public Law 105–178, 112 Stat. 107, 161 to 164, as amended; 49 CFR 1.48.

Issued on:April 22, 2002.

**Mary E. Peters,**

*Administrator, Federal Highway Administration.*

[FR Doc. 02–10765 Filed 4–30–02; 8:45 am]

**BILLING CODE 4910–22–P**

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2002–11880]**

### Notice of Receipt of Petition for Decision that Nonconforming 1978 General Motors Blazer Multipurpose Passenger Vehicles Are Eligible for Importation

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice of receipt of petition for decision that nonconforming 1978 General Motors Blazer multipurpose passenger vehicles are eligible for importation.

**SUMMARY:** This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1978 General Motors Blazer multipurpose passenger vehicles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

**DATES:** The closing date for comments on the petition is May 31, 2002.

**ADDRESSES:** Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.].

**FOR FURTHER INFORMATION CONTACT:** George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

**SUPPLEMENTARY INFORMATION:**

### Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas (''WETL'') (Registered Importer 90–005) has petitioned NHTSA to decide whether 1978 General Motors Blazer multipurpose passenger vehicles, originally manufactured for sale in European and other foreign markets, are eligible for importation into the United States. The vehicles which WETL believes are substantially similar are 1978 General Motors Blazer multipurpose passenger vehicles that were manufactured for sale in the United States and certified by their manufacturer, General Motors Corporation, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1978 General Motors Blazer multipurpose passenger vehicles to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

WETL submitted information with its petition intended to demonstrate that non-U.S. certified 1978 General Motors Blazer multipurpose passenger vehicles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1978 General Motors Blazer multipurpose passenger vehicles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 101 *Controls and Displays,* 102 *Transmission Shift Lever Sequence * * *,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 106 *Brake Hoses,* 108 *Lamps, Reflective Devices and Associated Equipment,* 113 *Hood Latch Systems,* 116 *Motor Vehicle Brake Fluids,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* 124 *Accelerator Control Systems,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 219 *Windshield Zone Intrusion,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that non-U.S. certified 1978 General Motors Blazer multipurpose passenger vehicles comply with the Vehicle Identification Number plate requirement of 49 CFR part 565.

Petitioner further contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 111 *Rearview Mirror:* Replacement of the passenger side rearview mirror, which is flat and has 1:1 magnification.

Standard No. 120 *Tire Selection and Rims for Motor Vehicles other than Passenger Cars:* Installation of a tire information placard.

Standard No. 208 *Occupant Crash Protection:* Installation of an audible safety belt warning system. The petitioner states that the vehicle is equipped with Type II seat belts in both front outboard seating positions and Type I seat belts in the rear outboard and center seating positions and that driver and front outboard passenger seating positions are not required to have air bags.

The petitioner also states that a certification label must be affixed to the driver's side door jamb to meet the requirements of 49 CFR part 567.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

**Authority:** 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 25, 2002.

**Marilynne Jacobs,**

*Director, Office of Vehicle Safety Compliance.*

[FR Doc. 02–10761 Filed 4–30–02; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

**[Docket No. NHTSA–2002–11846]**

## Notice of Receipt of Petition for Decision That Nonconforming 2001–2002 Mercedes Benz SL (Body 230) Passenger Cars Are Eligible for Importation

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice of receipt of petition for decision that nonconforming 2001–2002 Mercedes Benz SL (Body 230) passenger cars are eligible for importation.

**SUMMARY:** This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2001–2002 Mercedes Benz SL (Body 230) passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) They are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

**DATE:** The closing date for comments on the petition is May 31, 2002.

**ADDRESS:** Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm].

**FOR FURTHER INFORMATION CONTACT:** George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

**SUPPLEMENTARY INFORMATION:**

### Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Technologies, L.L.C. of Baltimore, Maryland (''J.K.'') (Registered Importer 90–006) has petitioned NHTSA to decide whether 2001–2002 Mercedes Benz SL (Body 230) passenger cars are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are 2001–2002 Mercedes Benz SL (Body 230) passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2001–2002 Mercedes Benz SL (Body 230) passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 2001–2002 Mercedes Benz SL (Body 230) passenger cars, as originally manufactured for sale in Europe, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2001–2002 Mercedes Benz SL (Body 230) passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence. * * *,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 118 *Power Window Systems,* 124 *Accelerator Control Systems,* 135 *Passenger Car Brake Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.*

In addition, the petitioner claims that the vehicles comply with the Bumper Standard found in 49 CFR Part 581.

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* replacement of the instrument cluster and cruise control lever with U.S.-model components.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamps and front sidemarker lamps, and (b) installation of U.S.-model taillamp assemblies that incorporate rear sidemarker lamps.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* reprogramming to activate the theft prevention warning system.

Standard No. 208 *Occupant Crash Protection:* (a) reprogramming to activate the seat belt warning buzzer; (b) inspection of all vehicles and replacement of the driver's and passenger's side air bags, knee bolsters, control units, sensors, and seat belts with U.S.-model components on vehicles that are not already so equipped. Petitioner states that the front outboard designated seating positions have combination lap and shoulder belts that are self-tensioning and that release by means of a single red pushbutton. Petitioner further states that the vehicles are equipped with a seat belt warning lamp that is identical to the lamp installed on U.S.-certified models.

Standard No. 214 *Side Impact Protection:* Inspect vehicles and replace any non-complying part with U.S. model parts. The petitioner states that the vehicles are equipped with side impact air bags identical to those found on U.S.-certified models.

The petitioner also states that a vehicle identification plate must be affixed to the vehicles near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to meet the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

**Authority:** 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 25, 2002.

**Marilynne Jacobs,**

*Director, Office of Vehicle Safety Compliance.*

[FR Doc. 02–10762 Filed 4–30–02; 8:45 am]

**BILLING CODE 4910–59–P**

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2000–7818; Notice 2]**

### Evenflo Company, Inc., Grant of Application for Decision of Inconsequential Noncompliance

Evenflo Company, Inc., of Vandalia, Ohio, has determined that 999,515 child restraint systems that it manufactured fail to comply with S5.4.1(a) of Federal Motor Vehicle Safety Standard (FMVSS) No. 213, ''Child Restraint Systems,'' which incorporates S5.1(d) of FMVSS No. 209, ''Seat Belt Assemblies,'' and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance reports.'' Evenflo has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301 —''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published on August 29, 2000, in the **Federal Register** (65 FR 52471), with a 30-day comment period. NHTSA received no comments.

FMVSS No. 213, S5.4.1(a) ''Performance Requirements,'' requires that:

> The webbing of belts provided with a child restraint system and used to attach the system to the vehicle or to restrain the child within the system shall, after being subjected to abrasion as specified in S5.1(d) or S5.3(c) of FMVSS No. 209, have a breaking strength of not less than 75 percent of the strength of the unabraded webbing when tested in accordance with S5.1(b) of FMVSS No. 209.

Evenflo has determined that certain child restraints it manufactured may have tether straps which fail the webbing strength requirements of FMVSS No. 213, S5.4.1(a). The child restraints containing the noncompliance are Ultara (model numbers 234, 235, 236, 237, 238, and 239), Secure Comfort (model number 247), Champion (model number 249), Medallion (model numbers 251, 254 and 259), Horizon (model numbers 420, 421, 425, and 426), Conquest (model numbers 428, and 429) and Tether Kits (model number 628). These child restraints and tether kits were manufactured between January 1, 1998 and May 30, 2000. A total of 959,514 convertible child seats and 40,001 tether kits are in noncompliance with this requirement.

Evenflo supports its application for inconsequential noncompliance with the following:

> ''In March 2000, Evenflo received a PE [Preliminary Evaluation] from NHTSA relating to a potential noncompliance of tether webbing after being subject to abrasion as specified in S5.1(d) of FMVSS No. 209 (referenced in S5.4.1(a) of FMVSS No. 213). According to NHTSA, based upon testing conducted by NHTSA at SGS U.S. Testing, the Elizabeth Mills black tether webbing (vendor style #7635) retained only 67.1 percent of its unabraded strength. Section S5.4.1(a) of FMVSS No. 213 requires webbing used to attach a child restraint to a vehicle to have a breaking strength after abrasion of not less than 75 percent of the unabraded webbing strength.
>
> In April 2000, Evenflo reviewed testing results from ongoing testing at Elizabeth Webbing Mills that showed all 82 test results acceptable on tests conducted from January 28, 1998 to March 13, 2000. The control chart showed the process to be in statistical control.
>
> Evenflo visited SGS U.S. Testing in Fairfield, New Jersey to review the testing process and obtain samples of the potential nonconforming tether webbing material tested. SGS U.S. Testing did not keep the test samples and had not finished its test report.
>
> Evenflo then tried to obtain samples from our finished good warehouse close to the date code tested by SGS U.S. testing. Exact matches of the date code could not be found. Samples of a close date code were then tested at the following independent test labs: Indiana Mills (IMMI), Magill, ACW, and Elizabeth Webbing Mills. The test results yielded a variety of results from 56 to 88 percent of unabraded strength. A follow up of the test results revealed differences in test set-ups and test equipment.
>
> Concurrently, Evenflo conducted sled testing of abraded and unabraded tethers at Veridian to determine if [there] was a safety concern with the tethers in use in the field. All test results shared the same basic performance for abraded and unabraded tethers. The testing demonstrated at least a 90 percent margin on tensile strength after abrasion (mean tensile strength after abrasion is 3,101 pounds and the maximum tensile load in sled testing was 1,616 pounds). According to Evenflo, the sled test results clearly demonstrate that there were no potential safety issues associated with abraded or unabraded tethers on the child restraint systems, and that there is more than an adequate margin of safety to protect against failures during reasonably expected usage.

Elizabeth Webbing Mills discovered an error in the manufacture of its test equipment. An angle specified for 85 degrees on the equipment was actually built to 90 degrees. Testing with the correct angle revealed a significant effect on the webbing Evenflo used but not on the webbing used by Evenflo's competitors.

To verify and understand this effect, Evenflo performed a multi-factor factorial design of experiment. The design of experiment confirmed the effect of Evenflo's webbing material relative to other tether material and the percent unabraded test, but also identified a test set-up within FMVSS No. 213 and FMVSS No. 209 that would yield potentially passing results. A question of what was the proper test weight, 1.5 or 2.33 Kg. to use in the testing process was identified.

Evenflo then requested an official interpretation from NHTSA as to the correct test weight to be used. A verification test was conducted to confirm the test set-up identified by the multi-factor factorial design of experiment. On June 19, 2000, the testing did not reveal an acceptable pass rate and as a result Evenflo has stopped manufacture and shipment of child restraint systems using this Elizabeth Webbing Mills style of webbing and is filing this section 573, non-compliance information report.''

Under 49 U.S.C. 30118(d) and 30120(h), NHTSA may exempt manufacturers from the Act's notification and remedy requirements when it determines that a noncompliance is inconsequential to motor vehicle safety. Evenflo states that it believes that the noncompliance here should be found to be inconsequential because the products meet the intent of the FMVSS No. 209 and FMVSS No. 213 performance requirements. Evenflo also stated that its testing has established that even in the severely abraded condition, child restraints with this tether webbing, which was manufactured by Elizabeth Webbing Mills (EWM), pass dynamic sled testing with over a 90 percent strength safety margin. Finally, Evenflo asserts that the EWM webbing tethers are stronger before abrasion than the tethers of other major U.S. child restraint manufacturers. Only when the EWM webbing tethers are severely abraded is their strength reduced to that of the competitors' tethers. This accounts for the EWM webbing tethers' noncompliance with the 75 percent strength retention requirement, but, according to Evenflo, it has no effect on the safety of the EWM webbing tethers in real world use.

The agency has reviewed Evenflo's application, analyzed Office of Vehicle Safety Compliance's (OVSC) data, and other data pertaining to breaking strength and abrasion of webbing used in child restraint systems and adult seat belt assemblies. The agency also evaluated child restraint data obtained in the 2001 New Car Assessment Program (NCAP), and Transport Canada's dynamic and static load distributions data on tether anchorages and hooks.[1] Results of this analysis show that the Evenflo dynamic tests at Veridian produced tether loading consistent with measured tether loads in agency testing. Based on its analysis, the agency has determined that the webbing used in Evenflo's child restraints achieved the performance previously specified in FMVSS No. 209 and FMVSS No. 213 during 1971–1979 for webbing in the unabraded condition and after abrasion conditioning.

Furthermore, the agency notes that from 1971 to 1979, FMVSS No. 213 was ''Child Seating Systems,'' and Type 3 seat belt assembly minimum breaking strength requirements were used to determine compliance for resistance to abrasion. During that period, the minimum breaking strength for a Type 3 belt for webbing connecting pelvic and upper torso restraints to attachment hardware when the assembly had a single webbing connection was 17,793 N. The minimum value after abrasion was 75% of this value, or 13,345 N. Evenflo's EWM unabraded tether webbing strength of 20,426 N, and the EWM abraded strength of 13,706 N, both surpass the previous requirements for Type 3 webbing.

For these reasons, the agency has decided that Evenflo has met its burden of persuasion that the noncompliance at issue is inconsequential to safety and its application is granted. Accordingly, Evenflo is hereby exempted from the notification and remedy provisions of 49 U.S.C. sections 30118 and 30120.

NHTSA believes that the absence of minimum breaking strength requirements for unabraded webbing in child restraint systems in the current version of FMVSS No. 213 is inappropriate. We plan to initiate rulemaking to amend FMVSS No. 213 to require a minimum breaking strength for webbing used in child restraint systems. The breaking strength requirements are needed to ensure that all child restraints being introduced into the market have adequate webbing strength to provide child safety protection over their lifetime.

**Authority:** 49 U.S.C. 30118(d) and 30120(h); delegations of authority at 49 CFR 1.50 and 501.8.

[1] Docket No. NHTSA–1999–6160–19.

Issued on April 25, 2002.

**Stephen R. Kratzke,**

*Associate Administrator for Safety Performance Standards.*

[FR Doc. 02–10647 Filed 4–30–02; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

## Surface Transportation Board

**[STB Finance Docket No. 34194]**

## The Burlington Northern and Santa Fe Railway Company-Trackage Rights Exemption—Union Pacific Railroad Company

Union Pacific Railroad Company (UP) has agreed to grant temporary overhead trackage rights to The Burlington Northern and Santa Fe Railway Company (BNSF) from UP's milepost 2.3 in Omaha, NE, to milepost 76.0 in Sioux City, IA, for a distance of 73.7 miles.[1]

The transaction was scheduled to be consummated on April 15, 2002. The temporary trackage rights will allow BNSF to bridge its train service over the UP line while BNSF's main line is out of service due to maintenance.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34194, must be filed with the Surface Transportation Board, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Michael E. Roper, Senior General Attorney, The Burlington Northern and Santa Fe Railway Company, P.O. Box 961039, Fort Worth, TX 76161–0039.

[1] On April 10, 2002, BNSF filed a petition for exemption in STB Finance Docket No. 34194 (Sub-No. 1), *The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company,* wherein BNSF requests that the Board permit the proposed temporary overhead trackage rights arrangement described in the present proceeding to expire on April 30, 2002. That petition will be addressed by the Board in a separate decision.

Board decisions and notices are available on our website at *www.stb.dot.gov.*

Decided: April 25, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 02–10753 Filed 4–30–02; 8:45 am]

**BILLING CODE 4915–00–P**

## DEPARTMENT OF THE TREASURY

### Customs Service

### First Phase of Automated Commercial Environment (ACE): Announcement of a National Customs Automation Program Test for the ACE Account Portal

**AGENCY:** Customs Service, Treasury.

**ACTION:** General notice.

**SUMMARY:** This document announces Customs plan to conduct a National Customs Automation Program test of the first phase of the Automated Commercial Environment. This test will allow importers and authorized parties to access their Customs data via a web-based Account Portal. This test is the first step toward the full electronic processing of commercial importations in the Automated Commercial Environment with a focus on defining and establishing the importer's account structure. Customs plans to initially accept approximately forty importer accounts for participation in this test, and may expand the universe of participants during the test. This notice provides a description of the test, outlines the development and evaluation methodology to be used, sets forth the eligibility requirements for participation, invites public comment on any aspect of the planned test, and opens the application period for participation.

**EFFECTIVE DATES:** The test will commence no earlier than October 28, 2002. The test will run for approximately two years and may be extended or modified. Comments concerning this notice and all aspects of the announced test may be submitted at any time. Applications may also be submitted at any time; however, in order to be eligible as one of the initial participants, applications must be received by June 1, 2002.

**ADDRESSES:** Written comments regarding this notice may be submitted to Ms. Hedwig Lock at U.S. Customs Service, 2850 Eisenhower Ave.—First Floor, Alexandria, Virginia 22314; e:mail address: *eisenhower@customs.treas.gov;* FAX number: (703) 329–5235. Applications to participate will only be accepted via e:mail sent to *eisenhower@customs.treas.gov.*

**FOR FURTHER INFORMATION CONTACT:** Ms. Hedwig Lock, U.S. Customs Service, Office of Field Operations, Trade Programs, Commercial Compliance, Account Management; Tel. (703) 317–3657; e:mail address: *eisenhower@customs.treas.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Background

The Customs Modernization Program has been created to improve efficiency, increase effectiveness, and reduce costs for Customs and all of its communities of interest. The ability to meet these objectives depends heavily on successfully modernizing Customs business functions and the information technology that supports those functions.

The initial thrust of the Customs Modernization Program focuses on Trade Compliance and the development of the Automated Commercial Environment (ACE) through the National Customs Automation Program (NCAP). ACE is not only a replacement system for the Automated Commercial System (ACS); it is an effort to streamline business processes to facilitate the growth in trade and foster participation in global commerce, while ensuring compliance with U.S. laws and regulations.

The ACE development strategy consists of partitioning ACE into four major increments. Each increment, while individually achieving critical business needs, also lays the foundation for subsequent increments. This test will be part of the first phase of ACE.

This test is the first step towards changing the way that the world interacts with U.S. Customs. This test will allow account holders to view integrated data for their account information from multiple system sources. It will enable Customs and account holders to interact via newly created account portals. This test accommodates both Customs and the trade. The Account Portal has the ability to access, manage and disseminate information in an efficient and secure manner. As an example, when a trade participant enters ACE, the Account Portal will present data specific to that participant's account transactions.

Participants in this test will eventually have the opportunity to use the account management functions such as account access to their profile and transactional data via the web portal. Eventually the account owner will also have the option to delegate portal access. In the initial phase of the test program participants will only have access to static data and basic account profile information necessary to establish an account. In the later stages of the test participants will have access to more extensive operational transaction data through the web portal.

This test will be delivered in a phased approach, with primary deployment scheduled for no earlier than October 28, 2002. The timeline for ACE is subject to change based on funding and technical requirements. Future phases of the Automated Commercial Environment (ACE) will be developed and deployed throughout the ACE development period, for use by the trade and Customs personnel selected to test the Account Portal.

Customs plans to select approximately forty importer accounts from the list of qualified applicants for the initial deployment of this test. A primary benefit for the initial participants will be an early opportunity to provide direct input into the initial design of the Account Portal. Additional participants may be selected throughout the duration of this test.

*Eligibility Criteria*

To be eligible for participation in this test, an importer must:

1. Participate in the Customs Trade Partnership Against Terrorism (C–TPAT). C–TPAT is a joint government-business initiative to build cooperative relationships that strengthen overall supply chain and border security. For further information, please refer to the Customs website at *http://www.customs.gov/enforcem;* and

2. Have the ability to connect to the Internet.

Customs expects to select a broad range of importers representing various industries. Applications will be considered from all volunteers; however, priority consideration for selection of the initial participants will be given to:

1. Importers that use carriers that participate in the Customs Industry Partnership Programs (IPP). IPP consists of several partnership programs that aim to engage the trade community in a cooperative relationship with Customs in the war on drugs and terrorism, such as the Carrier Initiative Program and the Business Anti-Smuggling Coalition. For further information on Industry Partnership Programs, please refer to the Customs website at *http://www.customs.gov/enforcem;* and

2. Importers who have participated in the Account Management Program for at least one year and who are managed by a full-time Account Manager.

*Application Process*

Each application for participation in this test must include the following information:

1. Importer name,
2. Unique importer number (e.g., SSN, EIN, Customs Assigned Importer #, DUNS #),
3. Statement certifying participation in C–TPAT, and
4. Statement certifying the capability to connect to the Internet.

In order to be eligible as one of the initial participants, completed applications must be received by June 1, 2002. Applicants will be notified by Customs of the status of their application, whether it is held pending further expansion or accepted for initial participation. An applicant who does not meet the eligibility criteria or who provides an incomplete application will be notified and given the opportunity to resubmit their application.

Upon selection into the test, Customs may request additional information for the account profile. Participants incur a continuing obligation to provide Customs with any updates or changes to the information they submit. All data submitted and entered into the Account Portal is subject to the Trade Secrets Act (18 U.S.C. 1905) and is considered confidential and subject to the appropriate levels of governmental control and protection. While the test is scheduled to begin October 28, 2002, participation in this test may be delayed due to funding and technological constraints. Future phases of ACE may also be tested; however, the eligibility criteria may differ from the criteria listed in this notice. Acceptance into this test does not guarantee eligibility for, or acceptance into future technical tests.

Each participant will designate one person as the account owner for the company's portal account information. The account owner will be responsible for safeguarding the company's portal account information, controlling all disclosures of that information to authorized persons, authorizing user access to the Account Portal and ensuring that access to the company's portal account information by authorized persons is strictly controlled.

*Authorization for the Test*

Pursuant to Customs Modernization provisions in the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2170 (December 8, 1993), Customs amended its regulations (19 CFR chapter I), in part, to enable the Commissioner of Customs to conduct limited test programs or procedures designed to evaluate planned components of the National Customs Automation Program. Section 101.9(b) of the Customs Regulations (19 CFR 101.9(b)) provides for the testing of NCAP programs or procedures. See T.D. 95–21. This test is established pursuant to that regulatory provision.

*Misconduct Under the Test*

If a test participant fails to follow the terms and conditions of this notice, fails to exercise reasonable care in the execution of participant obligations, fails to abide by applicable laws and regulations, misuses the Account Portal, engages in any unauthorized disclosure or access to the Account Portal, or engages in any activity which interferes with the successful evaluation of the new technology, the participant may be subject to civil and criminal penalties, administrative sanctions, and/or suspension from this test. Any decision proposing suspension of a participant may be appealed in writing to Ms. Hedwig Lock within 15 days of the decision date. Such proposed suspension will apprise the participant of the facts or conduct warranting suspension. Should the participant appeal the notice of proposed suspension, the participant should address the facts or conduct charges contained in the notice and state how compliance will be achieved. However, in the case of willfulness or where public health interests or safety are concerned, the suspension may be effective immediately.

*Test Evaluation Criteria*

To ensure adequate feedback, participants are required to participate in an evaluation of this test. Customs also invites all interested parties to comment on the design, conduct and implementation of the test at any time. The final results will be published in the **Federal Register** and the Customs Bulletin as required by § 101.9(b) of the Customs Regulations.

The following evaluation methods and criteria have been suggested:

1. Baseline measurements to be established through data analysis.
2. Questionnaires from both trade participants and Customs addressing such issues as:

- Workload impact (workload shifts/volume, cycle times, etc.);
- Cost savings (staff, interest, reduction in mailing costs, etc.);
- Policy and procedure accommodation;
- Trade compliance impact;
- Problem resolution;
- System efficiency;
- Operational efficiency;
- Other issues identified by the participant group.

Dated: April 26, 2002.

**Bonni G. Tischler,**

*Assistant Commissioner, Office of Field Operations.*

[FR Doc. 02–10777 Filed 4–30–02; 8:45 am]

BILLING CODE 4820–02–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Draft Information Quality Guidelines

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The IRS is publishing this notice of availability of its draft Information Quality Guidelines on the agency's website at *http://www.irs.gov/newsroom/* [''click'' on ''What's Hot''] to provide an opportunity for the public to comment by June 15, 2002.

**DATES:** Written comments should be received on or before June 15, 2002, to be assured of consideration.

**ADDRESSES:** All submissions must be in writing or in electronic form. Please send e-mail comments to *Wayne.E.Wiegand@irs.gov,* or facsimile transmissions to FAX Number (202) 622–7153 re: IRS Information Quality Guidelines. Comments sent by mail should be sent to: Internal Revenue Service, 1111 Constitution Avenue, NW., Room 3524, Washington, DC 20224, ATTN: Wayne Wiegand (Senders should be aware that there have been some unpredictable and lengthy delays in postal deliveries to the Washington, DC area in recent weeks and may prefer to make electronic submissions.)

**FOR FURTHER INFORMATION CONTACT:** Wayne Wiegand, Office of the Deputy Commissioner for Modernization/Chief Information Officer, Internal Revenue Service, 1111 Constitution Avenue, Room 3524, Washington, DC 20224. Telephone (202) 927–4412 or by email to *Wayne.E.Wiegand@irs.gov.*

**SUPPLEMENTARY INFORMATION:** On January 3, 2002, OMB published guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of information disseminated by Federal Agencies. These guidelines call upon each agency to develop a draft report

not later than May 1, 2002. The IRS will use these guidelines to develop processes for disseminating quality information. The guidelines apply to information disseminated to the public in any medium including textual, graphic, narrative, numerical, or audiovisual forms. This means information that the IRS posts to the Internet as well as sponsored distribution of information to the public. They do not apply to opinions or hyperlinks to information that others disseminate.

Dated: *April 26,* 2002.

**Wayne Wiegand,**

*Staff Advisor, Modernization & Information Technology Services.*

[FR Doc. 02–10780 Filed 4–30–02; 8:45 am]

BILLING CODE 4830–01–P

# Corrections

Federal Register
Vol. 67, No. 84
Wednesday, May 1, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 63

**[CC Docket No. 01–150; FCC 02–78]**

### Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations

*Correction*

In rule document 02–9101 beginning on page 18827, in the issue of Wednesday, April 17, 2002, make the following corrections:

**§ 63.03 [Corrected]**

1. On page 18831, in the second column, in § 63.03, ''paragraph (b)(2)i should read ''(b)(2)(i)''.

2. On page 18831, in the same column, in § 63.03, ''paragraph (b)(2)ii'' should read '' (b)(2)(ii)''.

3. On page 18831, in the same column, in the same section, paragraph (b)(2)iii'' should read '' (b)(2)(iii)''.

[FR Doc. C2–9101 Filed 4–30–02; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 2001–CE–47–AD; Amendment 39–12709; AD 2002–08–02]**

**RIN 2129–AA64**

### Airworthiness Directives; Fairchild Aircraft, Inc. Models SA226 and SA227 Series Airplanes

*Correction*

In rule document 02–9574 beginning on page 19327 in the issue of Friday, April 19, 2002, make the following corrections:

**§ 39.13 [Corrected]**

1. On page 19329, §39.13, in the table, under the column, ''Compliance'', in the third paragraph, in the fifth and sixth lines, ''(the effective date of AD 2001–20–154)'' should read ''(the effective date of AD 2001–20–14)''.

2. On page 19329, §39.13, in the same table, under the column, ''Procedures'', in the first paragraph, in the seventh line, ''paragraph (i) of number (P/N) this AD.'' should read ''paragraph (i) of this AD.''.

3. On page 19329, in the same section, in the same table, under the same column, in the third paragraph, in the third line, ''226–26–SA226–003'' should read ''226–26–003''.

[FR Doc. C2–9574 Filed 4–30–02; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE-2002-21]**

### Petitions for Exemption; Summary of Petitions Received

*Correction*

In notice document 02–7484 appearing on page 15000 in the issue of Thursday, March 28, 2002, make the following corrections:

1. In the third column, under ''*Description of Relief Sought:''*, in the third line ''five'' should read ''three ''.

2. In the same column, also under ''*Description of Relief Sought:''*, in the fifth line ''747'' should read ''767 ''.

[FR Doc. C2–7484 Filed 4–30–02; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

### Office of Hazardous Materials Safety; Notice of Applications for Exemtions

*Correction*

In notice document 02–9413 beginning on page 19313 in the issue of Thursday, April 18, 2002, the table is corrected to read as set forth below:

NEW EXEMPTIONS

| Application No. | Docket No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|---|
| 12966–N ..... | ..... | Scientific Cylinder Corporation, Englewood, CO. | 49 CFR (e)(8), (e)(15)(vi) and (e)(19), 173.34(e)(1), (e)(3), (e)(5), (e)(6), (e)(7). | To authorize the transportation in commerce of DOT–3AL cyclinders manufactured from 6351 alloy which have been examined by ultrasonic inspection in lieu of the internal visual test. (modes 1, 2, 3, 4) |
| 22967–N ..... | ..... | Reilly Industries, Inc., Indianapolis, IN. | 49 CFR 172.446, 172.560, 173.213. | To authorize the transportation in commerce of fused solid coal tar enamel in non-DOT specification open-top or closed-top sift proof metal packagings when the amounts meet or exceed the reportable quantity. (modes 1, 2, 3) |
| 12969–N ..... | ..... | Arrowhead Industrial Services Inc., Graham, NC. | 49 CFR 173.301(h), 173.302, 173.306(d)(3). | To authorize the transportation in commerce of non-DOT specification cyclinders containing Division 2.2 material overpacked in strong outside packaging for transporting to remote test sites. (mode 1) |
| 12970–N ..... | ..... | IMR Corporation Tulsa, OK. | 49 CFR 172.202(a)(1) ..... | To authorize the transportation in commerce of limited quantities of hazardous material with alternative shipping name on shipping papers. (mode 1) |

NEW EXEMPTIONS—Continued

| Application No. | Docket No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|---|
| 12972–N ..... | ..... | Voltaix, Inc., North Branch, NJ. | 49 CFR 173.301(j) ..... | To authorize the transportation in commerce of non-DOT specification cylinders for export containing various compressed gases without pressure relief devices. (modes 1, 3) |
| 12978–N ..... | ..... | Genesis Environmental, Ltd., McKeesport, PA. | 49 CFR 172.101 Col. 8(b) & 8(c), 173.197. | To authorize the transportation in commerce of solid regulated medical waste in non-DOT specification packaging consisting of a bulk outer packaging and a non-bulk inner packaging. (mode 1) |
| 12979–N ..... | ..... | Medical Microwave, Inc., Livington, NJ. | 49 CFR 172.101 Col. 8(b) & 8(c), 173.197. | To authorize the transportation in commerce of solid regulated medical waste in non-DOT specification packaging consisting of a bulk outer packaging and a non-bulk inner packaging. (mode 1) |
| 12982–N ..... | ..... | Arthur L. Fleener, Ames, IA. | 49 CFR 175.320 ..... | To authorize the transportation in commerce of Division 1.1 explosives, which are forbidden for shipment by passenger-carrying aircraft to remote areas when no other means of transportation is available. (mode 5) |

[FR Doc. C2–9413 Filed 4–30–02; 8:45 am]

**BILLING CODE 1505–01–D**

Federal Register

Wednesday,
May 1, 2002

# Part II

# Department of Transportation

## National Highway Traffic Safety Administration

## 49 CFR Part 571

## Federal Motor Vehicle Safety Standards; Child Restraint Systems; Proposed Rule

**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**49 CFR Part 571**

**[Docket No. NHTSA–02–11707]**

**RIN 2127–AI34**

## Federal Motor Vehicle Safety Standards; Child Restraint Systems

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes a number of revisions to the Federal safety standard for child restraint systems, including proposals for incorporating improved test dummies and updated procedures used to test child restraints, new or revised injury criteria to assess the dynamic performance of child restraints, and extension of the standard to apply it to child restraints recommended for use by children up to 65 pounds. This action is intended to make child restraints even more effective in protecting children from the risk of death or serious injury in motor vehicle crashes. This proposal is being issued in response to the Transportation Recall Enhancement, Accountability and Documentation Act of 2000, which directed NHTSA to initiate a rulemaking proceeding for the purpose of improving the safety of child restraints.

**DATES:** You should submit your comments early enough to ensure that Docket Management receives them not later than July 1, 2002.

**ADDRESSES:** You may submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC, 20590. Alternatively, you may submit your comments electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should mention the docket number of this document. You may call Docket Management at 202–366–9324. You may visit the Docket from 10:00 a.m. to 5:00 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues, you may call Mike Huntley of the NHTSA Office of Crashworthiness Standards, at 202–366–0029.

For legal issues, you may call Deirdre Fujita of the NHTSA Office of Chief Counsel, at 202–366–2992.

You may send mail to both of these officials at the National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC, 20590.

**SUPPLEMENTARY INFORMATION:**

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### I. Executive Summary

This document proposes a number of revisions to Federal Motor Vehicle Safety Standard No. 213, ''Child Restraint Systems'' (49 CFR 571.213). The proposed revisions would incorporate five elements into the standard: (a) An updated bench seat used to dynamically test add-on child restraint systems; (b) a sled pulse that provides a wider test corridor; (c) improved child test dummies; (d) expanded applicability to child restraint systems recommended for use by children weighing up to 65 pounds; and (e) new or revised injury criteria to assess the dynamic performance of child restraints. This proposal follows up on the agency's announcement in its November 2000 Draft Child Restraint Systems Safety Plan (Docket NHTSA–7938) that the agency will be undertaking rulemaking on these and other elements of Standard No. 213 (65 FR 70687; November 27, 2000). The proposal is also issued in response to the mandate in the Transportation Recall Enhancement, Accountability and Documentation Act (the TREAD Act) (November 1, 2000, Pub. L. 106–414, 114 Stat. 1800) to initiate a rulemaking for the purpose of improving the safety of child restraints.

Section 14(a) of the TREAD Act mandates that the agency ''initiate a rulemaking for the purpose of improving the safety of child restraints, including minimizing head injuries from side impact collisions.'' Section 14(b) identifies specific elements that the agency must consider in its rulemaking. The Act gives the agency substantial discretion over the decision whether to issue a final rule on the specific elements. Section 14(c) specifies that if the agency does not incorporate any element described in section 14(b) in a final rule, the agency shall explain in a report to Congress the reasons for not incorporating the element in a final rule.

In response to section 14, the agency comprehensively examined possible ways of revising and updating its child restraint standard. Today's proposal is substantially based on a combination of pre- and post-TREAD Act agency activities, including extensive testing of child restraints and dummies by NHTSA's Vehicle Research & Test Center and by the agency in its New Car

Assessment Program, and on evaluations of vehicle seat assemblies and pulses. The proposal is also based on data analysis, as well as agency review of existing global research papers and international standards. We have also taken into consideration submissions by the public in response to the agency's Safety Plan and sought an exchange of ideas with child restraint manufacturers as to the research being conducted in response to the TREAD Act, meeting with them in February 2001. There are a number of technical reports in the docket to which this NPRM will refer to from time to time in support of the proposals.

In an advance notice of proposed rulemaking published concurrently with today's document, we are seeking public comments on the agency's work on developing a possible side impact protection standard for child restraint systems and on possible refinements to the approach we have taken thus far. In its review of the child restraint standard, NHTSA placed particular emphasis on improving the ability of child restraints to provide protection in side impact crashes. Although we have conducted extensive testing and analysis over the past year aimed at providing additional side impact protection for children in child restraints, there are many unknowns. We seek comment on the suitability of the test procedures we are considering, on appropriate injury criteria for children in side impacts, on cost beneficial countermeasures, and on other issues. The agency anticipates that comments to the advance notice will help us assess the benefits and costs of a side impact rulemaking, which will help us decide whether to issue a notice of proposed rulemaking in the near future and/or identify the work that needs to be done.

The proposed updates to the seat assembly are based on studies that NHTSA contracted to have done in response to the TREAD Act. This NPRM proposes the following changes: the seat bottom cushion angle would be increased from 8 degrees off horizontal to 15 degrees; the seat back cushion angle would be increased from 15 degrees off the vertical to 22 degrees; the spacing between the anchors of the lap belt would be increased from 222 millimeters (mm) to 392 mm in the center seating position and from 356 mm to 472 mm in the outboard seating positions; and the seat back of the seat assembly would be changed, from a flexible seat back to one that is fixed, to represent a typical rear seat in a passenger car.

The proposed changes to the sled pulse are based on studies conducted in response to the TREAD Act. We propose to widen the test corridor to make it easier for more test facilities to reproduce. The wider corridor extends the pulse from 80 milliseconds (ms) to approximately 90 ms in duration. The expanded corridor would not reduce the stringency of the test, and would also make it easier to conduct compliance tests at speeds closer to 30 mph.

This document proposes two initiatives toward enhancing the use of test dummies in the evaluation of child restraints under Standard No. 213. NHTSA proposes to replace some of the existing dummies with the new 12-month-old Child Restraint Air Bag Interaction (CRABI) dummy, and the state-of-the art Hybrid III 3- and 6-year-old dummies. NHTSA also proposes testing child restraints for older children with a weighted 6-year-old dummy ( *i.e.,* a Hybrid III 6-year-old dummy to which weights have been added). The total weight of the dummy would be 62 lb. The weighted dummy would be used to test child restraints that are recommended for children weighing 50 to 65 lb, and is viewed as an interim measure until such time as the Hybrid III 10-year-old dummy becomes available.

The proposal to extend Standard No. 213 to child restraint systems for children who weigh 65 lb or less is based on the proposal to test restraints recommended for children weighing over 50 lb with the weighted 6-year-old dummy. The availability of that dummy makes it possible to extend the standard and evaluate the performance of the added restraints.

The proposal to use the new and scaled injury criteria of Standard No. 208 is based on research that the agency did in the advanced air bag rulemaking, as well as NCAP and sled testing done in response to the TREAD Act. The scaled head injury criterion limits from the Standard No. 208 rulemaking are proposed herein for Standard No. 213, as well as the chest deflection and acceleration limits. The Nij neck criterion would also be added to Standard No. 213, but without the limits on axial force. For Standard No. 208, the agency originally proposed Nij without limits on axial force. However, the Alliance of Automotive Manufacturers persuaded the agency to incorporate more conservative axial force limits for the out-of-position air bag loading environment. 65 FR 30717, 30718; May 12, 2000. Children in child restraints are correctly positioned and not sustaining neck injuries such as those associated with exposure to severe out-of-position air bag loading. Therefore, the agency is proposing that Nij without limits on axial force be added to Standard No. 213.

NHTSA has examined the benefits and costs of these proposed amendments, wishing to adopt only those amendments that contribute to improved safety, and mindful of the principles for regulatory decisionmaking set forth in Executive Order 12866, Regulatory Planning and Review. Its efforts to do so, however, have been limited by several factors. Two factors stand out. One is the limited time allowed by the schedule specified in the TREAD Act for initiating and completing this rulemaking. That has limited the amount and variety of information that the agency could obtain and testing that the agency could conduct to examine the efficacy of possible countermeasures under consideration and the effects of the various proposed amendments on child restraint performance. The other is the lack of specific accident data on children in motor vehicle crashes generally. For example, there is little available data on neck injury in children involved in motor vehicle crashes. Together, these limitations have made it difficult to assess and compare the benefits and costs of this rulemaking.

NHTSA estimates that the proposal to use the new and scaled injury criteria of Standard No. 208 would prevent an estimated 3–5 fatalities and 5 MAIS 2–5 non-fatal injuries for children ages 0–1 annually. In addition, the proposal would save 1 fatality and mitigate 1 MAIS 2–5 injury in the 4-to 6-year-old age group annually. The agency does not believe that updating the seat assembly and revising the crash pulse would affect dummy performance to an extent that benefits would accrue from such changes. Research will be conducted later this year to assess the effects of such changes on dummy performance.

At this time, NHTSA has not identified countermeasures to improve child restraint performance in frontal tests that would allow child restraint manufacturers to meet the proposed neck injury criterion. Consequently, we were unable to estimate the costs of such countermeasures. Comments are requested on possible countermeasures and their costs. The proposal to use new dummies in compliance tests, including testing with a weighted 6-year-old dummy, could result in increased testing costs for manufacturers that want to certify their restraints using the tests that NHTSA will use in compliance testing. NHTSA estimates that use of the new dummies and other changes to the

test procedure would add testing costs of $2.72 million. We believe that those changes would not result in redesign of child restraints.

## II. Background

The lack of occupant restraint use by motorists is a significant factor in most fatalities resulting from motor vehicle crashes. Of the 31,910 passenger vehicle occupants killed in 2000, over half (55 percent) were unrestrained. Forty-three percent of the 1,079 child occupant fatalities, ages 0 through 10 years old, were unrestrained. For child occupants less than 5 years old, 36 percent of the 529 fatalities were unrestrained.

Of the 2,938,000 passenger vehicle occupants injured in crashes in 2000, only 14 percent (409,000) were reported as unrestrained. The rates are about the same for child occupants. For children ages 0–10 years old, approximately 165,000 were injured in motor vehicle traffic crashes in 2000, and 13 percent (18,800) of these children were unrestrained. Of the 67,000 child occupants less than 5 years of age who were injured, 10 percent (6,500) were unrestrained.

Child restraints are highly effective in reducing the likelihood of death and or serious injury in motor vehicle crashes. NHTSA estimates (''Revised Estimates of Child Restraint Effectiveness,'' Hertz, 1996) that for children less than one-year-old, a child restraint can reduce the risk of fatality by 71 percent when used in a passenger car and by 58 percent when used in a pickup truck, van, or sport utility vehicle (light truck). Child restraint effectiveness for children between the ages 1 to 4 years old is 54 percent in passenger cars and 59 percent in light trucks.

Notwithstanding the effectiveness of child restraints certified to Standard No. 213, the agency is continuing to examine whether the safety of children in child restraints can be enhanced even further. In 2000, 256 child occupants under 5 years of age were killed while restrained in child restraints, and another 34,600 were injured. Today's NPRM is part of an effort to reduce these numbers.

On November 27, 2000, we published a planning document that defined our vision for enhancing child passenger safety over the next 5 years (65 FR 70687). The plan contained our views on implementing three strategies for enhancing the safety of child occupants from birth through age 10: increasing restraint use; improving the performance and testing of child restraints; and improving mechanisms for providing safety information to the public. The agency requested comments on the plan and received suggestions on the various initiatives (Docket NHTSA 7938).

Many commenters responded to the second of the three strategies, making suggestions as to how they believed Standard No. 213 should be improved to further enhance child restraint performance. There was general concurrence with the agency's plan to undertake rulemaking with regard to the five elements included today in this NPRM. There was no objection to the agency's then-announced intention to improve side impact protection as a measure that would be pursued internationally in concert with other government and industry bodies. However, it was apparent from the few comments we received on the subject that those commenters considered it to be a long-term project requiring several years of research and development.

After NHTSA completed its draft plan, but before it published the plan in the **Federal Register**, the TREAD Act was enacted on November 1, 2000. Sections 14 of the TREAD Act directed NHTSA to initiate a rulemaking for the purpose of improving the safety of child restraints by November 1, 2001, and to complete it by issuing a final rule or taking other action by November 1, 2002. The relevant provisions in Sections 14 are as follows:

(a) In General. Not later than 12 months after the date of enactment of this Act, the Secretary of Transportation shall initiate a rulemaking for the purpose of improving the safety of child restraints, including minimizing head injuries from side impact collisions.

(b) Elements for Consideration. In the rulemaking required by subsection (a), the Secretary shall consider—

(1) whether to require more comprehensive tests for child restraints than the current Federal motor vehicle safety standards requires, including the use of dynamic tests that—

(A) replicate an array of crash conditions, such as side-impact crashes and rear-impact crashes; and

(B) reflect the designs of passenger motor vehicles as of the date of enactment of this Act;

(2) whether to require the use of anthropomorphic test devices that—

(A) represent a greater range of sizes of children including the need to require the use of an anthropomorphic test device that is representative of a ten-year-old child; and

(B) are Hybrid III anthropomorphic test devices;

(3) whether to require improved protection from head injuries in side-impact and rear-impact crashes;

(4) how to provide consumer information on the physical compatibility of child restraints and vehicle seats on a model-by-model basis;

(5) whether to prescribe clearer and simpler labels and instructions required to be placed on child restraints;

(6) whether to amend Federal Motor Vehicle Safety Standard No. 213 (49 CFR 571.213) to cover restraints for children weighing up to 80 pounds;

(7) whether to establish booster seat performance and structural integrity requirements to be dynamically tested in 3-point lap and shoulder belts; [1]

(8) whether to apply scaled injury criteria performance levels, including neck injury, developed for Federal Motor Vehicle Safety Standard No. 208 to child restraints and booster seats covered by in [sic] Federal Motor Vehicle Safety Standard No. 213; and

(9) whether to include [a] child restraint in each vehicle crash tested under the New Car Assessment Program.

(c) Report to Congress. If the Secretary does not incorporate any element described in subsection (b) in the final rule, the Secretary shall explain, in a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Commerce submitted within 30 days after issuing the final rule, specifically why the Secretary did not incorporate any such element in the final rule.

(d) Completion. Notwithstanding any other provision of law, the Secretary shall complete the rulemaking required by subsection (a) not later than 24 months after the date of the enactment of this Act.

Each of the initiatives contemplated by the TREAD Act as possible upgrades to Standard No. 213 were included in the agency's plan as possible candidates for rulemaking to enhance the performance of child restraint systems. [2] Notwithstanding the effectiveness of child restraints certified to Standard No. 213, the thrust of the 5-year plan was to consider possible rulemaking that could enhance the performance of child restraints even further. Enhancements were considered in terms of improved crash protection and in terms of increased usability of the restraints so that misuse is reduced. At the same time, we believed then, and continue to do so now, that in making regulatory

[1] Standard No. 213 currently requires booster seats to be dynamically tested in 3-point (lap and shoulder) belts. As such, the agency is taking no action with respect to this provision of the TREAD Act. [Footnote added.]

[2] In addition, Section 14 of the TREAD Act required an NPRM to establish a child restraint safety rating consumer information program to provide consumers information for use in the purchase of child restraints. The NPRM was issued on October 29, 2001, and published November 6, 2001 (66 FR 56146, 66 FR 56048). Further, on October 29, 2001, the agency issued an NPRM on Standard No. 213's labeling and owner's manual requirements that responds to section 14(b)(5) of the Act. 66 FR 55623, November 2, 2001. The Act also required a study on the use and effectiveness of booster seats and a 5-year strategic plan to reduce, by 25 percent, deaths and injuries caused by failure to use the appropriate booster seat in the 4-to 8-year-old age group.

decisions on possible safety enhancements, the agency must bear in mind the consumer acceptance of cost increases.

Weighing all these factors, the agency has tentatively decided that safety enhancements are warranted in the aspects of the child1 restraint standard discussed below in section IV.

## III. Existing Requirements of Standard No. 213

The following discussion summarizes current provisions in Standard No. 213 relating to the performance of child restraint systems.

1. The performance of a child restraint system is evaluated in dynamic tests involving a 30 mph velocity change, which is representative of a severe crash. Each child restraint is tested while attached to a standardized seat assembly. Restraints are tested while attached to the standard seat assembly by various means. The restraint system is anchored to a test seat with a lap belt only, or a lap/shoulder belt if the restraint system is a booster seat designed for these belts. In another test, the child restraint is required to meet more demanding requirements with respect to the permissible forward motion of the dummy's head, which is typically accomplished by use of a tether attached to the top of the child restraint. Beginning in 2002, child restraints will also be subjected to frontal crash simulations when anchored to the test seat assembly by a new child restraint anchorage system (49 CFR 571.225).[3] Built-in child seats are evaluated by crash testing the vehicle they are built into, or by simulating a crash with the built-in seat dynamically tested with parts of the vehicle surrounding it.

2. To protect the child, limitations are set on the amount of force that can be exerted on the head and chest of a child test dummy during the dynamic testing. (S5.1.2 of Standard No. 213). To reduce the possibility of injury that child occupants in child restraint systems may incur if they contact vehicle interior surfaces during a crash, limitations are also set on the amount of frontal head and knee excursions that can be experienced by the test dummy. To prevent a child from being ejected from rearward-facing restraints (e.g., infant restraints), limitations are set on the amount that such restraints can tip forward (S5.1.4 of Standard No. 213).

3. During dynamic testing, no load-bearing or other structural part of any child restraint system may separate so as to create jagged edges that could cut and injure a child. If the child restraint has adjustable positions, it may not shift positions if doing so could potentially catch a child's limbs between the shifting parts or allow the child to ''submarine'' (*i.e.,* allow the child to slide down and out of the restraint during a crash) (S5.1.1 of Standard No. 213).

4. To prevent injuries to children during crashes from contact with the surfaces of the child restraint itself, the standard specifies requirements for the size and shape of those surfaces. In addition, protective padding requirements are set for restraints designed for use by infants (S5.2 of Standard No. 213). The standard specifies a minimum surface area for those surfaces that support the side of the child's torso. Each surface must be flat or concave and have a continuous surface of not less than 24 square inches for systems recommended for children weighing 20 lb or more, or 48 square inches for systems recommended for children weighing less than 20 lb (S5.2.2.1(b)).

5. The belts, buckles, and attachment hardware used in child restraint systems have to meet abrasion and corrosion resistance requirements (S5.4.1 and S5.4.2). Additionally, the belts in child restraints must adjust to snugly fit occupants, not transfer any crash loads from the vehicle to the child, and must restrain the child's upper and lower torso (S5.4.3 of Standard No. 213).

6. The amount of force necessary to open belt buckles and release a child from a restraint system is specified so that children will not be able to unbuckle themselves, but adults will be able to do so quickly and easily (S5.4.3.5 and S6 of Standard No. 213).

7. Information necessary for the proper use of the child restraint system must be permanently labeled on the child restraint and presented in an information booklet that accompanies the child restraint system. The child restraint must also provide a special location or compartment on the child restraint system in which the information booklet may be permanently stored, so that the parent or other user of the child restraint can always have available the necessary safety information (S5.5 of Standard No. 213). Standard No. 213 also requires each child restraint system to be accompanied by a postage-paid registration form so that purchasers can register with the manufacturer and thereby be directly notified in the event of a safety recall. Manufacturers must retain the names and addresses of registrants for a period of six years. (S5.8 of Standard No. 213; 49 CFR part 588).

8. Each material used in a child restraint system must meet the flammability requirements of S4 of FMVSS No. 302 (49 CFR 571.302) (S5.7 of Standard No. 213).

9. Beginning September 1, 2002, child restraint systems must have components permanently attached to them that will enable them to be anchored to a new child restraint anchorage system that will be standard on all new passenger vehicles. The vehicle anchorage system consists of two bars that are at or close to the intersection of the vehicle seat cushion and seat back, and a top tether anchorage located typically (a) on the rear shelf below the rear window in passenger cars, or (b) on the floor or on or under the seat structure of sport utility vehicles and minivans. Child restraints will still be capable of being anchored to the vehicle seat by the vehicle seat belts.

10. Child restraints certified for use in both motor vehicles and aircraft must pass an additional test when attached to a representative airplane seat, and provide additional information on the proper use of the restraint system in an airplane seat (S8 of Standard No. 213).

## IV. ANPRM on Side Impact Protection

In an advance notice of proposed rulemaking (ANPRM) published concurrently with today's NPRM, we are seeking public comments on the agency's work on developing a possible side impact protection standard for child restraint systems and on possible refinements to the approach we have taken thus far. In its review of the child restraint standard in response to the TREAD Act, NHTSA placed particular emphasis on improving the ability of child restraints to provide protection in side impact crashes. Although we have conducted extensive testing and

[3] Standard No. 225 requires motor vehicle manufacturers to provide vehicles equipped with the child restraint anchorage systems that are standardized and independent of the vehicle seat belts. The new independent system has two lower anchorages, and one upper anchorage. Each lower anchorage includes a rigid round rod or ''bar'' unto which a hook, a jaw-like buckle or other connector can be snapped. The bars are located at the intersection of the vehicle seat cushion and seat back. The upper anchorage is a ring-like object to which the upper tether of a child restraint system can be attached. (The system is widely known as the ''LATCH system,'' an acronym developed by manufacturers and retailers for ''lower anchors and tether for children.'') The LATCH system is required to be installed at two rear seating positions. In addition, a tether anchorage is required at a third position. By requiring an easy-to-use anchorage system that is independent of the vehicle seat belts, NHTSA's standard makes possible more effective child restraint installation and thereby increases child restraint effectiveness and child safety. The standard is estimated to save 36 to 50 lives annually, and prevent 1,231 to 2,929 injuries. See 64 FR 10786; March 5, 1999.

analysis over the past year aimed at providing additional side impact protection for children in child restraints, there are many unknowns. We seek comment on the suitability of the test procedures we are considering, on appropriate injury criteria for children in side impacts, on cost beneficial countermeasures, and on other issues. The agency anticipates that comments to the advance notice will help us assess the benefits and costs of a side impact rulemaking, which will help us decide whether to issue a notice of proposed rulemaking in the near future and/or identify the work that needs to be done.

**V. Agency Proposals**

*a. Updated Bench Seat*

1. Introduction

This NPRM proposes to update the standard vehicle seat assembly used in Standard No. 213's dynamic testing. The original seat assembly was developed in the mid-1970's by the Highway Safety Research Institute at the University of Michigan. The bench seat was based on the configuration and performance parameters of the 1974 Chevrolet Impala production front bench seat. Static and dynamic characteristics of the production seat were modeled into the frame deformation and foam stiffness of the standard seat.

NHTSA proposes to update the following features of the seat assembly: the seat bottom cushion angle would be increased from 8 degrees off horizontal to 15 degrees; the seat back cushion angle would be increased from 15 degrees off the vertical to 22 degrees; the spacing between the anchors of the lap belt would be increased from 222 millimeters (mm) to 392 mm in the center seating position and from 356 mm to 472 mm in the outboard seating positions; and the seat back of the seat assembly would be changed from a flexible seat back to one that is fixed, to represent a typical rear seat in a passenger car. Figures 1A, 1B and 1B' of Standard No. 213 would be revised to reflect these changes, as would the drawing package of the seat assembly (SAS–100–1000, with Addendum A, dated October 23, 1998) that is incorporated by reference (*see* 49 CFR 571.5) into the standard.

This proposal is based on evaluations we have made regularly over the years, and most recently this year in response to the TREAD Act, of the need to update or improve the seat assembly used for testing child restraints. There is no question that the seat assembly should be representative of production seats to the extent possible so that a child restraint's true performance in a crash can be assessed. However, while to the extent possible it may be desirable for the seat assembly to mirror production seats, our program work developing and evaluating the standard seat assembly was guided by a number of additional considerations. The seat assembly must be durable and must contribute to obtaining repeatable and comparable test results for child restraints. Meeting the performance requirements of Standard No. 213 on the test seat should ensure that child restraints performed adequately on the variety of different seats found in cars on the road. In comparison to some vehicle seats, the test seat might present more demanding test conditions, but this was acceptable if the test seat were representative of many seats used in vehicles. Differences between the standard seat assembly and production seats could be disregarded if the differences did not affect child restraint performance on the seat. The seat assembly did not need to conform to non-identical features that were unlikely to have a confounding effect on child restraint performance.

These considerations counseled against changing the seat assembly significantly in the past. Child restraints were performing well in the field. The few features that we thought could be updated, such as the seat assembly's cushion angle and seat back angle, were not thought to affect safety sufficiently to warrant use of the agency's limited resources for that purpose. We were also concerned about possible cost increases to child restraints that might occur as some manufacturers passed on the costs of possibly having to retest all child restraints on the market.

With the passage of section 14(b) of TREAD, Congress has presented its belief that the seat assembly should be updated to reflect the designs of production seats. We concur with considering the issue further. We have identified a number of features of the present seat assembly that could be updated, which are discussed below. Later this year, NHTSA will undertake an assessment of what effect, if any, the updated seat assembly might have on the performance of child restraints.

2. Post-TREAD Rulemaking Support Program

In response to TREAD, NHTSA initiated a test program to assess seat parameters of production seats, working with Veridian Engineering (Veridian) and the U.S. Naval Air Warfare Center Aircraft Division at Patuxent River, Maryland (PAX). Veridian gathered information on geometry and stiffness of seats of vehicles tested in NHTSA's 2001 New Car Assessment Program (NCAP). PAX analyzed the seat geometry data, including seat cushion angle, seat back angle, seat cushion length, seat back length, tether anchor locations, child restraint anchorage system anchor locations, and seat belt locations. A report by PAX on the project is available in the docket. This preamble provides an overview of the results. Readers are referred to the report for a detailed explanation of the methodology used in the test program, and the results of each parameter, sorted by vehicle class.

To summarize the report, the research program analyzed the seat geometries of 35 vehicles. Because of time constraints and the fact that the test for determining force/deflection characteristics of the vehicle seat is a destructive test (that is, a section of the seat cushion had to be cut out and removed), the agency utilized vehicles that had previously undergone testing in the agency's New Car Assessment Program but whose rear seats had not been destroyed or discarded. Every attempt was made to obtain vehicles from a range of vehicle classes for evaluation. Of these vehicles, 19 were passenger cars, 11 were SUVs, 4 were minivans, and 1 was a pickup truck. PAX analyzed the various seat geometry measurements of the vehicles, by seating position (outboard or middle) and vehicle class, and identified some features of the bench that do not reflect current vehicle designs.

We have tentatively determined that a number of those features should be changed, that some others need not be, and that a few features (e.g., seat cushion stiffness) require further analysis before we can decide whether we should change them. Generally, where there is a notable difference between the existing seat assembly and the fleet, the agency has proposed changing the seat assembly to make it more representative of the existing vehicle fleet.

We request comments on the proposal, particularly with regard to the latter category. NHTSA will be conducting further analyses of some of the proposed changes, since the analyses could not be completed in time for this NPRM. Information we obtain will be placed in the docket. Further, later this year, NHTSA will be evaluating dynamically most of the changes that we propose to make to the seat bench, to ensure that these changes do not result in compromising the safety currently afforded by child restraints. Results of this testing will be compared to compliance test data of existing child restraints to evaluate the effect of the changes. Comparison of these tests will

aid in the agency's decision regarding whether to adopt the proposed changes in a final rule.

3. Features That Should Be Changed

i. Bottom Seat Cushion Angle

Currently, the seat assembly has a seat pan angle of 8° off horizontal. In the 35 vehicles surveyed, 77 seat pan angle measurements were made of rear seats, from either the outboard position or the center position, or if the vehicle had a third seating position, from that position as well. PAX found that 39% of the seat pan angle measurements were within 16° to 20° off horizontal and 35% of the seat pan angle measurements fell within 11° to 15° of horizontal. The test data show an average seat pan angle of 15.5°. We have tentatively decided that the seat pan angle of the seat assembly should be increased to 15° off horizontal. A 15° angle would be in accordance with the bottom seat cushion angle specified by ECE Regulation 44.

Comments are requested on the effect of this change on the performance of child restraints in actual vehicles. In a September 18, 2000 petition for rulemaking, Ford Motor Company indicated that using the ECE Regulation 44 seat cushion angle would solve a problem it has found using the present seat assembly to test ''rear-facing child restraint systems (CRS) equipped with rigid Lower Anchors and Tethers for Children (LATCH) system attachments.'' Under Standard No. 213, child restraints may use rigid attachments to connect to the lower anchorage bars of LATCH systems, or may use non-rigid attachments (such as those attached to the child restraint by webbing material). Ford believed that the seat cushion angle of the seat assembly is driving the design of rear-facing child restraints. Because the current seat assembly is flatter than actual vehicle seats, when infant restraints are installed on actual vehicle seats, the restraints are installed at an overly steep angle. Ford stated that the overly steep angle can be corrected in conventional restraints by tipping the restraint back and placing a rolled towel under the base, near the seat bight. However, an infant restraint with rigid LATCH attachments will not have any flexibility that will allow it to be tipped backwards while remaining connected to the lower anchorage bars. To solve this problem, Ford suggested using the ECE Regulation 44 seat assembly, which has a 15° bottom seat cushion angle, modified to have the LATCH anchorage bars included in the assembly.[4]

ii. Seat Back Angle

Currently, the seat assembly has a seat back angle of 15° off vertical. Seventy-eight seat back angle measurements of rear seats in the 35 vehicles surveyed were taken from either the outboard or center seat position, or, if available, the third seating position. From this analysis, the average seat back angle for all measurements taken is 22° off of vertical. This is an increase of 7° over the current angle specified for the FMVSS No. 213 seat assembly. Forty-four percent of all the measurements taken yielded seat back angles between 21° and 25°. For these reasons, NHTSA proposes increasing the angle to 22°.

iii. Seat Belt Anchors

The current seat assembly has a lateral spacing of 222 mm between the lap belt anchors in the center seating position, and a lateral spacing of 500 mm for the outboard seating positions. Based on the evaluation of the 35 vehicles surveyed, the average lap belt anchor spacing in center seating positions in the modern vehicle fleet is 392 mm. Thirty-nine percent of the measurements taken for the center seating position fell in the range of 351 mm to 400 mm, while 63 percent of the measurements were between 301 mm and 400 mm. As such, the current seat assembly represents a distance that is 170 mm smaller than that of the current vehicle fleet. We propose increasing the spacing to 392 mm for the center seating position to represent the average of the current vehicle fleet. Based on the evaluation of the 35 vehicles surveyed, the average lap belt anchor spacing in the outboard seating positions is 472 mm, as compared to 500 mm on the current Standard No. 213 standard seat assembly. Thirty-three percent of the measurements taken were greater than 500 mm, while 90 percent were above 400 mm. As the average anchorage spacing for outboard seating positions in the modern vehicle fleet is 28 mm less than that on the current standard seat assembly, we propose to change the spacing to 472 mm to more accurately represent actual vehicles. Comments are requested on how changing the spacing will affect the performance of a child restraint in dynamic tests.

iv. Fixed Seat Back

NHTSA proposes that the seat back of the seat assembly be changed to represent a fixed vehicle seat. Steel rods should replace the existing aluminum rods. A fixed seat back will be more representative of the rear seat of today's passenger cars, and would harmonize with ECE regulations. Because NHTSA strongly recommends that children under the age of twelve ride in the back seat, changing the seat assembly to represent a typical rear seat seems appropriate. However, vans and multipurpose vehicles with multiple seating rows may be more closely represented by a flexible seat back. Comments are requested on this issue. NHTSA is currently evaluating the effect of the change on child restraint performance by use of MADYMO simulations, and will further study the effect of flexible versus rigid seat backs through sled testing to be performed later this year.

4. Features That Need Not Be Changed

NHTSA has tentatively decided that the following features of the bench seat need not be changed because they either reflect the design of production seats or are different but that difference is deemed not to have an effect on child restraint performance in dynamic testing. Comments are requested on these features.

i. Bottom Seat Cushion Length

Currently, the seat assembly has a bottom seat cushion length of 508 mm. In order to find the average bottom seat cushion length, 78 measurements were taken in the 35 vehicles surveyed. Analysis depicts the average seat pan length as 461 mm. The average bottom seat cushion length for 64% of the measurements was found to lie within the range of 451 mm to 500 mm. Therefore, the current FMVSS No. 213 seat assembly has a seat pan length that is about 50 mm longer than the average seat pan length observed in today's vehicle fleet. We do not believe that this difference is consequential, as the reduced seat cushion length does not cause an incompatibility with existing child restraint designs.

ii. Seat Back Height

Currently, the 213 seat assembly has a seat back height of 610 mm. In the 35 vehicles surveyed, 78 measurements of the height of the seat back were made in both the outboard and center positions. These data yield an average seat back height of 619 mm. The highest percentage of seat back length measurements fell within the range of 601 mm to 700 mm. This percentage

[4] The petition is granted to the extent it is consistent with today's NPRM. However, granting of the petition does not mean that the changes requested will be adopted. Granting of the petition indicates that the agency believes that the recommended change has merit and warrants further review and evaluation. A decision whether to adopt the recommended change will be made on the basis of all available information developed in the course of the rulemaking proceeding, in accordance with statutory criteria.

represented 64% of the vehicle measurements. Because the Standard No. 213 seat assembly is only 9 mm lower than the average seat back height observed in today's fleet, we do not see a need to propose to raise the height of the seat back.

iii. Test Bench Floor

In response to the agency's draft Child Protection System Safety Plan, Ford recommended that the standardized bench seat should have a floor (*see* Docket 7938–20). Ford believed that the current test seat assembly cannot evaluate a rear-facing child restraint that is equipped with a support leg, as has been developed and is currently used in other countries. We are declining to add a floor to the test assembly at this time, since Standard No. 213 does not allow support legs in compliance testing. Under Standard No. 213, rear-facing restraints are only to be attached to the seat assembly via the lap belt or the anchorages of the LATCH system. As such, the inclusion of a floor structure on the Standard No. 213 standard seat assembly is not necessary at this time.

5. What About Cushion Stiffness?

Comments are requested on whether the seat assembly's cushion should be made stiffer. PAX found the average stiffness of the Standard No. 213 seat assembly to be marginally softer than most, but not all new vehicles on the road today. The force deflection curves generated by PAX show that the current Standard No. 213 seat cushion is softer at both the fore and aft outboard positions than almost all seat cushions in vehicles of the modern fleet. As part of the work performed in 1988 to reexamine the Standard No. 213 procedures,[5] the stiffness characteristics of the Standard No. 213 seat cushion material were compared with the characteristics of then current model vehicle seats. Static force versus deflection tests were conducted on the Standard No. 213 seat cushion foams, and these curves were then compared with similar curves that had been developed for ten vehicles which had been measured in a separate project in 1987. The distribution of force versus deflection curves found in that evaluation closely parallel those found by PAX, in that most vehicle seats were stiffer than the Standard No. 213 seat assembly, but there was at least one vehicle seat that was softer. Sled tests were performed in 1988 to compare the dummy response of the Standard No. 213 seat cushion, a representative cushion that was softer, and a stiff cushion. The dummy response differences were not sufficiently large or consistent to warrant specifying a different cushion than the foam used in Standard No. 213. Thus, the Standard No. 213 cushion was considered to be ''representative'' of the rear seats of then current cars.

We are interested in increasing the stiffness of the cushion, but are uncertain what, if any, differences will be seen in dynamic testing. We request comments on what the stiffness should be. Comments are also requested on what effect changing the test seat stiffness would have on child restraint performance in dynamic testing.

*b. Crash Pulse*

This NPRM would slightly revise the Standard No. 213 pulse. We propose to extend the pulse to approximately 90 milliseconds (msec), and to widen the test corridor to make it easier for more test facilities to reproduce it. The expanded corridor would not reduce the stringency of the test, and would also make it easier to conduct compliance tests at speeds closer to 30 mph. We found in studying vehicle crash pulses that the Standard No. 213 pulse is more severe than most other pulses, but is similar to crash pulses of large sport utility vehicles and light trucks—passenger vehicles that are becoming more and more popular for use as family vehicles—and very similar to the crash pulse of small school buses.

1. The Current Crash Pulse

In Standard No. 213's dynamic sled test, a test dummy is secured in a child restraint, which in turn is attached to a representative vehicle bench seat (seat assembly). The assembly is then subjected to acceleration to simulate a vehicle crash. The child restraint must manage the force from the simulated crash so that the forces imparted to the dummy are within tolerable limits. The force imposed on the child restraint and dummy is a function of the acceleration onset rate, peak, and duration. Paragraph S6.1.1(b)(1) of Standard No. 213 specifies that when child restraints are tested in the 48 km/h (30 mph) dynamic test, the acceleration of the test platform must be entirely within the curve shown in Figure 2 of the standard.[6] ''Crash pulse'' refers to the change in the sled's velocity over time. The severity of a crash pulse is a function of its onset rate, peak g and its time of occurrence, and duration. The standard has a relatively severe crash pulse, in that the sled is accelerated relatively quickly to an acceleration of approximately 24 g's (24 times the force of gravity) and maintains the 24 g level for a relatively long time period (37 to 42 msec) before returning to zero acceleration.

Pulses can vary as to their shape, onset rate, peak acceleration, and duration. NHTSA's research in the mid-1990's showed that Standard No. 213's pulse was more severe than the ''average car'' pulse of 1988–1991. Crash pulses obtained from Standard No. 208 vehicle crash tests indicated a peak G occurring much later in the crash event compared to Standard No. 213 and a longer pulse duration. The upper limit of the Standard No. 208 pulse ended at 135 msec, compared to 81 msec for the Standard No. 213 pulse.

Since the mid-1970's, vehicle front ends of passenger cars have become softer, allowing for more front-end crush to take place. This results in crash pulses that are much longer in duration than car crash pulses of 30 years ago. Current cars have crash pulses that are generally longer in duration than that of Standard No. 213. The peak G's are similar, so the longer duration means that the average model year 2001 passenger car has a less severe pulse than the standard.[7] Because of these changes in car design, we have been asked to reconsider the crash pulse in Standard No. 213 to ensure that it is representative of the crash pulses of today's vehicles. See, e.g., Ford's comment on NHTSA's draft Child Restraint Systems Safety Plan, docket 7938–20.

We have also been asked to re-examine the crash pulse because it is difficult to duplicate due to the narrow corridors in the laboratory test procedure. Very few labs are able to replicate the 213 pulse. Transportation Research Center (TRC), a testing laboratory, submitted a petition to NHTSA on October 6, 1999, which we

[5] Hiltner, Edward C. and MacLaughlin, Thomas F., ''Child Seating Test Procedure Development,'' NHTSA Final Report No. DOT HS 807 466, March 1989.

[6] Our laboratory test procedure (TP) for Standard 213 (TP–213–04, September 1, 1997), specifies a ''tolerance band,'' or ''acceleration function envelope,'' that incorporates the upper limit of Figure 2 and that also sets a lower limit (*see* section D.3.3, ''Impact Severity'' (page 53)).

[7] FMVSS No. 213's pulse is quite different than any other pulse used to regulate child restraints. The Europeans, the Canadians and the Australians all use different crash pulses to test their child restraints. The FMVSS No. 213 pulse seems to be more severe than the other pulses because of its sharp rise time and the short duration of the crash pulse. Of these three international pulses, the only similarity between the three was the time duration. All other pulses used to regulate child restraints, except FMVSS No. 213, ended beyond 100 msec. The U.S. has about 10 times the LTV sales as Europe (50 percent versus 5 percent). In Australia, LTV sales constitute about 25 percent of the total vehicles sold in that country.

granted, regarding the pulse corridor specified in the laboratory test procedure for Standard No. 213. Due to features of the TRC sled and others of its type generally (HYGE), TRC stated that there is a problem with achieving the acceleration curve specified in the standard and suggested that the pulse can be slightly revised, by manipulating time zero, to accommodate HYGE sleds without affecting test results.

Standard No. 213 specifies that, when testing child restraints in the 48 km/h test, the acceleration of the test platform must be entirely within a specified curve. The curve begins at zero g's and zero time. TRC stated that its HYGE sled is generally unable to produce the required acceleration curve. The sled ''fires'' by cracking a seal between a high pressure chamber and a low pressure chamber, with the flow of gas (around a metering pin, which controls acceleration curve shapes) from high pressure to low pressure providing the acceleration force. TRC explained that initially, the area available for gas flow is small, and a short amount of time is required for pressure to build enough to cause significant acceleration. Because there is a lag time between initiation of the test and appreciable acceleration of the sled, when the curve begins at zero g's and zero time, a significant portion of the curve is not within the tolerance band required by the present test procedure. When time zero is manipulated so that the initial acceleration pulse falls within the zero to 10 millisecond envelope, and the acceleration at time zero is 1.25 g's, the required tolerance band is achieved.

We have determined that TRC's petition merits consideration. In December 1998, NHTSA issued a final rule amending the sled test requirement in Standard 208, ''Occupant Crash Protection,'' by, among other things, revising how time zero is defined (63 FR 71390, December 28, 1998). The sled test in that standard tests occupant response for air bag restraint systems. In that rulemaking, NHTSA determined that it is impractical for that test to have time zero at 0.0 g acceleration, because of the time lag between initial movement of the sled and significant acceleration. The agency decided that the start of the sled test will be determined by a specific acceleration level for the sled which corresponds to a time at which the most rapid acceleration begins, at about 0.5 g's (63 FR at 71393). Similarly, TRC would like NHTSA to revise its pulse envelope specifications for child restraint testing to allow a small deviance at time zero ''so that * * * sleds [similar to TRC's] may defendably participate in certification and compliance testing.''

2. The Crash Pulse Is Not Overly Severe

Following passage of the TREAD Act, NHTSA had PAX analyze the crash pulses of over 150 vehicles tested under FMVSS No. 208 and under the agency's frontal New Car Assessment Program (NCAP). Based on the analysis of model year (MY) 1995 to MY 2000 vehicles, PAX found that the current pulse in Standard No. 213 was more severe [8] than that of most passenger vehicles in today's fleet, but was similar to the pulses of truck and truck-like multipurpose passenger vehicles (*i.e.*, large sport utility vehicles, SUVs) in Standard No. 208 tests, except that the truck pulse was much longer in duration than the Standard No. 213 pulse. A report by PAX on the research project is available in the docket.

To summarize the report, PAX obtained ''average'' crash pulses from the FMVSS No. 208 vehicle crash tests and NCAP tests. To obtain average NCAP and FMVSS No. 208 pulses, 59 vehicles were separated into 4 classes: Cars, SUV's, trucks, and vans. The pulses were then filtered, and the peak velocity, peak G, and duration of the crash pulse were recorded.

The Society of Automotive Engineers (SAE) Recommended Practice for electronic processing of vehicle crash test acceleration data, as given in SAE J211, is Channel Frequency Class 60. Filtered at SAE J211 Class 60 (100 Hz cutoff frequency), the average car pulse had a peak acceleration of 24 g's at 70 msec and pulse duration of approximately 115 msec. When this pulse was overlaid with the Standard No. 213 pulse, the 213 pulse enclosed no portion of the average car curve. The average car had an initial slope similar to FMVSS No. 213, but then the vehicle began to crush before stiffening up again. For vans, the average van pulse had a peak acceleration of 22 g's at 42 msec and pulse duration of 140 msec. Both the van pulse and the 213 pulse had almost identical rise times, but then after 10 msec, the van pulse began to behave like the car pulse. However, small portions of the van pulse were enclosed by the 213 pulse corridor.

With SUV's, the average SUV pulse had a peak acceleration of 26 g's at 27 msec and a pulse duration of 113 msec. When the SUV pulse was overlaid with the 213 corridor, the time of peak G for the SUV pulse was very similar to the 213 pulse, which peaks at 20 msec, and the rise time between the two pulses was also very similar. Portions of the SUV pulse fell within the 213 corridor a number of times.

For pick-up trucks, the average truck pulse had a peak acceleration of 26 g's at 24 msec and a pulse duration of 114 msec. When the truck pulse was overlaid with the 213 corridor, there were many similarities. Not only did the two curves peak at almost the same time but the rise time was very similar. Also, for the first 65 msec, the truck pulse fell within the corridors of 213 many times. Although the duration of the pulse was different, the truck pulse and the 213 pulse appeared to be very similar.

A summary of the PAX findings are set forth in Table 4.

TABLE 4.—SUMMARY OF PAX PULSE DATA FILTERED AT SAE CLASS 60 (100 HZ)

| Pulse type | Peak G | Time (msec) | | ΔV (kph) |
|---|---|---|---|---|
| | | Duration | Peak G | |
| Average Passenger Car | 24 | 115 | 31 | 55 |
| Average SUV | 26 | 113 | 35 | 52 |
| Average Truck | 29 | 114 | 39 | 52 |
| Average Van | 22 | 140 | 26 | 54 |
| FMVSS No. 213 | 21 | 81 | 20 | 48 |

[8] A more severe crash pulse is defined as one having a higher acceleration onset rate, higher peak acceleration, and/or a shorter time duration.

Based on this information, we have decided not to reduce the severity of Standard No. 213's crash pulse. PAX found that the current crash pulse is very similar to the pulse of light trucks, SUVs and small school buses in acceleration onset rate and peak magnitude.

Figures 2, 3 and 4 plot acceleration curves of SUVs, trucks, and a small school bus. These plots show that the existing Standard No. 213 pulse corridor closely represents pulses of these vehicles. As shown in the figures, the first 70 msec represents several modern day vehicles used to transport children. Increasingly, light trucks, SUVs and small school buses are being used to transport children in child restraints. Based on these findings, we conclude that the stringency of the FMVSS No. 213 crash pulse is justified to better ensure that each child restraint will not have structural degradation in a crash, and will limit forces to the head, neck, and torso to tolerable levels, no matter the vehicle the child is in.

The agency is seeking comment on whether a more severe crash pulse should be established for testing child restraint systems. Comments are sought on the trapezoidal-shaped corridor proposed, and on the parameters that determine the level of severity of a pulse for child restraint systems. Does the trapezoidal-shaped corridor provide a sufficient representation of the current vehicle fleet, or are there other pulse shapes that would be more representative and/or more severe?

The agency is also seeking comment as to whether the total change of velocity of the current Standard No. 213 pulse (delta v = 30 mph) should be increased to 33 mph to be equivalent to a 30 mph crash into a rigid barrier. Typically, a delta v of 33 mph is seen in a 30 mph rigid wall test required for adult protection in Standard No. 208.

3. Adjusting the Corridors of the Pulse

We are proposing minor revisions to the crash pulse. We would extend it to approximately 90 msec, and would widen the test corridor so that several testing facilities can satisfactorily reproduce the FMVSS No. 213 crash pulse (*see* figure 5). The expanded corridor would not sacrifice the stringency of the current pulse. The proposal would ensure the rapid rise as is currently in the standard but also accommodate small deviations at time zero as requested by the TRC petition. The change in the boundary of the corridor would provide laboratories the flexibility to generate a pulse that would be closer to a $\Delta V = 30$ mph.

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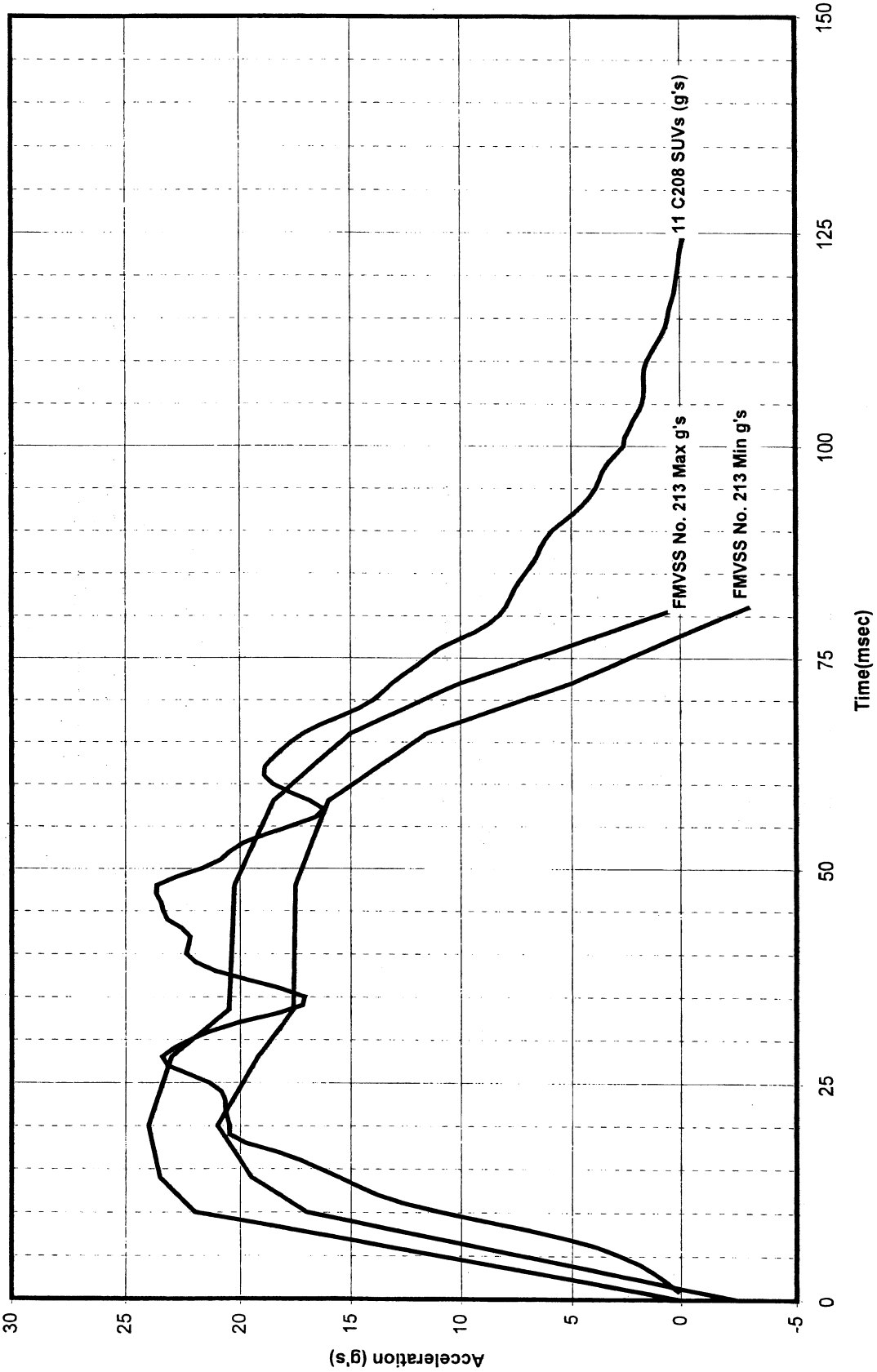



Figure 2: FMVSS 213 vs 208-SUV Crash Pulse Filtered @ 100Hz

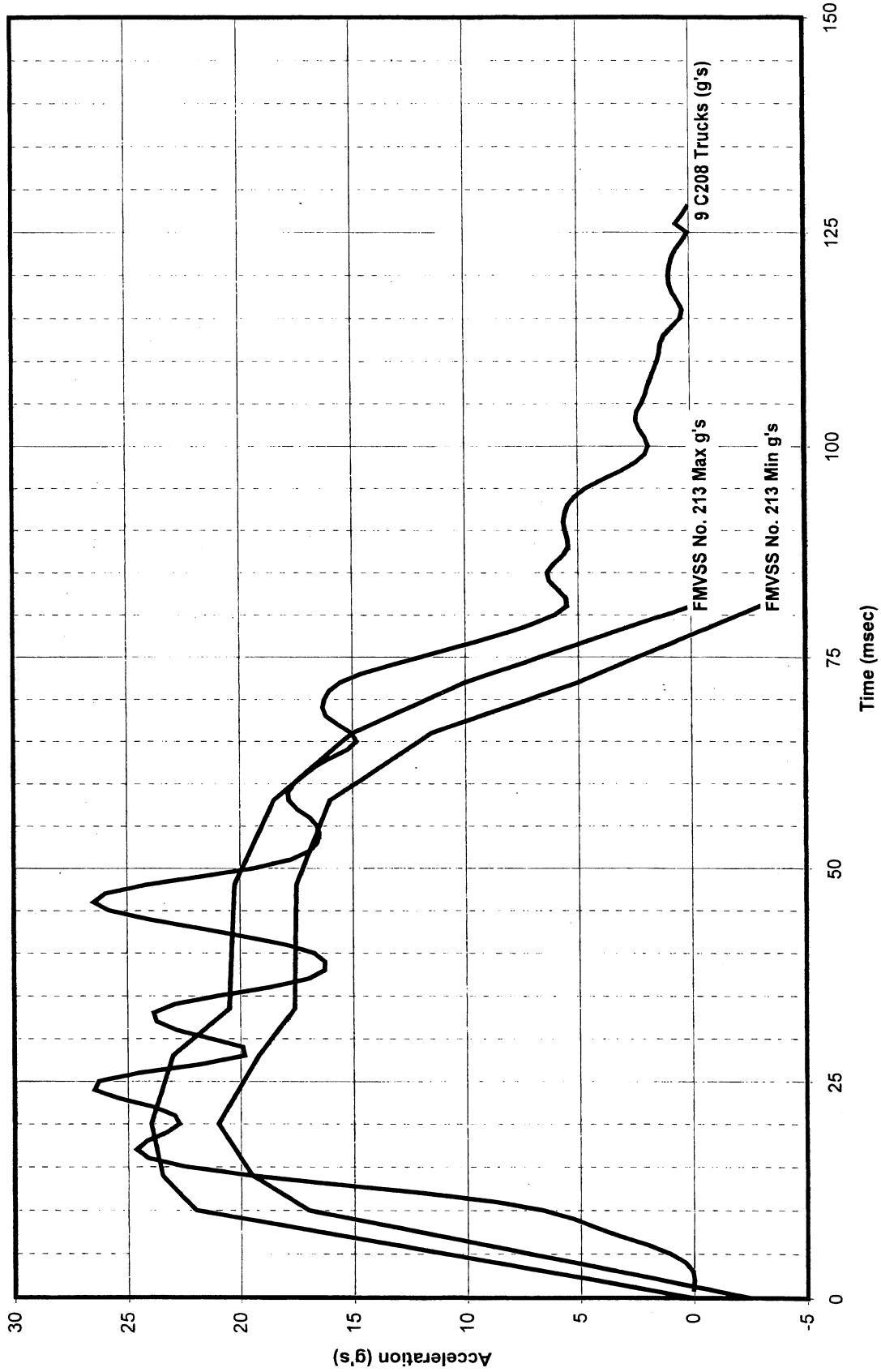



Figure 3: FMVSS 213 vs 208-Truck Crash Pulse Filtered @ 100Hz

Figure 4: FMVSS 213 vs. Small School Bus Crash Pulse Acceleration

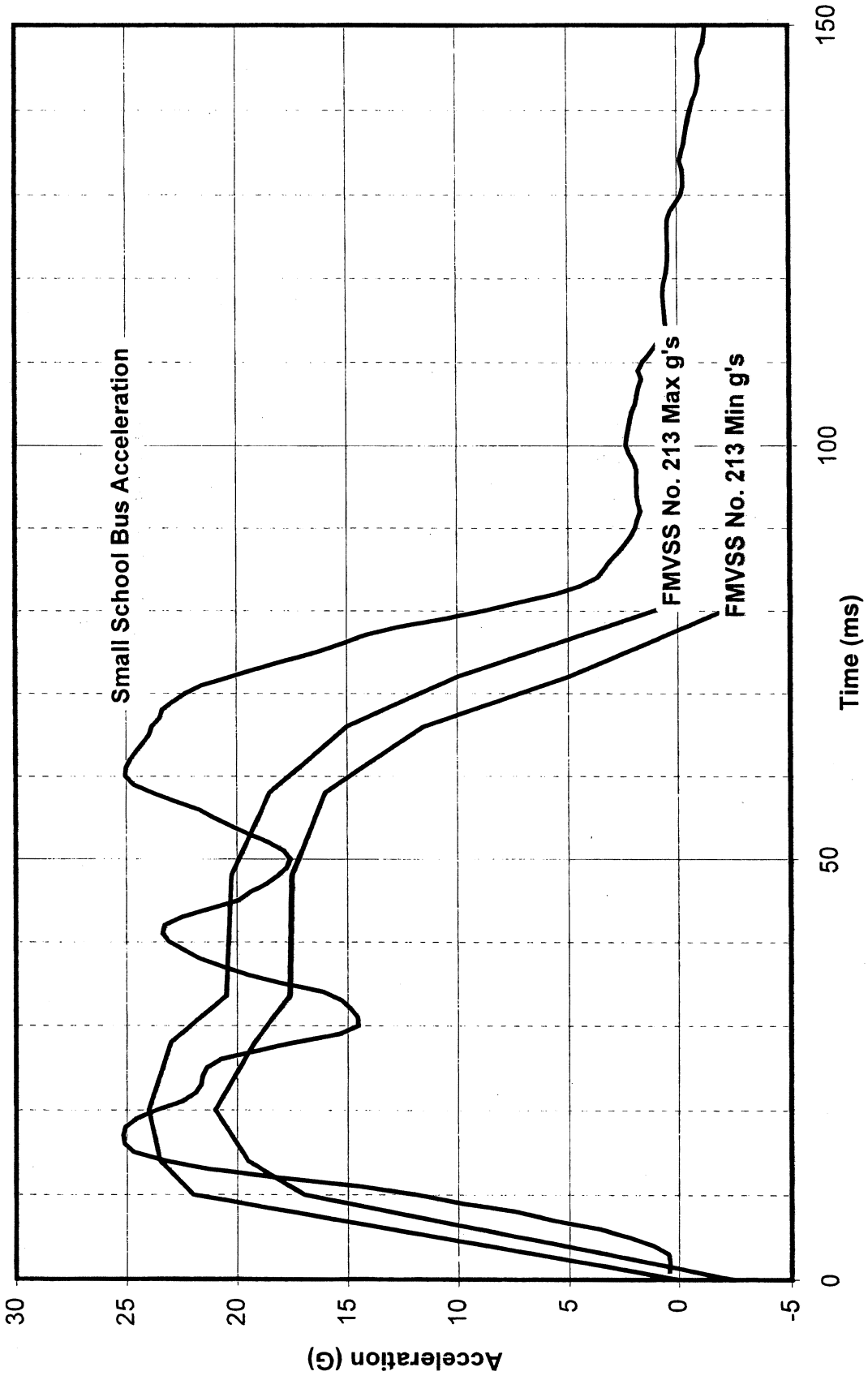
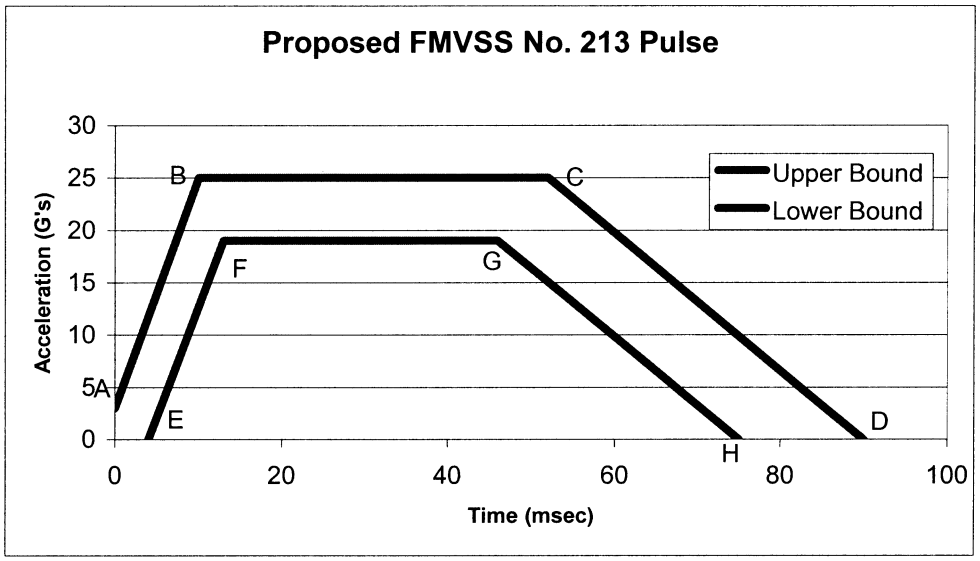


**FIGURE 5: Proposed FMVSS No. 213 Pulse**

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NHTSA proposes that the sled pulse for Standard No. 213 (see figure 5, above) should have the coordinates given in the following table 5:

TABLE 5.—PROPOSED SLED PULSE COORDINATES

| Point | Time | Acceleration |
|---|---|---|
| **Upper Bound** | | |
| A | 0 | 3 |
| B | 10 | 25 |
| C | 52 | 25 |
| D | 90 | 0 |
| **Lower Bound** | | |
| E | 4 | 0 |
| F | 13 | 19 |
| G | 46 | 19 |
| H | 75 | 0 |

NHTSA will be further evaluating the proposed changes. Sled tests using the proposed crash pulse will be conducted later this year, and the information we obtain will be placed in the docket. Results of this testing will be compared to compliance test data of existing child restraints to evaluate the effect of the changes. Comparison of these tests will aid in the agency's decision as to whether the proposed changes should be adopted in a final rule.

*c. Improved Child Test Dummies*

This document proposes two initiatives toward enhancing the use of test dummies in the evaluation of child restraints under Standard No. 213. NHTSA proposes to replace some of the existing dummies with improved dummies representing children of approximately the same age as the replaced dummies. NHTSA also proposes testing child restraints for older children by using a weighted 6-year-old dummy (*i.e.,* a dummy to which weights have been added). The total weight of the dummy would be 62 lb. The weighted dummy would be used to test child restraints that are recommended for children weighing 50 to 65 lb. (This NPRM also proposes expanding the applicability of Standard No. 213 to restraint systems recommended for use by children weighing up to 65 lb. See section IV(e) of this preamble.)

Child restraint systems must be certified as meeting Standard No. 213's requirements when dynamically tested with test dummies that represent children of different ages. The current dummies used in Standard No. 213 compliance testing are the uninstrumented newborn infant, the uninstrumented 9-month-old infant, and the Hybrid II 3- and 6-year-old dummies. NHTSA selects which test dummy to use based on the mass of the children for whom the manufacturer recommends for the child restraint. Table 6 sets forth which dummies are used to test child restraints based on the mass recommendations established for the restraint by the manufacturer. If a child restraint were recommended for a range of children whose mass overlaps, in whole or in part, two or more of the mass ranges in the table, the restraint is tested with the dummies specified for each of those ranges. Thus, for example, if a child restraint were recommended for children having masses greater than 13 kg and up to 20kg, it would be tested with the 9-month-old dummy, the 3-year-old dummy and the 6-year-old dummy.

TABLE 6.—USE OF CURRENT DUMMIES

| Recommended mass range (kilograms) | Dummy(ies) currently used in compliance testing |
|---|---|
| Not greater than 5 kg (0 to 11 lb) | Newborn. |
| Greater than 5 but not greater than 10 kg (11 to 22 lb) | Newborn, 9-month-old. |
| Greater than 10 but not greater than 18 kg (22 to 40 lb) | 9-month-old, Hybrid II 3- year-old. |
| Greater than 18 (40 to 50 lb) | Hybrid II 6- year-old. |

1. CRABI, Hybrid III Dummies

i. Replacing Current Dummies

The first initiative is a proposal to replace three of the test dummies now used in Standard No. 213 compliance tests with new test dummies. The design and performance criteria for the new dummies were incorporated into NHTSA's regulation for anthropomorphic test devices, 49 CFR part 572, by rulemaking actions concluded last year. The new dummies are the Child Restraint Air Bag Interaction (CRABI) 12-month-old infant dummy (Part 572, Subpart R), the Hybrid III 3-year-old child dummy (Subpart P), and the Hybrid III 6-year-old child dummy (Subpart N). The dummies are used in compliance tests that the agency adopted last year for testing advanced air bag systems under Standard No. 208, ''Occupant Crash Protection.'' We would retain the newborn infant dummy in Standard No. 213's compliance tests, but would replace the 9-month-old dummy (Part 572, Subpart J) with the CRABI.[9] We would replace the Hybrid II 3- and 6-year-old dummies with their Hybrid III (HIII) counterparts. Thus, just as in the protocol today under Standard No. 213, there would be four child test dummies used for compliance testing.

The new dummies were incorporated into Part 572 because they comprise a new generation of test dummies that are more representative of human children than their Hybrid II counterparts, and allow for the assessment of the potential for more types of injuries in motor vehicle crashes. The biofidelity, reliability and repeatability of the test dummies were discussed in the final rules incorporating the dummies into Part 572. *See,* final rules for the CRABI (65 FR 17188; March 31, 2000); Hybrid III 3-year-old (65 FR 15254; March 22, 2000); Hybrid III 6-year-old dummy (65 FR 2065; January 13, 2000). The CRABI dummy is instrumented with head, neck and chest accelerometers, while the 9-month-old dummy is not. The Hybrid III child dummies have a broader selection of instruments to assess the injury potential to child occupants, including a multi-segmented neck, multi-rib thorax and abdominal load monitors, while the Hybrid II dummies have limited biofidelity in the neck area and are not instrumented to measure neck injury. Because of their superior instrumentation, the CRABI dummy and the Hybrid III child dummies can provide a fuller evaluation of the performance of child restraint systems in protecting young children.

Simply substituting the dummies for the existing ones might not, in itself, affect child restraint performance. There does not seem to be a significant difference between the Hybrid II and Hybrid III dummies in their ability to measure head and chest accelerations or in dummy kinematics relevant to head and knee excursions. A series of frontal, Standard No. 213 sled tests were conducted to evaluate the equivalency between the Hybrid II child dummies currently used in the standard with the CRABI dummy and the Hybrid III 3- and 6-year-old dummies. Results from previously performed compliance tests (Hybrid II dummies) were identified, and the Hybrid III and CRABI dummies were seated in various CRS and vehicle belt configurations in order to establish a full complement of tests with both the Hybrid II and Hybrid III dummies. Where needed, additional sled tests were performed with the Hybrid II dummies. HIC, chest acceleration, and head and knee excursion values were compared between the Hybrid II and Hybrid III dummies for each age group. Test results indicate similar performance between the Hybrid II and Hybrid III child dummy families. *See,* ''A Comparative Evaluation of the Hybrid II and Hybrid III Child Dummy Families,'' a copy of which has been placed in the docket. Nonetheless, replacing the Hybrid II 3- and 6-year-old dummies with their Hybrid III counterparts would enhance safety by the latter's greater instrumentation capabilities and improved biofidelity, and by the adoption of injury criteria that the Hybrid II dummies cannot measure. This NPRM proposes new injury criteria of that sort, which are discussed in section V (f), *infra.*

ii. Retaining the Criteria Used To Determine Which Dummy Is Used in Compliance Tests

NHTSA proposes to retain the criteria that are used to determine which dummy is used in Standard No. 213's compliance test. Table 7 sets forth the dummies that would be used to test child restraints, based on the mass of the children for whom the restraint is recommended.

TABLE 7.—PROPOSED USE OF NEW DUMMIES

| Recommended mass range (kilograms) | Dummy(ies) currently used in compliance testing | Dummies proposed for use |
|---|---|---|
| Not greater than 5 kg (0 to 11 lb) | Newborn | Newborn. |
| Greater than 5 but not greater than 10 kg (11 to 22 lb). | Newborn, 9-month-old | Newborn, CRABI. |
| Greater than 10 but not greater than 18 kg (22 to 40 lb). | 9-month-old, 3-year-old | CRABI, HIII 3-year-old. |
| Greater than 18 kg but not greater than 22.7 kg (40 to 50 lb). | 6-year-old | HIII 6-year-old. |
| Greater than 22.7 kg (Over 50 lb) | | Weighted HIII 6-year-old. |

Comments are requested on the merits of replacing the existing dummies with the three new ones. The agency has tentatively decided that it would no longer use the 9-month-old dummy (which weighs 20 lb) to test child restraints because the newborn and the CRABI (22 lb) appear sufficient to evaluate the performance of a child restraint recommended for infants. Comments are requested on whether the 9-month-old dummy would still be needed to test child restraints, and if so, which restraints should be tested with that dummy. The 9-month-old dummy better represents a 9-month-old child than the CRABI, since the CRABI is slightly more massive as a device representing a 12-month-old. Thus, retaining the 9-month-old in compliance testing might increase the scrutiny of the standard of infant restraints, which argues for continued use of the dummy in compliance tests (although there would be costs associated with such use). Also, some rear-facing infant car seats/carriers that are designed with a

[9] Britax Child Safety Inc. submitted a petition for rulemaking on September 22, 2000, to allow manufacturers to specify use of the CRABI in compliance testing in place of the 9-month-old dummy. To the extent the petition is consistent with this NPRM, it is granted.

handle for toting the infant outside of the vehicle are recommended for use with infants weighing only up to 20 lb. Even though the CRABI (at 22 lb) is heavier than the children recommended for those restraints, we tentatively conclude that the CRABI can and should be used in compliance tests of these restraints because it is instrumented and the 9-month-old (20 lb) dummy is not. Do all infant car seat/carriers have back supports that are high enough to support the CRABI?

Relatedly, the agency's policy has been, to the extent possible, to test each child restraint with dummies that are at the ends of the weight range of children for whom the restraint is recommended. The smaller of the two dummies with which we test child restraints is used for assessing the potential for ejection, while the larger dummy is used for assessing structural integrity. Be that as it may, we would test a child restraint that is recommended for use by children weighing 20 to 40 lb forward-facing with the CRABI (22 lb) dummy, and not with the 9-month-old (20 lb) dummy, even though the 9-month-old dummy is closer in weight/mass to the lower end of the recommended weight range for the restraint. The difference in stature between the 9-month-old and the 12-month-old CRABI is nominal—the 9-month-old is 27.9 inches tall, while the 12-month-old CRABI is 29.4 inches tall (the sitting heights are 17.7 inches and 18.3 inches, respectively). As such, both dummies will likely provide nearly identical measures of the possibility for ejection. Comments are requested on this issue.

Comments are requested on whether there is a need to specify in Part 572 a test dummy representing an 18-month-old child. Transport Canada has evaluated an 18-month-old CRABI child dummy that weighs 25 lb. However, because NHTSA has not evaluated the dummy, we have not assessed whether it should be used in compliance testing. There also does not appear to be a significant need for the dummy. The dummy would be used in tests of convertible[10] restraints that are recommended for use in the rear-facing configuration by children weighing over 22 lb. As noted above, restraints that are recommended for use by children over 22 lb (and less than 40 lb) are subject to testing with the Hybrid II 3-year-old (33 lb) dummy. Virtually all convertible restraints currently on the market are certified rear-facing for up to at least 30 lb, and often to 35 or 40 lb. The 3-year-old dummy therefore is more representative of children at the upper end of the recommended weight ranges for these restraints than the 18-month-old dummy.

The height recommendations would not change. The 850 mm height criterion was originally based on the 95th percentile 1-year-old and not the 9-month-old, so the substitution of the CRABI 12-month-old for the 9-month does not require a change.

TABLE 8.—DUMMY SELECTION BASED ON HEIGHT RECOMMENDATIONS

| Recommended height range (kilograms) | Dummy(ies) currently used in compliance testing | Dummies proposed for use |
|---|---|---|
| Not greater than 650 mm | Newborn | Newborn. |
| Greater than 650 mm but not greater than 850 mm. | Newborn, 9-month-old | Newborn, CRABI. |
| Greater than 850 mm but not greater than 1100 mm. | 9-month-old, HII 3-year-old | CRABI, HIII 3-year-old. |
| Greater than 1100 mm | HII 6-year-old | HIII 6-year-old. |

iii. Conditioning the Dummies

This document proposes detailed descriptions of the clothing, conditioning and positioning procedures for the dummies to ensure that the test conditions are carefully controlled.

Clothing for the 12-month-old CRABI and the Hybrid III 3- and 6-year-old dummies is currently specified in the corresponding sections of Part 572 that identify the design and performance criteria for each dummy. (Clothing is described in § 572.154(c)(2) of Part 572 for the CRABI 12-month-old; in § 572.144(c)(1) for the Hybrid III 3-year-old; and in § 572.124(c)(2) for the Hybrid III 6-year-old.) It is proposed that the clothing specified in Part 572 for each dummy be used in the Standard No. 213 compliance test, except with respect to the identification of appropriate footwear. S9.1(c) of Standard No. 213 prescribes size 7M sneakers for the 3-year-old dummy and size 12½ M sneakers for the 6-year-old dummy with rubber toe caps, uppers of Dacron and cotton or nylon and a total mass of 0.453 kg. No such specifications are in Part 572. As such, we propose that S9.1(c) Standard No. 213 maintain the specification of footwear for the Hybrid III 3- and 6-year-old dummies. The clothing and footwear for the weighted 6-year-old dummy (see section V.d.2, *infra*) would be the same as that specified in Part 572 for the Hybrid III 6-year-old dummy.

The conditioning specifications specified in S9.3 of Standard No. 213 would be revised to reflect the same pre-test conditioning procedures that are currently specified in Standard No. 208 for the CRABI 12-month-old and the Hybrid III 3- and 6-year-old dummies. Namely, each dummy would be maintained at a temperature between 69 and 72 degrees F (between 20.6 and 22.2 degrees C) for at least 4 hours prior to a test. This would ensure that each dummy is conditioned in a manner that is consistent with the provisions specified in Part 572 for each dummy and its specific subassemblies. The dummy positioning requirements in S10 of Standard No. 213 would remain essentially unchanged. We note that S10.2.1(a) of Standard No. 213, which specifies rotating the legs of the 9-month-old dummy prior to placement of the dummy in a child restraint, is not needed for the CRABI 12-month-old dummy because of the spinal structure of the CRABI dummy.[11]

2. Using a Weighted 6-Year-Old Dummy

The second initiative relates to enhancing the dynamic evaluation of child restraints that are designed for older children. This NPRM proposes to use a weighted Hybrid III 6-year-old dummy to test child restraints that are

[10] A convertible child restraint can be used rear-facing with infants and young toddlers, and forward-facing with older toddlers. They typically are recommended for use by children from birth until the child reaches 40 lb.

[11] The proposed regulatory text of this NPRM retains the specifications in Standard No. 213 for conditioning and positioning the 9-month-old dummy and the Hybrid II dummies because the dummies would continue to be used in compliance tests until the mandatory compliance date of a final rule (which is proposed to be November 1, 2004).

recommended for use by children with masses up to 29.5 kg (65 lb).

A child reaching 40 lb (18 kg) has outgrown a convertible or toddler restraint, but still must be restrained by special means to safely ride in a vehicle. Parents tend to move these young children into the vehicle belt system, only to find that the lap and shoulder belts do not properly fit their children. The children are not yet large enough to sit with their backs against the vehicle seat back cushion with their knees bent over the seat edge. To compensate for a shoulder belt crossing their face or neck, some children tend to place the shoulder belt behind their backs, which results in no restraint of the child's upper torso. Children also find it more comfortable to bend their knees at the vehicle seat cushion's edge than to ride with the edge of the cushion pressing against their calves. Because their legs are not long enough to enable them to bend their knees at the cushion's edge while riding in a vehicle, children generally slouch down in the vehicle seat and scoot forward on the seat. Slouching raises the lap belt over their soft-tissue areas, which exposes abdominal organs to crash forces that can be imposed by the lap belt.

Klinich et al. estimates that children who are less than 148 centimeters in standing height do not adequately fit the seat belt and seating system in vehicles (''Study of Older Child Restraint/Booster Seat Fit and NASS Injury Analysis,'' DOT HS 808 248, November 1994.) Current NHTSA guidelines recommend booster seat use for children up to age 8, unless the child is 4′ 9″.

A booster seat improves the fit of a vehicle's belts on children. Booster seats are ''child restraint systems'' regulated in the same manner as other child restraint systems by Standard No. 213. The boosters come in a variety of styles, the majority having high-backs, with shoulder strap adjuster features on the sides. Belt-positioning seats (also referred to as ''belt-positioning boosters'') must be used with a lap and shoulder belt system. Boosters provide a raised seating platform for the child, which provides a taller sitting height. Raising the child helps position both the vehicle's lap and shoulder belts correctly. The seating platform also allows the child's knees to bend comfortably while the child is riding in the vehicle, which greatly reduces the tendency to slouch. Booster seats are dynamically tested by the agency using the 6-year-old test dummy, which weighs approximately 48 pounds and is about 48″ tall.

In September 1996, the NTSB issued Safety Recommendation H–96–25, which asked NHTSA to revise Standard No. 213 to establish performance standards for booster seats that can restrain children up to 80 pounds. The Safety Board expressed concern about the performance of boosters when restraining a child that weighs more than the 6-year-old dummy that is currently used in Standard No. 213 compliance testing. This concern was also expressed by the Blue Ribbon Panel II in March 1999 (''Blue Ribbon Panel II: Protecting Our Older Child Passengers'') in its report on ways to increase the use of age- and size-appropriate occupant restraints by children ages 4 through 15. Most booster seats currently on the market are certified for use by children weighing up to 80 lb. To better evaluate the performance of these boosters with children at the higher end of the weight range recommended for the restraint, the agency is pursuing two separate but parallel efforts to address the protection needs of older children. The first is a long-term program to develop a 76-lb, 10-year-old dummy. The second is a short-term initiative to use a weighted 6-year-old dummy to test booster seats beyond the 50-lb weight limit specified in FMVSS No. 213. The weighted dummy weighs 62 lb.

i. Development of the 10-Year-Old Dummy Is a Long-Term Measure

A 10-year-old dummy is being developed, but it is not far enough along in its development to be part of this NPRM. [12] The following summarizes the work on the dummy thus far.

In early 2000, NHTSA asked the Society of Automotive Engineers (SAE) Dummy Family Task Group (DFTG) to develop a test dummy representative of a 10-year-old child. The development and adoption of a dummy this size is seen as a long-term solution to ensuring the proper restraint of the approximately 10 percent of the population between the sizes of 6-year-olds and 5th percentile adult females, and could potentially be used in evaluating the performance of booster seats and vehicle belt systems. The group met initially in May 2000 to define the concept. The weight and height of the proposed dummy were provided from the Center for Disease Control Data Bank, and was targeted to be approximately 4′6″ and 72 lb. The basic construction was envisioned to be similar to that of the small female dummy. The dummy was to be able to be positioned in erect seated, slouched seated, standing, and kneeling postures to fully evaluate possible restraint configurations.

The task group held its first review meeting in June 2000, and reviewed impact responses scaled from the small female and 6-year-old dummies. At that time, provisional performance requirements were defined, and the anthropometry and mass goals were finalized. The dummy instrumentation was specified to measure injury parameters for the following body regions: head, neck, shoulder, thorax, pelvis, femur, and tibia.

The first 10-year-old prototype was assembled in February 2001. It weighed about 76 lb. The task group reviewed this prototype, and directed design corrections. Subsequently, the first drawings were completed in April 2001. GM and NHTSA separately performed preliminary dummy performance verifications in Spring 2001 and Summer 2001, respectively. The agency is now conducting an extensive evaluation of the dummy, which will include a series of sled testing of the dummy. If no problems are encountered, NHTSA may issue an NPRM proposing the incorporation of the 10-year-old dummy into Part 572 by early 2003. When it issues such an NPRM, NHTSA will also undertake rulemaking on Standard No. 213 to propose using the dummy in compliance tests. At this time, we invite views on the development and potential use of the 10-year-old dummy in Standard No. 213's compliance tests.

ii. A Weighted 6-Year-Old Dummy Is a Feasible Short-Term Alternative

As a short-term, interim measure, NHTSA is proposing the use of a weighted Hybrid III 6-year-old dummy (hereinafter ''HIII–6CW'') for use in testing child restraints that are recommended for use by children weighing from 50 to 65 lb.

The agency developed the dummy by adding weights to the current Hybrid III 6-year-old child dummy to increase the

[12] The legislative history to TREAD indicates that Congress was interested in the potential for using the 10-year-old dummy specified in ECE 44. That dummy is manufactured by the Netherlands Organisation for Applied Scientific Research (TNO), which manufactures the other test dummies referenced in ECE 44. These dummies are TNO's ''P'' series of child dummies, which includes a newborn, a 9-month, 18-month, and 3-, 6-, and 10-year-old. All P series dummies are of similar construction. The agency evaluated the 3-year-old child dummy and found it to have insurmountable seating stability problems when placed in a child restraint, and un-human-like impact kinematics because of its cervical and thoracic spine construction. We also found problems with the instrumentation. As a result, because of design similarities of all P series dummies, our engineering judgment was the 10-year-old TNO dummy would not be suitable for use in crash testing. Subsequently, TNO began developing the Q series dummies, which appear likely to be more biofidelic, stable and reliable than their predecessor. The dummies are still in development and are not available for use now.

total weight from approximately 52 pounds[13] to over 60 pounds.[14] NHTSA added approximately 10 pounds to the dummy so that it could be used to represent slightly heavier children. The initial design concept utilized carbon steel weights that were rigidly attached to the dummy in two locations: (1) a weight located on the superior side of the pelvis between the pelvis and the lumbar adaptor; and (2) weights located on the lateral sides of the thoracic spine box. The steel pelvis weight added 3.8 pounds to the dummy while the spine weights added a total of 5 pounds (each weight was 2.5 pounds on right and left sides). The resulting dummy weight was approximately 60 pounds. The modifications also increased the dummy's seating height by one inch. This change in stature appeared to be acceptable; a heavier occupant could also be slightly taller.

Following preliminary testing with the carbon steel weights and upon experiencing some belt retention problems, we determined that better weight and center of gravity distributions could be achieved through the use of a dense Tungsten alloy material. The geometry of the spine and pelvis weights was redesigned to achieve a weight of 5.1 pounds for the pelvis weight and 5.2 pounds total for the spine weights. The increased density offered by the Tungsten alloy allowed each of the weights to be reduced in size, thus reducing the possibility of interference between the ribs and the spine weights. Further, the dummy's seated height was only increased by approximately 0.7 inches over the unweighted HIII–6C dummy.

Preliminary evaluation tests have been conducted on dummies equipped with both the steel and Tungsten alloy versions of the weights. These tests included thoracic calibration impacts, torso flexion tests, and dynamic sled tests. The weights withstood dynamic impacts and testing without causing excessive noise or vibrations in the data channels. (Adding the weights does not require any permanent modifications to the dummy. When the weights are removed, the dummy reverts to its original condition and meets the existing Part 572 specifications for the Hybrid III unweighted 6-year-old dummy.)

Component tests conducted with the steel version indicate that the added weights did not appear to introduce structural or instrumentation problems. The thoracic responses met the calibration requirements of the unweighted HIII–6C dummy; however, the peak probe force measured during the compression interval was near the upper end of the corridor. Thus, the thoracic impact response corridor may need to be adjusted for the weighted dummy. Electronic responses and visual observations confirmed that there was no contact between the ribs and the spine weights during the oblique impacts. The torso flexion tests also met all of the requirements of the unweighted HIII–6C dummy.

Sled tests have been conducted with both the steel and Tungsten versions. For all sled tests, the current Standard No. 213 pulse and buck were used. Both versions of the dummy have been tested with different booster seats and with 3-point (lap and shoulder) belt systems. The results of the dummy, particularly with the high mass Tungsten weights, appear to be reasonable as compared to the standard HIII–6C dummy. That is, there have been no structural or electronic deficiencies observed as a result of the sled testing. Additionally, a series of four Standard No. 213 sled tests using various child restraints were performed to compare the response of the unweighted Hybrid III 6-year-old dummy to the HIII–6CW. Tests of the revised weighted 6-year-old H-III dummy produced normal dummy kinematics (motion in midsagittal plane) in booster seats and regular belt systems.

A technical report discussing the agency's work in developing the dummy, titled ''Evaluation of the Weighted Hybrid III Six-Year-Old Dummy,'' has been placed in the docket. A proposal to incorporate the specifications and performance criteria for the HIII–6CW in Part 572 will be published in early 2002 in the **Federal Register**.

*d. Expanding the Applicability of the Standard to 65 Lb*

NHTSA proposes to amend Standard No. 213 to increase the upper limits of its applicability so that it would apply to child restraint systems for children who weigh 65 lb or less. Currently, the standard defines ''child restraint system'' as ''any device except Type I [lap] or Type II [lap/shoulder] seat belts, designed for use in a motor vehicle or aircraft to restrain, seat, or position children who weigh 50 pounds or less'' (S4). We would amend the definition to increase the weight limit to 65 lb.

The effect of the amendment would be to apply Standard No. 213 to devices that are recommended for children weighing 50 to 65 lb. There has been considerable interest over the years in raising the limit to require that child restraint systems that are recommended for older children (*i.e.,* booster seats) perform adequately in a crash. The aim of raising the limit was to bring booster seats that are recommended for children over 50 lb within Standard No. 213 and subject them to that standard's dynamic test, just as other restraints are tested under the standard. The intent to evaluate booster seat performance more thoroughly by dynamically testing them could not be realized, however, without a test dummy representing an older child. It would make little sense to raise the standard's limit above 50 lb if a test device were not available to test the performance of the restraint. Further, booster seats were not being marketed so as to be beyond the standard's purview; their recommended usage included children weighing less than 50 lb so they were, at least, subject to the 30 mph dynamic test with the 6-year-old (48 lb) dummy. For these reasons, NHTSA decided against increasing the 50 lb limit in the definition of ''child restraint system.'' (*See* 58 FR 46928, 46932 for a discussion of the agency's decision not to undertake rulemaking on this issue.)

Today, we are proposing to incorporate a weighted 6-year-old dummy (62 lb total weight) into Part 572. We tentatively conclude that the dummy can provide useful information on the performance of booster seats that are recommended for children above 50 lb. Accordingly, we propose to increase the 50 lb weight limit in the definition of child restraint system to 65 lb. In the event that the weighted 6-year-old dummy is not determined to be sufficient for testing child restraints for children weighing above 50 lb, what would be the advantages and disadvantages of raising the limit nonetheless? Regardless of whether the

[13] The Hybrid III 6-year-old dummy weighs about 51.5 lb, whereas the Hybrid II dummy weighs approximately 48 lb. A 50th percentile 6-year-old weighs 51 lb.

[14] The agency originally began this project by evaluating whether weight could be added to the HIII 6-year-old dummy by way of a weighted vest. We purchased a weighted vest from First Technology Safety Systems, a dummy manufacturer, to evaluate its design. The weights were contained in pouches located over the abdomen in the front and over the lower back of the dummy's posterior. On inspection of the vest on the dummy, we decided that this design would be unacceptable for use in compliance testing. Because the weights were not rigidly attached to the dummy, the weights could rattle or even slap in a dynamic event and possibly create noisy data signals in the dummy's instrumentation responses. Further, the vest was somewhat bulky, and the agency was concerned that it could affect the positioning of the dummy within the restraint system. The agency therefore concluded that the weighted vest concept was not a feasible alternative.

weighted 6-year-old dummy were adopted, comments are also requested on the advantages and disadvantages of increasing the weight limit to eighty pounds (80 lb) in the absence of an 80-lb test device. Our tentative conclusion is that the weighted 6-year-old dummy is not sufficient to assess the dynamic performance of a booster seat in restraining an 80-lb child. Consumers Union (CU) has suggested in its comment to the agency's draft child passenger protection plan (Docket NHTSA–7938, page 11) that manufacturers should not be permitted to recommend a child restraint for children of weights above the weight of the largest test dummy used to evaluate the restraint in compliance testing. NHTSA previously declined the suggestion, believing that limiting the recommendations in the manner suggested could result in safety losses. (For example, a manufacturer would not be able to recommend a toddler restraint for children above the weight of the 3-year-old dummy, 33 lb, which would result in 3-year-olds being graduated out of child restraints at too early an age.) (61 FR 30824; June 18, 1996.) Comments are requested on CU's suggestion with respect to booster seats. If the weighted dummy were adopted, should manufacturers be allowed to recommend boosters for children only up to 62 lb?

*e. New or Revised Injury Criteria*

This section describes proposed amendments to the measures that we use to assess the performance of child restraints under Standard No. 213. We propose injury criteria that are the same as the scaled injury criteria for children specified in Standard No. 208, *Occupant Crash Protection.* We also propose some requirements similar to the static testing requirements of Standard No. 213. The requirements that child restraints must maintain system integrity and limit excursion of the torso, head and knees in the simulated frontal impact would not be changed.

The agency requests comments on each of the proposed injury criteria. Comments are solicited on what risk levels are acceptable, what factors should be considered in selecting performance limits and whether the same limits as in Standard No. 208 should be established for the child restraint standard. The two standards address different sources of potential harm to children. The injury criteria for children in Standard No. 208 are intended to minimize the risk from a deploying air bag (ensuring that the air bag deploys in a manner much less likely to cause serious or fatal injury to out-of-position occupants). The injury criteria in Standard No. 213 are intended to limit the severity of forces imposed on a child during a crash. Child restraints meeting these criteria have worked effectively to maintain high levels of performance in crashes. Because the injury criteria of the standards are intended to minimize risks from different injury sources, it might be reasonable to have non-identical criteria.

1. Scaled Injury Criteria

The injury criteria that a child restraint must meet when restraining a dummy would change in several ways. Lower head and chest injury criteria are proposed, but the duration within which accelerations are measured would be limited. A new criterion for chest deflection is also proposed, as well as new criteria for neck injury. Currently, Standard No. 213 specifies a head injury criterion (HIC) of 1000 and maximum acceleration level for the chest (60g). These were based on the criteria that were specified for the adult male test dummy in Standard No. 208 in the early 1980's, when injury criteria were incorporated into Standard No. 213 (44 FR 72131; December 13, 1979). At that time, there were no injury criteria that were separately scaled from an adult dummy to reflect anatomical differences and differing injury tolerance of children. In the agency's May 2000 final rule on advanced air bag technology, NHTSA amended Standard No. 208 by, among other things, adjusting the criteria and performance limits to account for motor vehicle injury risks faced by different size occupants. (65 FR 30680; May 12, 2000.) See also a paper titled ''Development of Improved Injury Criteria for the Assessment of Child Restraint Systems,'' that has been placed in the docket.

i. Head Injury

This NPRM proposes to replace the HIC 1000 limit in Standard No. 213 with the scaled HIC values adopted by the May 2000 air bag final rule: 700 for 6-year-old dummy, 570 for the 3-year-old dummy; and 390 for the CRABI 12-month-old. In Standard No. 208, these values are calculated over a 15 millisecond (msec) duration. We propose to calculate HIC over a 15 msec duration ($HIC_{15}$) for Standard No. 213. Comments are requested on this issue, however, because while $HIC_{15}$ is appropriate for Standard No. 208, there currently is no limit on the time duration used to calculate HIC in Standard No. 213. Generally speaking, limiting the time duration lowers the calculated HIC values.

A. Should HIC Duration Be Limited to 15 Milliseconds?

We have previously declined to limit the time duration for calculating HIC in Standard No. 213 compliance tests because of the possible lessening of the stringency of the standard. Prior to the May 2000 rule on advanced air bags, Standard No. 208 limited HIC to 1000 but limited the calculation to a maximum time interval of 36 msec ($1000_{36}$). In 1995, we were asked to amend Standard No. 213 to calculate HIC using a 36 msec time duration, as was done at the time for Standard No. 208. The agency decided against limiting HIC because we determined that HIC values were generally lower when the time interval was limited to 36 msec ($HIC_{36}$), compared to $HIC_{unlimited}$ (an unlimited time duration may be used to calculate HIC). Given that a $HIC_{36}$ limit could have reduced the stringency of the standard, there was not enough information justifying any limit on the time interval. Thus, NHTSA decided against limiting HIC to 36 msec in Standard No. 213. 69 FR 35127, July 6, 1995.

Now, however, we are considering limiting the time interval for measuring HIC in the child restraint standard. Standard No. 208 had provided for calculating HIC for the entire crash duration as the child restraint standard does now, but NHTSA limited the maximum time duration of the HIC calculation to 36 msec for Standard No. 208 because low acceleration crashes over a long time duration could exceed HIC $1000_{unlimited}$ even though they were not likely to result in brain injuries. The agency determined that limiting the duration over which HIC is calculated to a maximum of 36 msec, while limiting HIC to 1000, assured that the acceleration level of the head will not exceed 60 g's for any period greater than 36 msec. The 60 g acceleration limit was set as a reasonable head injury threshold by the originators of the ''Wayne State Tolerance Curve,'' which was used in the development of the HIC calculation. 51 FR 37028; October 17, 1986.

The time interval was further reduced to 15 msec by the May 2000 final rule amending Standard No. 208. The May 2000 rule on advanced air bags replaced $1000_{36}$ with HIC $700_{15}$, based on recommendations from motor vehicle manufacturers that the duration for the HIC computations should be limited to 15 msec with a limit of 700 for the $50_{th}$ percentile adult male dummy. NHTSA determined that the stringency of HIC $700_{15}$ was equivalent to HIC $1000_{36}$ for

long duration pulses, because while $HIC^{15}$ produces a lower numerical value for long duration events, its 700 lower failure threshold compensated for the reduction.[15] The final rule employed a 15 msec time interval whenever calculating the HIC function in Standard No. 208, and limited the maximum response of the adult male dummy to 700 and the response of the smaller dummies to suitably scaled maximums (700 for the 6-year-old, 570 for the 3-year-old, and 390 for the CRABI).

Since the TREAD Act directs us to consider adopting the scaled injury criteria adopted by the May 2000 final rule on advanced air bags, we are proposing that the HIC limits of $700_{15}$, $570_{15}$ and $390_{15}$ be incorporated into Standard No. 213 for tests with the 6-year-old, the 3-year-old and the CRABI, respectively. NHTSA believes that it should take a cautious approach in modifying the head injury tolerance level set by the HIC requirement. Comments are requested on the appropriateness of both the scaled HIC limits and on a 15 msec (or other) time interval for calculating HIC. In cases of head contacts with softer surfaces, such as an airbag system, the time duration of the contact is longer than in head contacts with hard surfaces. Since HIC was initially developed for high acceleration, short duration impact events, it is appropriate to limit the HIC calculation in such airbag impacts, since the acceleration levels are low but time duration is long and not similar to the original intent of the HIC criterion. Data from sled testing of child restraints conducted at the agency's Vehicle Research & Test Center (VRTC) and from evaluating child restraints as part of the agency's New Car Assessment Program (NCAP) show that there was not a major difference between $HIC_{unlimited}$ and $HIC_{36}$, indicating that the HIC responses are from contact events shorter than 36 msec. Further, accident data show that 79 percent of all brain injuries for children 0–8 years old are due to contact, which would imply the prevalence of short duration head acceleration events. This finding appears to indicate a reasonable basis for making Standard No. 213's calculation of HIC consistent with Standard No. 208. Comments are requested on whether the time interval should be limited to 15 msec, to 36 msec, or not at all. Limiting the time interval to 15 msec would produce lower HIC values than the current method of calculating HIC in Standard No. 213, but the reduction in $HIC1000_{36}$ to the lower failure thresholds of $700_{15}$, $570_{15}$ and $390_{15}$ should achieve equivalent performance.

The agency does not know at this time the degree to which HIC $700_{15}$ and the scaled thresholds for the smaller dummies would reduce the current HIC failure rate of Standard No. 213 because data from past tests are unavailable in a format that allows us to recalculate the relevant values. However, based upon agency test results, we expect a high passage rate for $HIC_{15}$. A series of five rear-facing and five forward-facing tests were conducted at VRTC with the CRABI dummy. In those tests, all five passed the $HIC_{15}390$ requirement in the rear-facing tests. Three of five passed for the forward-facing tests. Forward facing tests with the Hybrid III 3-year-old dummy have indicated 100 percent passage of the $HIC_{15}570$ requirement in Standard No. 213 conditions. A series of nine sled tests conducted under the NCAP program at an elevated sled test velocity of 35 mph also experienced a 100 percent passage of the requirement; a series of 20 in-vehicle crash tests with Hybrid III 3-year-old dummies conducted in NCAP produced over a 60 percent passage of the $HIC_{15}$ requirement for these higher speed impact test conditions. For the 6-year-old Hybrid III dummy, the $HIC_{15}700$ requirement was met 91 percent of the time in a series of 11 tests. Based upon these results, the agency has tentatively concluded that incorporation of the scaled $HIC_{15}$ criteria for these Hybrid III child dummies would be reasonable. Comments on test result experience of vehicle and/or child restraint manufacturers with the Hybrid III child dummies and the scaled $HIC_{15}$ responses are sought.

B. Test Data

The agency conducted two series of tests to evaluate if the child injury tolerance limits specified in FMVSS No. 208 are appropriate and practicable for use in testing child restraints using Hybrid III child dummies. The first series of sled tests was performed by VRTC to determine the performance of typical forward-facing child restraint systems secured by either a lap belt only, a lap and shoulder belt, or the LATCH system (the child restraint's attachments were attached to the child restraint by webbing material). The Hybrid III 3-year-old test dummy was used in this testing. The child restraint systems were installed and tested in either the rear seat of a contemporary sedan or the seating assembly specified in FMVSS No. 213. In addition, three sled acceleration pulses were studied: a typical Standard No. 208 frontal barrier crash (30 mph), an NCAP frontal crash (35 mph), and a Standard No. 213 pulse. The results of the VRTC sled testing are tabulated in Table 9 and discussed in a paper titled, ''Dynamic Evaluation of Child Restraints Using Various Frontal Crash Pulses,'' which is available from the docket.

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[15] In addition, the agency also believed that, for pulse durations shorter than approximately 25 mses, the HIC $700_{15}$ requirement is more stringent than HIC $1000_{36}$.

## Table 9: Results of VRTC Sled Testing

| TSTNO | Pulse Type | Sled Type | CRS Description | HIC 15 | Max Nij | Chest Acceleration | Chest Deflection |
|---|---|---|---|---|---|---|---|
| 3621 | 208 | GrandAm Buck | CoscoTouriva LS | 294 | 0.69 | 36 | |
| 3622 | NCAP | GrandAm Buck | CoscoTouriva LS | 322 | 0.69 | 34 | 17 |
| 3623 | NCAP | GrandAm Buck | FP SafeEmbrace LS | 320 | 0.80 | 36 | 17 |
| 3624 | 213-30 | GrandAm Buck | CoscoTouriva LS | 358 | 0.96 | 50 | 17 |
| 3625 | 213-33 | GrandAm Buck | CoscoTouriva LS | 540 | 0.91 | 52 | 19 |
| 3626 | 213-37 | GrandAm Buck | CoscoTouriva LS | 936 | 1.17 | 55 | 19 |
| 3627 | 213-37 | GrandAm Buck | FP SafeEmbrace LS | 637 | 1.06 | 68 | 20 |
| 3632 | 213-30 | 213 Bench | Cosco Triad LATCH | 173 | 0.72 | 48 | 12 |
| 3633 | 213-33 | 213 Bench | Cosco Triad LATCH | 237 | 0.80 | 50 | 14 |
| 3634 | 213-37 | 213 Bench | Cosco Triad LATCH | 278 | 0.90 | 50 | 16 |
| 3690 | 208-32 | 213 Bench | CoscoTouriva Lap Only | 373 | 0.80 | 41 | 17 |
| 3691 | 208-32 | 213 Bench | CoscoTouriva LS | 417 | 0.74 | 38 | 18 |
| 3692 | 208-37 | 213 Bench | CoscoTouriva LS | 473 | 0.72 | 38 | 19 |
| 3693 | 208-37 | 213 Bench | CoscoTouriva Lap Only | 475 | 0.77 | 42 | 20 |
| 3694 | 213-29 | 213 Bench | CoscoTouriva LS | 487 | 0.76 | 54 | 18 |
| 3695 | 213-32 | 213 Bench | CoscoTouriva LS | 578 | 0.85 | 56 | 22 |
| 3696 | 213-37 | 213 Bench | CoscoTouriva LS | 848 | 1.33 | 63 | 21 |
| 3621 | 208 | GrandAm Buck | Cosco Triad LATCH | 166 | 0.56 | 35 | 14 |
| 3622 | NCAP | GrandAm Buck | Cosco Triad LATCH | 219 | 0.59 | 34 | 14 |
| 3623 | NCAP | GrandAm Buck | FP SafeEmbrace LATCH | 218 | 0.75 | 35 | 17 |
| 3624 | 213-30 | GrandAm Buck | Cosco Triad LATCH | 362 | 0.78 | 49 | 11 |
| 3625 | 213-33 | GrandAm Buck | Cosco Triad LATCH | 325 | 0.69 | 47 | 12 |
| 3626 | 213-37 | GrandAm Buck | Cosco Triad LATCH | 454 | 0.77 | 52 | 15 |
| 3627 | 213-37 | GrandAm Buck | FP SafeEmbrace LATCH | 461 | 1.03 | 55 | 19 |
| 3632 | 213-30 | 213 Bench | Cosco Touriva Lap Only | 374 | 0.85 | 43 | 20 |
| 3633 | 213-33 | 213 Bench | Cosco Touriva Lap Only | 509 | 0.86 | 44 | 22 |
| 3634 | 213-37 | 213 Bench | Cosco Touriva Lap Only | 441 | 0.92 | 47 | 16 |
| 3690 | 208-32 | 213 Bench | Cosco Triad LATCH | 152 | 0.51 | 26 | 17 |
| 3691 | 208-32 | 213 Bench | Cosco Triad LATCH | 155 | 0.56 | 29 | 18 |
| 3692 | 208-37 | 213 Bench | Cosco Triad LATCH | 168 | 0.53 | NA | 19 |
| 3693 | 208-37 | 213 Bench | Cosco Triad LATCH | 154 | 0.55 | 27 | 15 |
| 3694 | 213-29 | 213 Bench | Cosco Triad LATCH | 345 | 0.69 | 48 | 14 |
| 3695 | 213-32 | 213 Bench | Cosco Triad LATCH | 373 | 0.74 | 52 | 13 |
| 3696 | 213-37 | 213 Bench | Cosco Triad LATCH | 277 | 0.71 | 55 | 19 |

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The second series of tests were performed in 20 NCAP vehicle crash tests to determine the performance of forward-facing child restraint systems restrained in the rear seat by a lap and shoulder belt with top tether and by a LATCH system (lower anchorages and top tether). The Hybrid III 3-year-old test dummy was also used in this testing. The results of these NCAP crash tests are tabulated and set forth in Table 10, *infra.*

Data from the VRTC sled tests and the NCAP full scale vehicle tests suggest that the new Standard No. 208 head injury criteria, $HIC_{15}$ with its lower performance limit (570 for 3-year-old) is equivalent to the current $HIC_{unlimited}$ with a performance limit of 1000. This conclusion is reached based upon the observation that both the Hybrid II $HIC_{unlimited}$, and the Hybrid III $HIC_{15}$, responses in Standard No. 213 appear to comply with their respective criteria limits with roughly a 50 percent margin.

ii. Thoracic Injury

A. Chest Acceleration

This document proposes new limits on chest acceleration and chest deflection. Currently, Standard No. 213 limits chest acceleration to 60 g's. The May 2000 final rule on advanced air bags scaled this value to 55 g's for the 3-year-old dummy and 50 g's for the CRABI. The chest acceleration limit remained at 60 g's for the 6-year-old dummy. We propose incorporating the same limits into Standard No. 213. For the 12-month-old CRABI dummy, the agency has observed chest accelerations of around 40 g's in rearward-facing child restraints. For forward-facing restraints using the 12-month-old CRABI dummy, nearly 75 percent of agency test results exceeded the 50 g limit, with accelerations generally less than 55 g's. Chest acceleration responses for both the 3- and 6-year-old dummies were well below their respective criteria in agency tests.

B. Chest Deflection

Currently, there is no chest deflection limit in Standard No. 213 because the current Hybrid II test dummies cannot measure chest deflection. Incorporating the Hybrid III 6- and 3-year-old dummies into Standard No. 213, as proposed in this NPRM, would enable us to measure deformation-deflection of the thorax sternum. Because the dummies would be capable of measuring this injury parameter, we propose that Standard No. 213 include limits on chest deflection.

The May 2000 final rule on advanced air bags reduced the deflection limit for the 50th percentile male dummy from 76 mm to 63 mm (from 3 inches (in) to 2.5 in). These limits were then scaled to obtain equivalent performance limits for the 6- and 3-year-old dummies. The CRABI does not measure chest deflection, so no limit was specified for that dummy. Compression deflection of the sternum relative to the spine was limited in Standard No. 208 to 40 mm (1.6 in) for the 6-year-old dummy and 34 mm (1.3 in) for the 3-year-old dummy.

We propose the same limits for Standard No. 213, except for the weighted 6-year-old dummy (see next section, below). Comments are requested as to whether these limits are appropriate for testing child restraint systems, particularly with respect to webbing systems and impact shields that some child restraints use to restrain forward movement of the child's torso.

C. Weighted 6-Year-Old Dummy

Based upon scaling considerations of increased mass of the thoracic spine, greater chest compression limits appear to be justified for the HIII–6CW since this dummy would represent either an 8-year-old, or an 80th- to 90th-percentile 6-year-old in weight and stature.

In evaluating chest acceleration, a pure mathematical evaluation would indicate that accelerations should be somewhat lower for the heavier dummy. However, considering that both the 5th-percentile female and Hybrid III 6-year-old dummy have a 60g limit for injury assessment purposes, the agency is reluctant to propose a reduction to a lower g level for a dummy that is sized between the female and the existing 6-year-old.

Accordingly, the agency proposes to incorporate a 42 mm deflection limit for the weighted 6-year-old and a chest acceleration limit of 60 g.

D. Test Data

Data from the VRTC and NCAP tests indicate a high passing rate for chest acceleration and deflection tests. In the VRTC frontal sled tests, 94 percent of the tests of the LATCH seats (15 out of 16) resulted in passing values for chest acceleration (average 43 g's), and 100 percent (17 out of 17) passed chest deflection (average 0.61 in). For the non-LATCH seats, 76 percent (13 out of 17) passed chest acceleration (average 47 g's) and 100 percent (16 out of 16) passed chest deflection (average 0.73 in). These data suggest that the Standard No. 208 chest acceleration and chest deflection limits are practicable for child restraint systems.

iii. Neck Injury

Currently, there is no neck injury criterion in Standard No. 213, because the current Hybrid II test dummies are not designed with neck force measurement capability. However, the CRABI 12-month-old and the Hybrid III 3- and 6-year-old dummies have been designed to measure neck bending moments and forces in the fore and aft direction, and axial compression and tension loads. Because the dummies are capable of measuring neck injury parameters, we are proposing that the standard include a new neck criterion.

The May 2000 final rule on advanced air bags specified limits for a neck injury criterion, Nij, for the adult and child dummies used in Standard No. 208 compliance testing. Nij is a new injury formula that accounts for the combination of flexion, extension, tension and compression. Nij accounts for the superposition of loads and moments, and the additive effects on injury risk. Standard No. 208 includes an additional, more stringent tension/compression limit to independently control these potentially injurious loading modes in the air bag environment to out-of-position children.

This NPRM proposes to incorporate an Nij criterion in Standard No. 213 that is the same as that specified in Standard No. 208, except that the limit on peak tension and compression would not be adopted and the ''in-position'' critical values [16] would be used for calculation of the Nij. This decision is consistent with the agency's recognition of in-position critical values in the Standard No. 208 final rule, and with the observation that neck injury for children properly restrained in child restraints is not as prevalent as for those positioned in close proximity to an air bag at the time of deployment. A precise determination of neck injuries to children in child restraints has been difficult to quantify. When the NASS and FARS data are sorted to examine neck injury for children restrained in a child restraint and involved in a crash severity comparable to the Standard No. 213 sled pulse, few neck injuries are observed. However, biomechanics researchers have indicated to the agency that, although not frequent, such injuries do occur under severe crash

[16] The FMVSS No. 208 final rule proposed both ''out-of-position'' and ''in-position'' critical values for Nij. The out-of-position values are applicable to the air bag loading environment where the loading to the neck is due to the occupant being out of a normal seating position in close proximity to the air bag. In-position critical values are applicable for conditions such as child restraints, where the occupant is properly positioned and neck forces and moments result from inertial loadings.

conditions. In the agency's tests of child restraints, discussed below, the Nij values calculated when applying the in-position critical values ranged around Nij = 1. NHTSA has tentatively determined that Standard No. 213 will incorporate the neck criterion of Nij = 1.0, where the critical values are the in-position values shown in Table 10, and the axial force is not limited. Comments are requested on this issue. NHTSA also requests comments on the need for any type of neck injury criterion at all in Standard No. 213, and the difficulty child restraint manufacturers may have in meeting this new injury measurement requirement.

TABLE 10.—NIJ IN-POSITION CRITICAL VALUES

| Dummy size | Nij intercepts | | | |
|---|---|---|---|---|
| | Tension | Compress | Flexion | Extension |
| CRABI | 1460 N (328 lbf) | 1460 N(328 lbf) | 43 Nm (32 lbf-ft) | 17 Nm (13 lbf-ft) |
| 3 YO | 2340 N (526 lbf) | 2120 N (477 lbf) | 68 Nm (50 lbf-ft) | 30 Nm (22 lbf-ft) |
| 6 YO | 3096 N (696 lbf) | 2800 N (629 lbf) | 93 Nm (69 lbf-ft) | 42 Nm (31 lbf-ft) |

iv. Tabulated Data

Table 9, *supra,* and the following table 11, set forth the data from the NCAP tests. They show that meeting the Nij is practicable, especially for LATCH seats, but that the neck measurements have little compliance margin for Nij = 1.0. A detailed discussion of the findings can be found in the technical paper, ''Dynamic Evaluation of Child Restraints Using Various Frontal Crash Pulses,'' previously referenced in this preamble.

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**Table 11: Results of Frontal NCAP Tests With Child Restraints**

| Testno | Vehicle Size | Model | Type of Child Seat: Left Rear | CRS-to-car Attachment | HIC 15 | Max Nij | Chest Acceleration | Chest Deflection |
|---|---|---|---|---|---|---|---|---|
| 3549 | Medium | Stratus 4dr | Cosco Triad-LAT | LATCH | 463 | 0.85 | 45 | 18 |
| 3554 | | Volvo S60 | Century STE | 3PT+Tether | 744 | 1.02 | 58 | 12 |
| 3643 | | Maxima | Evenflo Horizon V-NOLAT | 3PT+Tether | 742 | 1.05 | 49 | 16 |
| 3611 | | Accord | Evenflo Horizon V-LAT | LATCH | 456 | 0.95 | 41 | 14 |
| 3648 | | Impala | Century STE | 3PT+Tether | 622 | 0.98 | 43 | 14 |
| 3548 | Heavy | Lincoln LS | Cosco Triad-NOLAT | 3PT+Tether | 1029 | 1.35 | 53 | 14 |
| 3593 | SUV | Escape | Fisher Price Safe Embrace II-NOLAT | 3PT+Tether | 493 | 1.09 | 53 | 15 |
| 3645 | | Escape | Cosco Triad-NOLAT | 3PT+Tether | 516 | 0.87 | 46 | 13 |
| 3642 | | Durango | Century STE | 3PT+Tether | 638 | 0.98 | 48 | 16 |
| 3553 | | Suburban | No CRS | NA | | | | |
| 3573 | Minivan | Grand Caravan | Century STE | 3PT+Tether | 771 | 1.05 | 54 | 15 |
| 3644 | | Grand Caravan | Fisher Price Safe Embrace II-LAT | LATCH | 556 | 1.04 | 56 | 17 |
| 3594 | | Windstar | Fisher Price Safe Embrace II-NOLAT | 3PT+Tether | 342 | 0.86 | 38 | 15 |
| 3650 | | Windstar | Cosco Triad-NOLAT | 3PT+Tether | 422 | 0.88 | 38 | 12 |
| 3562 | Light | Sentra | Cosco Triad-LAT | LATCH | 342 | 0.79 | 43 | 10 |
| 3612 | | Sentra | Fisher Price Safe Embrace II-LAT | LATCH | 456 | 0.99 | 45 | 22 |
| 3610 | | Civic 4 dr | Cosco Triad-LAT | LATCH | 568 | 0.87 | 55 | 16 |
| 3537 | Compact | Echo | Cosco Triad-LAT | LATCH | 302 | 0.76 | 54 | 12 |
| 3647 | | Echo | Hoizon V-LAT | LATCH | 916 | 1.03 | 55 | 18 |
| 3563 | | Elantra | Fisher Price Safe Embrace II-LAT | LATCH | 450 | 1.04 | 48 | 20 |
| 3549 | Medium | Stratus 4dr | Cosco Triad-LAT | LATCH | 368 | 0.81 | 44 | 17 |
| 3554 | | Volvo S60 | Evenflo Horizon V | 3PT+Tether | 817 | 0.95 | 53 | 20 |
| 3643 | | Maxima | Evenflo Horizon V-LAT | LATCH | 777 | 1.13 | 48 | 21 |
| 3611 | | Accord | Fisher Price Safe Embrace II-LAT | LATCH | 375 | 0.99 | 39 | 19 |
| 3648 | | Impala | Roundabout | 3PT+Tether | 361 | 0.75 | 42 | 20 |
| 3548 | Heavy | Lincoln LS | Cosco Triad-LAT | LATCH | 394 | 0.89 | 47 | 13 |
| 3593 | SUV | Escape | Fisher Price Safe Embrace II-LAT | LATCH | 387 | 0.96 | 47 | 16 |
| 3645 | | Escape | Cosco Triad-LAT | LATCH | 634 | 0.97 | 44 | |
| 3642 | | Durango | Evenflo Horizon V | 3PT+Tether | 534 | 1.00 | 47 | 21 |
| 3553 | | Suburban | Roundabout-NOLAT | 3PT+Tether | 564 | 0.86 | 38 | 16 |
| 3573 | Minivan | Grand Caravan | Evenflo Horizon V-LAT | LATCH | 734 | NA | 54 | 14 |
| 3644 | | Grand Caravan | Evenflo Horizon V-LAT | LATCH | 585 | 0.92 | 51 | 18 |
| 3594 | | Windstar | Fisher Price Safe Embrace II-LAT | LATCH | 371 | NA | 38 | 18 |
| 3650 | | Windstar | Cosco Triad-LAT | LATCH | 409 | 0.78 | 37 | 13 |

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2. Static Testing Criteria

Certain changes to the requirements for which compliance is measured in a static test seem appropriate by an incorporation of the new test dummies.

Comments are requested on whether changes are needed to S5.2.3, which specifies a padding requirement for child restraints used by children weighing less than 22 lb. Should the requirement be deleted? NHTSA specified the requirement (whose thickness and static compression specifications are compliance-tested statically) because there was no instrumented infant test dummy available at the time (1979) the requirement was adopted. The agency's goal was to establish dynamic test requirements for infant restraints, so that the total energy absorption capability of the padding and underlying structure could be measured. (44 FR 72131, 72135). Since today's NPRM proposes use of the instrumented CRABI 12-month-old dummy for use in testing restraints recommended for children under 22 lb, we propose deleting S5.2.3.

The standard refers to use of one or more Hybrid II dummies in some of the static tests. These references would be

changed to the Hybrid III dummies or the CRABI. See, *e.g.*, S5.2.1.2, on use of the dummies to determine whether a seat back is required. See also S5.4.3.5(b) and S6.2.3 (post-impact buckle force release). NHTSA proposes to amend S6.2.3 so that the tension would be 90 N when a child restraint is tested with the CRABI, and 350 N when a child restraint is tested with the weighted 6-year-old dummy. Comments are requested as to what other requirements should be changed.

## VI. Proposed Effective Dates

TREAD requires us to complete this rulemaking by November 1, 2002. Based on that date, the following section discusses tentative conclusions about the dates on which compliance with the requirements would become mandatory.

a. We believe that manufacturers could begin certifying their child restraints based on testing done on the new seat assembly by 2 years after the date of a final rule. That compliance date would be November 1, 2004. While we do not expect the proposed changes to the seat assembly to have a major effect on the results of compliance tests, restraint manufacturers will likely have to conduct testing to confirm compliance of their restraints. This will be a financial impact on the manufacturers that, coupled with the fact that some redesign may be necessary to meet the revised injury criteria (see next section), would be more appropriately spread out over a 2-year time period.

b. We propose providing 2 years of leadtime (two years after publication of a final rule) before specifying the use of the new CRABI and Hybrid III dummies in compliance tests and the revised or new injury criteria. That compliance date would be November 1, 2004. We believe that child restraint systems generally are already able to meet the proposed requirements using the new dummies, so redesign of current child restraints would not be generally needed. For some non-LATCH restraints, however, redesign might be needed to meet the new $HIC_{15}$ and chest acceleration requirements, so longer leadtime might be needed. (As noted in section V(f), *supra*, some of the tested restraints failed to meet the proposed limits in the VRTC tests.) Comments are requested on how much leadtime would be necessary.

We also propose that manufacturers should be permitted the option of voluntarily using the new test dummies prior to the date on which they would be required to do so. Note, however, that this proposal also specifies that a manufacturer's selection of a compliance option (*i.e.*, to use the new dummies prior to the mandatory compliance date) must be made prior to, or at the time of the compliance test and that the selection is irrevocable for that child restraint. This provision is needed for us to efficiently carry out our enforcement responsibilities. We want to avoid the situation of a manufacturer confronted with an apparent noncompliance (based on a compliance test) with the option it has selected responding to that noncompliance by arguing that its products comply with a different option for which the agency has not conducted a compliance test. To ensure that we will not be asked to conduct multiple compliance tests first for one compliance option, then for another, we would require manufacturers to select the option by the time it certifies the child restraint system and prohibit them from thereafter selecting a different option for the restraint. This would mean that failure to comply with the selected option would constitute a noncompliance regardless of whether the restraint complies with another option. (Of course, a manufacturer may petition for an exemption from the recall requirements of the statute on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.)

c. As for using the weighted 6-year-old dummy to test restraints (typically booster seats) recommended for children with masses of over 22.7 kg (weights over 50 lb), we propose that the dummy can begin to be used in compliance tests 180 days after publication of a final rule to incorporate the dummy into Part 572. The weighted dummy's kinematic performance is comparable to that of the unweighted 6-year-old dummy. We do not anticipate that manufacturers would have to redesign their booster seats to certify compliance using the dummy.

## VII. Child Passenger Safety Plan and Other Issues of the TREAD Act

### *a. Comments on Possible Rulemaking*

On November 27, 2000, the agency published a request for comments on a draft planning document that NHTSA prepared that outlined our vision for enhancing child passenger safety over the next few years (65 FR 70687). The plan contained our views on implementing three strategies for improving the safety of child occupants from birth through age 10: increasing restraint use; improving the performance and testing of child restraints; and improving mechanisms for providing safety information to the public. The agency received about 30 comments on the draft plan.

Many commenters responded to the second of the three strategies, making suggestions as to how they believed Standard No. 213 should be improved to further enhance child restraint performance. Based on the comments we received, we believe that this NPRM substantially addresses them. Commenters strongly supported the plan to update the standard seat assembly and evaluate the crash pulse specified in Standard No. 213 for compliance tests of child restraint systems. Commenters endorsed the plan to undertake rulemaking to add the CRABI and Hybrid III child test dummies to the standard, along with the scaled injury criteria. Commenters supported extending the scope of the standard to child restraint systems recommended for children above 50 lb. Additionally, the November 2, 2001 NPRM (66 FR 55623) addressed comments suggesting improvements to Standard No. 213's labeling requirements.

It should be noted that there were a few comments on amending Standard No. 213 to incorporate side impact protection requirements. These comments will be addressed in the forthcoming ANPRM.

### *b. Rear-Impact Test*

No comments were received on incorporating rear impact test requirements into Standard No. 213.

As directed by the TREAD Act, we have considered whether to incorporate a rear impact test into the standard. During 1991–2000, 9,580 passenger vehicle occupants under 9 years old were fatally injured. Of these, 690 were killed in rear impact crashes (average of 69 per year), while 3751 and 2759 children were killed in front and side impact crashes, respectively. Of the 690 children killed in rear impact crashes in 1991–2000, 129 were restrained with a lap and/or shoulder belt; 218 were in child restraint systems; 280 were unrestrained and 63 were of other or unknown restraint use. Of the 69 children killed per year in rear impacts, on average 22 of them were in child restraint systems.

Data from the Fatal Analysis Reporting System (FARS) for 1991–2000 show 108 children, ages less than 1 year old, were fatally injured in rear impact crashes, while 655 children of that age group were killed in frontal crashes and 391 were killed in side crashes.

Based on these data and the timeframe of the TREAD Act, we have primarily focused on frontal and side impact protection. However, the agency

intends to explore potential upgrades to Standard No. 213 in rear impact protection as part of the ANPRM.

*c. Child Restraints in NCAP Tests*

Section 14(b)(9) of the TREAD Act requires consideration of ''[w]hether to include child restraints in each vehicle crash tested under the New Car Assessment Program.''

Each year since 1979, the agency has evaluated vehicle crashworthiness in frontal impact under the New Car Assessment Program (NCAP). In 1997, a side impact program was initiated and added to the NCAP. Under the NCAP, the agency conducts approximately 40 frontal and 40 side impact crash tests each year. For the frontal crash, the agency does these tests with two 50th percentile dummies in the front seat. Side impact crash tests are also conducted with a two 50th percentile dummies, however one dummy is placed in the driver seat and the other in the left rear passenger seat.

In response to the TREAD Act, NCAP incorporated various child restraints into frontal NCAP crash tests for the model year 2001 testing. Child restraints were placed in a total of twenty vehicles, varying in type and size. The agency evaluated performances of six different five-point-harness forward-facing child restraints. A fully instrumented Hybrid-III three-year-old dummy was used to assess performance. In each vehicle tested, the subject child restraint was secured tightly, as prescribed by the child restraint manufacturer's instructions. In addition, all child restraints, whether secured with LATCH or secured with a lap/shoulder belt, used a top tether. Similar testing will be conducted for both the front and side NCAP program in model year 2002.

Section 14(g) of the TREAD Act requires NHTSA to establish a child restraint safety rating consumer information program. NHTSA published a proposed rating program on November 6, 2001 (66 FR 56146, 66 FR 56048), which discussed the placement of child restraints in each vehicle crash tested under the New Car Assessment Program as a possible approach to obtain information for a rating program. We used the results of the child restraint NCAP tests in determining the feasibility of the proposal. The agency has asked for public comment on the rating program proposal and will consider the comments received, and all other available information, in deciding whether to include child restraints in vehicles tested under NCAP over the long-term.

## VIII. Rulemaking Analyses and Notices

*a. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

The agency has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures and determined that it is ''significant'' because of Congressional and public interest in upgrading Standard No. 213 and the performance of child restraint systems. Accordingly, the action was reviewed under the Executive Order.

As discussed below and in NHTSA's preliminary regulatory evaluation (PRE) for this NPRM [17], the proposal to use new dummies in compliance tests, including a weighted 6-year-old dummy, could result in increased testing costs for manufacturers that want to certify their restraints using the tests that NHTSA will use in compliance testing. The PRE estimates that use of the new dummies and other aspects of the changes to the test procedure would add testing costs of $2.72 million. We believe that use of the new dummies, in itself, would not necessitate redesign of child restraints. The new dummies perform similarly to the ones presently used in compliance testing.

On the other hand, the new neck injury criteria would necessitate improvements in the performance of some child restraints. The agency estimates that the proposal to use the new and scaled injury criteria of Standard No. 208 would prevent an estimated 3–5 fatalities and 5 MAIS 2–5 non-fatal injuries for children ages 0–1 annually. In addition, the proposal would save 1 fatality and mitigate 1 MAIS 2–5 injury in the 4- to 6-year-old age group annually. These were estimated by evaluating the test results of some child restraints that failed the proposed neck injury criterion, and estimating what benefits would accrue if those restraints were redesigned so that they could just pass the proposed criterion. The needed design changes appear to be small, because the restraints that met or came close to meeting the proposed Nij limit appear outwardly to be the same as those that failed to meet it. Thus far, NHTSA has been unable to identify what changes manufacturers could make to enable their restraints to meet the proposed criterion. While meeting the proposed Nij limit appears feasible because test results for some current child restraints show that they met the proposed Nij value, we do not know which particular design features generally reduced Nij. Thus, we could not estimate the costs of such countermeasures. Comments are requested on possible countermeasures and their costs.

The agency does not believe that updating the seat assembly and revising the crash pulse would affect dummy performance to an extent that benefits would accrue from such changes. Research will be conducted later this year to assess the effects of such changes on dummy performance.

*b. Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980, as amended, requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations and small governmental jurisdictions. I hereby certify that this NPRM would not have a significant economic impact on a substantial number of small entities. NHTSA estimates there to be about 10 manufacturers of child restraints, four or five of which could be small businesses. Manufacturers might have to make some design changes to some child restraints to meet the new injury criteria, particularly the neck injury criterion. NHTSA does not know the extent or nature of such changes, and has requested comments on them and their costs. We believe that only small changes to child restraints would be needed to allow them to pass the proposed neck injury criterion. Thus, there would likely be no impact on the number of child restraint producers. Comments are requested on the changes that are needed and the effect of this rule on the number of child restraint producers.

A rule adopting today's proposals would increase the testing that NHTSA conducts of child restraints, which in turn could increase the certification responsibilities of manufacturers. However, the agency does not believe such an increase would constitute a significant economic impact on small entities, because these businesses currently must certify their products to the dynamic test of Standard No. 213. That is, the products of these manufacturers already are subject to dynamic testing using child test dummies. The effect of this proposal on most child restraints is to subject them to testing with new dummies in place of

[17] NHTSA's preliminary regulatory evaluation (PRE) discusses issues relating to the potential costs, benefits and other impacts of this regulatory action. The PRE is available in the Docket for this rule and may be obtained by contacting docket Management at the address or telephone number provided at the beginning of this document. You may also read the document via the Internet, by following the instructions in the section below entitled, ''Viewing Docket Submissions.'' The PRE will be listed in the docket summary.

existing ones. Testing child restraints on a new seat assembly is not expected to significantly affect the performance of the restraints.

*c. Executive Order 13132 (Federalism)*

Executive Order 13132 requires NHTSA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, the agency may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation. NHTSA also may not issue a regulation with Federalism implications and that preempts State law unless the agency consults with State and local officials early in the process of developing the proposed regulation.

We have analyzed this proposed rule in accordance with the principles and criteria set forth in Executive Order 13132 and have determined that this proposal does not have sufficient Federal implications to warrant consultation with State and local officials or the preparation of a Federalism summary impact statement. The proposal would not have any substantial impact on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

*d. Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal 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 in any one year ($100 million adjusted annually for inflation, with base year of 1995). (Adjusting this amount by the implicit gross domestic product price deflator for the year 2000 results in $109 million.) This NPRM will not result in costs of $109 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. Thus, this NPRM is not subject to the requirements of sections 202 of the UMRA.

*e. National Environmental Policy Act*

NHTSA has analyzed this proposal for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

*f. Executive Order 12778 (Civil Justice Reform)*

This proposal would not have any retroactive effect. Under 49 U.S.C. 21403, 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. 21461 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. Plain Language*

Executive Order 12866 requires 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 isn't 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 proposal.

*h. 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 proposed rule does not contain any collection of information requirements requiring review under the Paperwork Reduction Act.

*i. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) directs us to use voluntary consensus standards in our regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards ( *e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the International Organization for Standardization (ISO). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

There are no voluntary consensus standards available for use at this time.

## IX. Submission of Comments

*How Can I Influence NHTSA's Thinking on This Proposed Rule?*

In developing this proposal, we tried to address the concerns of all our stakeholders. Your comments will help us improve this proposed rule. We invite you to provide different views on options we propose, new approaches we haven't considered, new data, how this proposed rule may affect you, or other relevant information. We welcome your views on all aspects of this proposed rule, but request comments on specific issues throughout this document. Your comments will be most effective if you follow the suggestions below:

—Explain your views and reasoning as clearly as possible
—Provide solid technical and cost data to support your views
—If you estimate potential costs, explain how you arrived at the estimate
—Tell us which parts of the proposal 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 proposal, such as the

units or page numbers of the preamble, or the regulatory sections

—Be sure to include the name, date, and docket number with your comments

*How Do I Prepare and Submit Comments?*

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

Comments may also be submitted to the docket electronically by logging onto the Dockets Management System Web site at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filing the document electronically.

*How Can I Be Sure That My Comments Were Received?*

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

*How Do I Submit Confidential Business Information?*

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

*Will the Agency Consider Late Comments?*

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

*How Can I Read the Comments Submitted by Other People?*

You may read the comments received by Docket Management 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 on the Internet. To read the comments 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–2002–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.''

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. However, since the comments are imaged documents, instead of word processing documents, the downloaded comments are not word searchable.

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. Upon receiving the comments, the docket supervisor will return the postcard by mail.

**List of Subjects in 49 CFR Part 571**

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR Part 571 as set forth below.

## PART 571—[Amended]

1. The authority citation for Part 571 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 571.213 would be amended by:

a. Revising the definition of ''child restraint system'' in S4;

b. Revising the introductory text of S5.1.2;

c. Adding S5.1.2.1 and S5.1.2.2;

d. Revising the introductory text of S5.2.1.2, revising S6.1.1(a)(1), S6.1.1(d), and the introductory text of S6.2.3;

e. Revising S7, and S9.1(c);

f. Adding S9.1(d), S9.1(e) and S9.1(f);

g. Revising S9.3, S10.2.1(b)(2), S10.2.1(c)(1)(i), S10.2.1(c)(1)(i), introductory text, S10.21(c)(1)(i)(B) and S10.2.1(c)(2) and S10.2.2(c)(2); and,

h. Revising Figure 2.

The revised and added text and figure would read as follows:

**§ 571.213 Standard No. 213, Child restraint systems.**

* * * * *

S4. *Definitions.*

*Child restraint system* means any device, except Type I or Type II seat belts, designed for use in a motor vehicle or aircraft to restrain, seat, or position children who weigh 65 pounds or less.

* * * * *

S5.1.2 *Injury criteria.* When tested in accordance with S6.1 and with the test dummies specified in S7, each child restraint system manufactured before November 1, 2004, shall—

* * * * *

S5.1.2.1 When tested in accordance with S6.1 and with the test dummies specified in S7, each child restraint system manufactured on or after November 1, 2004, shall—

(a) Limit the resultant acceleration at the location of the accelerometer mounted in the test dummy head such that, 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 maximum calculated head injury criterion ($HIC_{15}$) shall not exceed the limits specified in the table in this S5.1.2.1, 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), calculated using the expression:

$$HIC = \left[ \frac{1}{t_2 - t_1} \int_{t_1}^{t_2} a\,dt \right]^{2.5} (t_2 - t_1)$$

(b) The resultant acceleration calculated from the output of the thoracic instrumentation shall not exceed the limits specified in the table in this S5.1.2.1, except for intervals whose cumulative duration is not more than 3 milliseconds.

(c) Compression deflection of the sternum relative to the spine, as determined by instrumentation, shall not exceed the limits specified in the table in this S5.1.2.1.

TABLE TO S5.1.2.1(a)–(c).—INJURY LIMITS FOR HEAD AND THORAX

| Test dummy | Maximum calculated $HIC_{15}$ values (S5.1.2.1(a)) | Maximum thoracic G's (S5.1.2.1(b)) | Maximum chest deflection (S5.1.2.1(c)) |
|---|---|---|---|
| 12-month-old subpart R | 390 | 50 g's | N/A. |
| 3-year-old subpart P | 570 | 55 g's | 34 mm (1.3 in). |
| 6-year-old subpart N | 700 | 60 g's | 40 mm (1.6 in). |
| Weighted 6-year-old | 700 | 60 g's | 42 mm (1.65 in). |

(d) *Neck injury.* For the measurement of neck injury, the following injury criteria shall be met when calculated based on data recorded for the first 300 milliseconds of the sled pulse.

(1) The shear force (Fx), axial force (Fz), and bending moment (My) shall be measured by the dummy upper neck load cell for 300 milliseconds, as specified in S5.1.2.1(d). Shear force, axial force, and bending moment shall be filtered for Nij purposes at SAE J211/1 rev. Mar95 Channel Frequency Class 600 (*see* 49 CFR 571.208, S4.7).

(2) During the event, the axial force (Fz) can be either in tension or extension, 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). For the calculation of Nij using the equation set forth in S5.1.2.1(d)(3), the critical values, Fzc and Myc, are as specified in the table to this S5.1.2.1(d) for each of the dummies used in the test.

(3) At each point in time, only one of the four loading conditions occurs. The Nij value corresponding to that loading condition is computed and the three remaining loading modes shall be considered to have a value of zero. The equation for calculating each Nij loading condition is given by:

Nij = (Fz/Fzc) + (Mocy/Myc)

(4) None of the four Nij values shall exceed 1.0 at any time during the event.

TABLE TO S5.1.2.1(d)—CRITICAL VALUES FOR CALCULATING NIJ

| Test dummy | Fzc when Fz is in tension | Fzc when Fz is in compression | Myc when a flexion moment exists at the occipital condyle | Myc when an extension moment exists at the occipital condyle |
|---|---|---|---|---|
| 12-Month-Old Subpart R | 1460 N (328 lbf) | 1460 N (328 lbf) | 43 Nm (32 lbf-ft) | 17 Nm (13 lbf-ft) |
| 3-Year-Old Subpart P | 2340 N (526 lbf) | 2120 N (477 lbf) | 68 Nm (50 lbf-ft) | 30 Nm (22 lbf-ft) |
| 6-Year-Old Subpart N | 3096 N (696 lbf) | 2800 N (629 lbf) | 93 Nm (69 lbf-ft) | 42 Nm (31 lbf-ft) |
| Weighted 6-Year-Old | 3096 N (696 lbf) | 2800 N (629 lbf) | 93 Nm (69 lbf-ft) | 42 Nm (31 lbf-ft) |

S5.1.2.2 At the manufacturer's option (with said option irrevocably selected prior to, or at the time of, certification of the restraint), child restraint systems manufactured before November 1, 2004 may be tested to the requirements of S5 while using the test dummies specified in S7.1.2 of this standard according to the criteria for selecting test dummies specified in that paragraph. That paragraph specifies the dummies used to test child restraint systems manufactured on or after November 1, 2004. If a manufacturer selects the dummies specified in S7.1.2 to test its product, the injury criteria specified by S5.1.2.1 of this standard must be met. Child restraints manufactured on or after November 1, 2004, must be tested using the test dummies specified in S7.1.2.

* * * * *

S5.2 *Force distribution.*

* * * * *

S5.2.1.2 The applicability of the requirements of S5.2.1.1 to a front-facing child restraint, and the conformance of any child restraint other than a car bed to those requirements, is determined using the largest of the test dummies specified in S7 for use in testing that restraint, provided that the 6-year-old dummy described in subpart I or in subpart N of part 572 of this chapter is not used to determine the applicability of or compliance with S5.2.1.1. A front-facing child restraint system is not required to comply with S5.2.1.1 if the target point on either side of the dummy's head is below a horizontal plane tangent to the top of—

* * * * *

S6.1.1 *Test conditions.*

(a) *Test devices.*

(1) The test device for testing add-on restraint systems to frontal barrier impact simulations is a standard seat assembly consisting of a simulated vehicle bench seat, with three seating positions, which is described in Drawing Package SAS–100–1000 with Addendum _____: Seat Base Weldment (consisting of drawings and a bill of materials), dated _____ (will be

incorporated by reference in § 571.5). The assembly is mounted on a dynamic test platform so that the center SORL of the seat is parallel to the direction of the test platform travel and so that movement between the base of the assembly and the platform is prevented.

* * * * *

(d)(1) When using the test dummies specified in 49 CFR part 572, subparts C, I, J, or K, performance tests under S6.1 are conducted at any ambient temperature from 19° C to 26° C and at any relative humidity from 10 percent to 70 percent.

(2) When using the test dummies specified in 49 CFR part 572, subparts N, P or R, performance tests under S6.1 are conducted at any ambient temperature from 20.6° C to 22.2° C and at any relative humidity from 10 percent to 70 percent.

* * * * *

S6.2.3 Pull the sling tied to the dummy restrained in the child restraint system and apply the following force: 50 N for a system tested with a newborn dummy; 90 N for a system tested with a 9-month-old dummy; 90 N for a system tested with a 12-month-old dummy; 200 N for a system tested with a 3-year-old dummy; 270 N for a system tested with a 6-year-old dummy; or 350 N for a system tested with a weighted 6-year-old dummy. The force is applied in the manner illustrated in Figure 4 and as follows:

* * * * *

S7 *Test dummies.* (Subparts referenced in this section are of part 572 of this chapter.)

S7.1 *Dummy selection.* Select any dummy specified in S7.1.1, S7.1.2 or S7.1.3, as appropriate, for testing systems for use by children of the height and mass for which the system is recommended in accordance with S5.5. A child restraint that meets the criteria in two or more of the following paragraphs in S7 may be tested with any of the test dummies specified in those paragraphs.

S7.1.1 Child restraints that are manufactured before November 1, 2004, are subject to the following provisions.

(a) A child restraint that is recommended by its manufacturer in accordance with S5.5 for use either by children in a specified mass range that includes any children having a mass of not greater than 5 kg, or by children in a specified height range that includes any children whose height is not greater than 650 mm, is tested with a newborn test dummy conforming to part 572 subpart K.

(b) A child restraint that is recommended by its manufacturer in accordance with S5.5 for use either by children in a specified mass range that includes any children having a mass greater than 5 but not greater than 10 kg, or by children in a specified height range that includes any children whose height is greater than 650 mm but not greater than 850 mm, is tested with a newborn test dummy conforming to part 572 subpart K, and a 9-month-old test dummy conforming to part 572 subpart J.

(c) A child restraint that is recommended by its manufacturer in accordance with S5.5 for use either by children in a specified mass range that includes any children having a mass greater than 10 kg but not greater than 18 kg, or by children in a specified height range that includes any children whose height is greater than 850 mm but not greater than 1100 mm, is tested with a 9-month-old test dummy conforming to part 572 subpart J, and a 3-year-old test dummy conforming to part 572 subpart C and S7.2, provided, however, that the 9-month-old dummy is not used to test a booster seat.

(d) A child restraint that is recommended by its manufacturer in accordance with S5.5 for use either by children in a specified mass range that includes any children having a mass greater than 18 kg, or by children in a specified height range that includes any children whose height is greater than 1100 mm, is tested with a 6-year-old child dummy conforming to part 572 subpart I.

(e) A child restraint that is manufactured on or after [date to be inserted would be the date 180 days after publication of a final rule incorporating a weighted 6-year-old dummy into Part 572], and that is recommended by its manufacturer in accordance with S5.5 for use either by children in a specified mass range that includes any children having a mass greater than 22.7 kg (50 lb), or by children in a specified height range that includes any children whose height is greater than 1100 mm, is tested with a weighted 6-year-old child dummy conforming to part 572 Subpart [to be determined].

S7.1.2 Child restraints that are manufactured on or after November 1, 2004, are subject to the following provisions.

(a) A child restraint that is recommended by its manufacturer in accordance with S5.5 for use either by children in a specified mass range that includes any children having a mass of not greater than 5 kg, or by children in a specified height range that includes any children whose height is not greater than 650 mm, is tested with a newborn test dummy conforming to part 572 subpart K.

(b) A child restraint that is recommended by its manufacturer in accordance with S5.5 for use either by children in a specified mass range that includes any children having a mass greater than 5 but not greater than 10 kg, or by children in a specified height range that includes any children whose height is greater than 650 mm but not greater than 850 mm, is tested with a newborn test dummy conforming to part 572 subpart K, and a 12-month-old test dummy conforming to part 572 subpart R.

(c) A child restraint that is recommended by its manufacturer in accordance with S5.5 for use either by children in a specified mass range that includes any children having a mass greater than 10 kg but not greater than 18 kg, or by children in a specified height range that includes any children whose height is greater than 850 mm but not greater than 1100 mm, is tested with a 12-month-old test dummy conforming to part 572 subpart R, and a 3-year-old test dummy conforming to part 572 subpart P and S7.2, provided, however, that the 12-month-old dummy is not used to test a booster seat.

(d) A child restraint that is recommended by its manufacturer in accordance with S5.5 for use either by children in a specified mass range that includes any children having a mass greater than 18 kg, or by children in a specified height range that includes any children whose height is greater than 1100 mm, is tested with a 6-year-old child dummy conforming to part 572 subpart N.

(e) A child restraint that is manufactured on or after [date to be inserted would be the date 180 days after publication of a final rule incorporating a weighted 6-year-old dummy into Part 572], and that is recommended by its manufacturer in accordance with S5.5 for use either by children in a specified mass range that includes any children having a mass greater than 22.7 kg (50 lb), or by children in a specified height range that includes any children whose height is greater than 1100 mm, is tested with a weighted 6-year-old child dummy conforming to Part 572 Subpart [to be determined].

S7.1.3 *Voluntary use of alternative dummies.* At the manufacturer's option (with said option irrevocably selected prior to, or at the time of, certification of the restraint), child restraint systems manufactured before November 1, 2004 may be tested to the requirements of S5 while using the test dummies specified in S7.1.2 according to the criteria for

selecting test dummies specified in that paragraph. Child restraints manufactured on or after November 1, 2004, must be tested using the test dummies specified in S7.1.2.

* * * * *

S9.1 *Type of clothing.*

* * * * *

(c) *12-month-old dummy (49 CFR part 572, subpart R).* When used in testing under this standard, the dummy specified in 49 CFR part 572, subpart R, is clothed in a cotton-polyester based tight fitting sweat shirt with long sleeves and ankle long pants whose combined weight is not more than 0.25 kg (.55 lb).

(d) *Hybrid II three-year-old and Hybrid II six-year-old dummies (49 CFR part 572, subparts C and I).* When used in testing under this standard, the dummies specified in 49 CFR part 572, subparts C and I, are clothed in thermal knit, waffle-weave polyester and cotton underwear or equivalent, a size 4 long-sleeved shirt (3-year-old dummy) or a size 5 long-sleeved shirt (6-year-old dummy) having a mass of 0.090 kg, a size 4 pair of long pants having a mass of 0.090 kg, and cut off just far enough above the knee to allow the knee target to be visible, and size 7M sneakers (3-year-old dummy) or size 12½M sneakers (6-year-old dummy) with rubber toe caps, uppers of dacron and cotton or nylon and a total mass of 0.453 kg.

(e) *Hybrid III 3-year-old dummy (49 CFR part 572, subpart P).* When used in testing under this standard, the dummy specified in 49 CFR part 572, subpart P, is clothed in a cotton-polyester based tight fitting sweat shirt with long sleeves and ankle long pants whose combined weight is not more than 0.25 kg (.55 lb), and size 7M sneakers with rubber toe caps, uppers of dacron and cotton or nylon and a total mass of 0.453 kg.

(f) *Hybrid III 6-year-old dummy (49 CFR part 572, subpart N) and Hybrid III weighted 6-year-old dummy (40 CFR part 572, subpart____).* When used in testing under this standard, the dummy specified in 49 CFR part 572, subpart N, and in Subpart [to be determined], is clothed in a light-weight cotton stretch short-sleeve shirt and above-the-knee pants, and size 12.5M sneakers with rubber toe caps, uppers of dacron and cotton or nylon and a total mass of 0.453 kg.

* * * * *

S9.3 *Preparing dummies.* (Subparts referenced in this section are of Part 572 of this chapter.)

S9.3.1 When using the test dummies conforming to part 572 subparts C, I, J, or K, prepare the dummies as specified in this paragraph. Before being used in testing under this standard, dummies must be conditioned at any ambient temperature from 19°C to 25.5°C and at any relative humidity from 10 percent to 70 percent, for at least 4 hours.

S9.3.2 When using the test dummies conforming to Part 572 Subparts N, P, R, or [subpart on the weighted 6-year-old dummy to be inserted], prepare the dummies as specified in this paragraph. Before being used in testing under this standard, dummies must be conditioned at any ambient temperature from 20.6° to 22.2° C (69° to 72° F) and at any relative humidity from 10 percent to 70 percent, for at least 4 hours.

* * * * *

S10.2.1 * * *

(b) * * *

(2) When testing rear-facing child restraint systems, place the newborn, 9-month-old or 12-month-old dummy in the child restraint system so that the back of the dummy torso contacts the back support surface of the system. For a child restraint system which is equipped with a fixed or movable surface described in S5.2.2.2 which is being tested under the conditions of test configuration II, do not attach any of the child restraint belts unless they are an integral part of the fixed or movable surface. For all other child restraint systems and for a child restraint system with a fixed or movable surface which is being tested under the conditions of test configuration I, attach all appropriate child restraint belts and tighten them as specified in S6.1.2. Attach all appropriate vehicle belts and tighten them as specified in S6.1.2. Position each movable surface in accordance with the instructions that the manufacturer provided under S5.6.1 or S5.6.2. If the dummy's head does not remain in the proper position, tape it against the front of the seat back surface of the system by means of a single thickness of 6 mm-wide paper masking tape placed across the center of the dummy's face.

(c)(1)(i) When testing forward-facing child restraint systems, extend the arms of the 9-month-old or 12-month-old test dummy as far as possible in the upward vertical direction. Extend the legs of the 9-month-old or 12-month-old test dummy as far as possible in the forward horizontal direction, with the dummy feet perpendicular to the centerline of the lower legs. Using a flat square surface with an area of 2,580 square mm, apply a force of 178 N, perpendicular to:

(B) The back of the vehicle seat in the specific vehicle shell or the specific vehicle, in the case of a built-in system, first against the dummy crotch and then at the dummy thorax in the midsagittal plane of the dummy. For a child restraint system with a fixed or movable surface described in S5.2.2.2, which is being tested under the conditions of test configuration II, do not attach any of the child restraint belts unless they are an integral part of the fixed or movable surface. For all other child restraint systems and for a child restraint system with a fixed or movable surface that is being tested under the conditions of test configuration I, attach all appropriate child restraint belts and tighten them as specified in S6.1.2. Attach all appropriate vehicle belts and tighten them as specified in S6.1.2. Position each movable surface in accordance with the instructions that the manufacturer provided under S5.6.1 or S5.6.2.

* * * * *

BILLING CODE 4910–59–P

(2) When testing rear-facing child restraint systems, extend the dummy's arms vertically upwards and then rotate each arm downward toward the dummy's lower body until the arm contacts a surface of the child restraint system or the standard seat assembly in the case of an add-on child restraint system, or the specific vehicle shell or the specific vehicle, in the case of a built-in child restraint system. Ensure that no arm is restrained from movement in other than the downward direction, by any part of the system or the belts used to anchor the system to the standard seat assembly, the specific shell, or the specific vehicle.

* * * * *

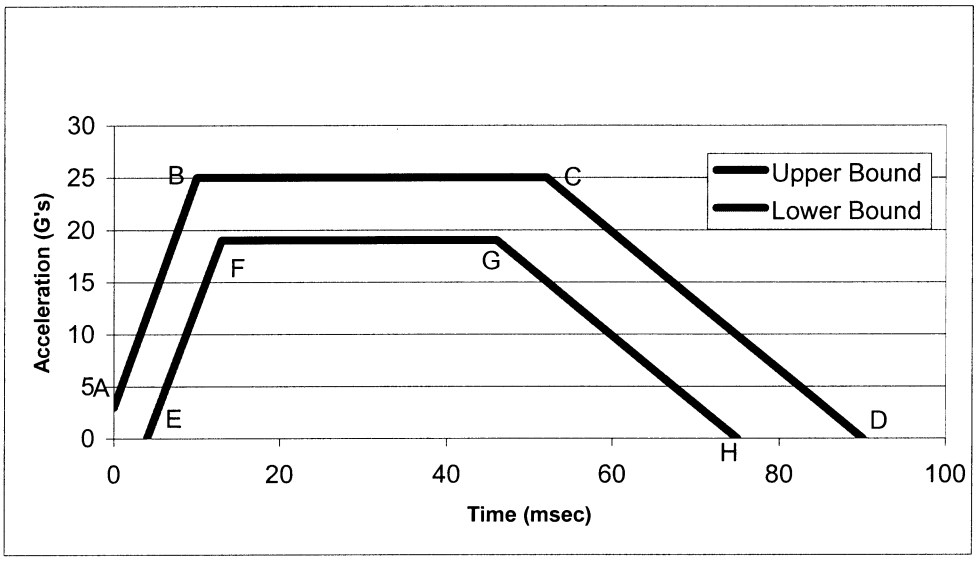
S10.2.2 * * *

(c) * * *

(2) The back of the vehicle seat in the specific vehicle shell or the specific vehicle, in the case of a built-in system, first against the dummy crotch and then at the dummy thorax in the midsagittal plane of the dummy. For a child restraint system with a fixed or movable surface described in S5.2.2.2, which is being tested under the conditions of test configuration II, do not attach any of the child restraint belts unless the belt is an integral part of the fixed or movable surface. For all other child restraint systems and for a child restraint system with a fixed or movable surface that is being tested under the conditions of test configuration I, attach all appropriate child restraint belts and tighten them as specified in S6.1.2. Attach all appropriate vehicle belts and tighten them as specified in S6.1.2. Position each movable surface in accordance with the instructions that the

manufacturer provided under S5.6.1 or S5.6.2.

* * * * *




| Upper Bound | | | Lower Bound | | |
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| **Point** | **Time** | **Acceleration** | **Point** | **Time** | **Acceleration** |
| A | 0 | 3 | E | 4 | 0 |
| **B** | 10 | 25 | **F** | 13 | 19 |
| **C** | 52 | 25 | **G** | 46 | 19 |
| **D** | 90 | 0 | **H** | 75 | 0 |

**Figure 2**

Issued on April 24, 2002.

**Stephen R. Kratzke,**

*Associate Administrator for Safety Performance Standards.*

[FR Doc. 02–10507 Filed 4–25–02; 10:00 am]

BILLING CODE 4910–59–C

**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**49 CFR Part 571**

**[Docket No. 02–12151]**

**RIN 2127–AI83**

## Federal Motor Vehicle Safety Standards; Child Restraint Systems

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Advance notice of proposed rulemaking (ANPRM).

**SUMMARY:** The Transportation Recall Enhancement, Accountability and Documentation Act of 2000 directed NHTSA to initiate a rulemaking for the purpose of improving the safety of child restraints and specified various elements that must be considered in the rulemaking. NHTSA has issued two notices of proposed rulemaking that together address all but side and rear impact protection requirements for children in child restraint systems.

NHTSA is addressing side impact protection in an ANPRM, instead of a notice of proposed rulemaking, because there are uncertainties in too many areas to issue a proposal now. These areas include: the determination of child

injury mechanisms in side impacts, and crash characteristics associated with serious and fatal injuries to children in child restraints; development of test procedures, a suitable test dummy and appropriate injury criteria; and identification of cost beneficial countermeasures. Uncertainties in these areas, together with the statutory schedule for this rulemaking, make it difficult for the agency to assess and make judgments concerning the benefits and costs of a rulemaking on side impact protection. Accordingly, we believe that the most appropriate course of action at this point is to issue this ANPRM to obtain additional information that will help us decide whether it is possible and appropriate to issue a proposal in the near future and/or identify additional work that needs to be done.

Also in response to the Act, this ANPRM requests comments on the appropriateness of proposing to incorporate a rear impact test procedure into Standard No. 213, for rear-facing child restraint systems.

**DATES:** You should submit your comments early enough to ensure that Docket Management receives them not later than July 1, 2002.

**ADDRESSES:** You may submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Alternatively, you may submit your comments electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should mention the docket number of this document. You may call Docket Management at 202–366–9324. You may visit the Docket from 10:00 a.m. to 5:00 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues, you may call Mike Huntley of the NHTSA Office of Crashworthiness Standards, at 202–366–0029.

For legal issues, you may call Deirdre Fujita of the NHTSA Office of Chief Counsel at 202–366–2992.

You may send mail to both of these officials at the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

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I. Background
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## I. Background

This document requests comments on the agency's work in developing a possible side impact protection requirement for child restraint systems and on refinements to the approach the agency has taken thus far. The agency's work on this subject was prompted by section 14 of the Transportation Recall Enhancement, Accountability and Documentation Act (the TREAD Act) (November 1, 2000, Pub. L. 106–414, 114 Stat. 1800). Section 14 directs the agency to initiate a rulemaking for the purpose of improving the safety of child restraints and specifies elements that the agency is to consider in that rulemaking. The section directed NHTSA to initiate that rulemaking by November 1, 2001, and to complete it by issuing a final rule or taking other action by November 1, 2002.

The relevant provisions in section 14 are as follows:

(a) In General.—Not later than 12 months after the date of enactment of this Act, the Secretary of Transportation shall initiate a rulemaking for the purpose of improving the safety of child restraints, including minimizing head injuries from side impact collisions.

(b) Elements for Consideration.—In the rulemaking required by subsection (a), the Secretary shall consider—

(1) Whether to require more comprehensive tests for child restraints than the current Federal motor vehicle safety standards requires, including the use of dynamic tests that—

(A) Replicate an array of crash conditions, such as side-impact crashes and rear-impact crashes; and

(B) Reflect the designs of passenger motor vehicles as of the date of enactment of this Act;

(2) Whether to require the use of anthropomorphic test devices that—

(A) Represent a greater range of sizes of children including the need to require the use of an anthropomorphic test device that is representative of a ten-year-old child; and

(B) Are Hybrid III anthropomorphic test devices;

(3) Whether to require improved protection from head injuries in side-impact and rear-impact crashes;

(4) How to provide consumer information on the physical compatibility of child restraints and vehicle seats on a model-by-model basis;

(5) Whether to prescribe clearer and simpler labels and instructions required to be placed on child restraints;

(6) Whether to amend Federal Motor Vehicle Safety Standard No. 213 (49 CFR 571.213) to cover restraints for children weighing up to 80 pounds;

(7) Whether to establish booster seat performance and structural integrity requirements to be dynamically tested in 3-point lap and shoulder belts;

(8) Whether to apply scaled injury criteria performance levels, including neck injury, developed for Federal Motor Vehicle Safety Standard No. 208 to child restraints and booster seats covered by in [sic] Federal Motor Vehicle Safety Standard No. 213; and

(9) Whether to include [a] child restraint in each vehicle crash tested under the New Car Assessment Program.

(c) Report to Congress.—If the Secretary does not incorporate any element described in subsection (b) in the final rule, the Secretary shall explain, in a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Commerce submitted within 30 days after issuing the final rule, specifically why the Secretary did not incorporate any such element in the final rule.

(d) Completion.— Notwithstanding any other provision of law, the Secretary shall complete the rulemaking required by subsection (a) not later than 24 months after the date of the enactment of this Act.

Federal Motor Vehicle Safety Standard No. 213, ''Child Restraint Systems'' (49 CFR 571.213) regulates the performance of a child restraint system in dynamic tests involving a 30 mph velocity change, representative of a frontal impact. To protect children, the standard limits the amount of force that can be exerted on the head and chest of a child test dummy during the dynamic testing. It also limits the amount of excursion of head and knee excursion in those tests to reduce the possibility that children in child restraint systems

might contact vehicle interior surfaces and be injured during a frontal crash. Additional performance and labeling requirements are also specified in the standard.

Partly in response to the TREAD Act and partly in fulfillment of agency plans to upgrade Standard No. 213, NHTSA has issued two notices of proposed rulemaking (NPRM) addressing all elements specified in section 14 except for side and rear impact protection. On November 2, 2001, the agency issued an NPRM proposing to improve the instructions and labels required on child restraints. (66 FR 55623). The second NPRM has been issued concurrently with today's document, and is published in today's edition of the **Federal Register**. In it, the agency is proposing to incorporate the following elements into the standard: (a) An updated bench seat used to dynamically test add-on child restraint systems; (b) a sled pulse that provides a wider test corridor; (c) improved child test dummies; (d) expanded applicability to child restraint systems recommended for use by children weighing up to 65 pounds; and (e) new or revised injury criteria to assess the dynamic performance of child restraints.

NHTSA is addressing side impact protection in an ANPRM, instead of a notice of proposed rulemaking, because there are uncertainties in too many areas to issue a proposal now. These areas include: (a) Crash characteristics associated with serious and fatal injuries to children in child restraints and the child injury mechanisms in side impacts, and; (b) development of test procedures, a suitable test dummy and appropriate injury criteria; and (c) identification of cost beneficial countermeasures. The schedule specified in the TREAD Act for initiating and completing this rulemaking has limited the amount and variety of information that the agency could obtain, and testing that the agency could conduct, to develop test procedures and injury criteria and identify possible countermeasures and examine their efficacy on child restraint performance. The agency has also been hampered by a lack of specific accident data on children in motor vehicle crashes generally, and particularly in side impact crashes. There are few available data on how children are being injured and killed in side impacts (*e.g.,* to what degree injuries are caused by intrusion of an impacting vehicle or other object). Together, these limitations have made it difficult to assess and compare the benefits and costs of provisions that could be included in a rulemaking proposal on side impact.

Notwithstanding these limitations, we believe we have made progress toward developing a potential regulatory proposal to improve the side impact performance of child restraint systems. We have analyzed crash data and have developed a dynamic side impact test. We have identified possible countermeasures. However, we have not evaluated the countermeasures to determine their feasibility and benefit, although we will study potential countermeasures for rear-facing restraints in 2002. Information from that study will help us further evaluate the course of action that the agency should pursue in this rulemaking. From the information and analysis that we have, it appears that if we were to issue a notice of proposed rulemaking on side impact, it might involve significantly higher costs per equivalent life saved than those in most NHTSA vehicle safety rulemakings.

Because of all these factors, we believe that the most appropriate course of action at this point is to issue this ANPRM to obtain additional information that will help us decide whether it is possible and appropriate to issue a proposal in the near future and/or identify additional work that needs to be done. Through issuing this ANPRM, we hope to obtain more information about matters such as the harm to restrained children in side impacts, such as the child injury mechanisms and the crash characteristics associated with serious and fatal injuries. We seek comment on the suitability of the test procedures we are considering, of the dummy we might use in a test procedure, and on possible injury criteria. We want cost, benefit and other information on possible countermeasures that would be effective in improving side impact protection, particularly the possible countermeasures we have identified. As a result of issuing this ANPRM, the agency anticipates receiving information that will improve its ability to assess the merits of this rulemaking and thus aid the agency in making decisions about the future course of this rulemaking.

## II. Side Impact Safety Problem

### *a. Fatalities*

Passenger vehicle occupant fatalities in the United States, as reported in the Fatality Analysis Reporting System (FARS), for all ages, increased slightly (4 percent) over the period from 1991 to 2000 (from 30,776 in 1991 to 31,910 in 2000). In comparison, fatalities involving children in the age range 0 to 8 years old decreased slightly (3 percent), from 923 in 1991 to 895 in 2000. Child occupant fatalities, 0 to 8 years old, accounted for approximately 3 percent of all passenger vehicle occupant fatalities in each of those years.

Despite the slight increase in total passenger vehicle occupant fatalities, the overall motor vehicle crash fatality rate has been declining, from 1.9 fatalities per 100 million vehicle miles traveled (VMT) in 1991 to 1.5 fatalities per 100 million VMT in 2000. Part of the decline in the fatality rate is attributable to the increasing use of occupant restraints. The first National Occupant Protection Use Survey (NOPUS), in 1994, estimated that 58 percent of passenger vehicle front seat occupants were restrained. By December 1999, this rate had increased to 67 percent. Correspondingly, the percentage of unrestrained passenger vehicle occupant fatalities decreased, from 67 percent in 1991 to 55 percent in 2000, although unrestrained occupants still make up the majority of passenger vehicle occupant fatalities. Similarly, the restraining of children has also increased. NOPUS shows the percentage of children under 5 being restrained increased from 66 percent in 1994 to 92 percent in 2000. This increase is reflected in FARS data. The percentage of fatally injured children, 0 to 8 years old, who were unrestrained, decreased from 61 percent in 1991 to 41 percent in 2000. Unrestrained child occupants no longer are the majority of child occupants killed in motor vehicle crashes, but still constitute a large percentage of the overall total.

Prompted by a media safety campaign that began in 1996 to move children to the rear seat, the rear seat has replaced the front seat as the most frequently chosen seating position for children in passenger vehicles. This change in front versus rear seat exposure has contributed to a significant change in the distribution of child occupant fatalities within vehicles. A steep decline in front seat child occupant fatalities occurred in the last half of the 1990's, with total front seat fatalities for the age group dropping from 411 in 1995 to 239 in 2000 (a decrease of 42 percent). Rear seat child occupant fatalities increased during that time period, from 463 in 1995 to 561 in 2000. Thus, of those children (in known seating positions; front seat versus rear seats), between 1995 and 2000, front seat fatalities decreased by 172 and rear seat fatalities increased by 98, resulting in an overall decrease of 74 fatalities. The reduction in overall fatalities is the result of the rear seat being a safer environment and an increase in restraint use over those years.

For passenger vehicle child occupants, ages 0 to 8 years old, data from FARS for 1991–2000 show that, regardless of whether the child was seated in the front seat or second seat, frontal and side crashes account for most child occupant fatalities. Fifty-one percent of front seat child occupant fatalities were in frontal crashes, and 31 percent were in side impact crashes. Rear impact crashes accounted for 4 percent of front seat child fatalities. For rear seat child occupants, frontal impacts and side impact crashes accounted for 44 percent and 42 percent of the fatalities, respectively, while rear impact crashes accounted for 14 percent of the fatalities.

Seating position relative to the point of impact is also a factor in side impact crash fatalities. For the 3,018 front seat child fatalities, 22 percent were killed in near side impacts, i.e., they were in the outboard seating position on the impacted side of the vehicle. Of the 3,826 rear seat fatalities, 25 percent involved near side impacts. Of the 682 children ages 0 to 8 years old who were killed in side impacts and were secured in child restraints, 64 percent (434) were seated in the near side position. The remaining 36 percent of the fatalities (248) for children in child restraints were seated either in the middle seating position or in the ''far side'' position, *i.e.,* the outboard seating position on the opposite side from the point of impact.

*b. Injuries*

The number of occupants of passenger vehicles injured in motor vehicle crashes in the United States, as reported by National Automotive Sampling System-General Estimates Systems (NASS–GES) for all ages, increased moderately (5 percent) over the period from 1991 to 2000 (from 2,797,000 in 1991 to 2,938,000 in 2000). In contrast, for child occupants 0 to 8 years old, the number injured decreased (7 percent), from 141,000 in 1991 to 132,000 in 2000. The number of child occupants, 0 to 8 years old, injured in motor vehicle crashes accounted for approximately 5 percent of all passenger vehicle occupant injuries in each year.

As in the case of fatalities, despite the moderate increase in the number of injured passenger vehicle occupants, the overall motor vehicle injury rate has been declining. In 1991, the number of persons injured in motor vehicle crashes per 100 million VMT was 143. By 1999, the injury rate had declined to 120 per 100 million VMT, a drop of 16 percent. The increased use of occupant restraints is reflected in the declining number of unrestrained injured occupants and increasing numbers of restrained occupants. For all ages, the percentage of unrestrained injured occupants decreased from 27 percent of injured occupants in 1991 to 12 percent in 2000. The number of child occupants, 0 to 8 years old, who were injured and unrestrained decreased from 40,800 (31 percent of all injured child occupants) in 1991 to 14,000 (12 percent of all injured) in 2000. This is a decrease of 61 percent. Correspondingly, the number of child occupants in this age group who were injured while restrained in a child restraint system or in a lap and/or shoulder belt increased significantly during this time-period. The number of child occupants injured while restrained by a child restraint rose from 20,000 in 1991 to 37,000 in 2000, an increase of 84 percent. The number of child occupants injured while restrained in a lap and/or shoulder belt rose from 48,200 in 1991 to 66,300 in 2000, an increase of 38 percent.

An examination of NASS-Crashworthiness Data System (CDS) data over the 1991–2000 period yielded important insights regarding the type and severity of injuries to children in motor vehicles crashes. First, children 0 to 8 years old are most susceptible to head injuries. Fifty-seven percent of all injuries to child occupants in crashes are head injuries (mostly scrapes, cuts and concussions). Second, the majority of injuries to child occupants, even to the head, tend to be of very low severity. By use of the abbreviated injury scale (AIS 1 = minor injury through AIS 6 = maximum, untreatable, injury), an assessment of fatality risk may be made. Of all injuries reported for children 0 to 8 years old, 91.6 percent of these injuries were within the AIS 1 (or least severe) category. Another 4.6 percent were of AIS 2 (moderate severity) category. The remaining 3.8 percent of injuries to child occupants fell within AIS 3 through AIS 6 (severe to untreatable) categories. This injury distribution for child occupants compares favorably with that for occupants of all ages, for whom 88 percent of the injuries were within the AIS 1 category, 8.0 percent were of AIS 2 category, and 3.9 percent fell within AIS 3 through AIS 6 categories.

Approximately 16 percent of the injuries to children were sustained from side impact crashes. Although detailed information of specific injury mechanisms sustained by children in this collision mode is somewhat lacking, overall trends of susceptibility to head injury is consistent for side impact.

## III. Current Regulatory Approaches

*a. Absence of Any Requirement Worldwide*

Currently, no country or region has a requirement specifying a minimum level of performance for child restraints in a dynamic side impact simulation. Efforts around the world to improve child restraint safety have concentrated on performance in frontal impacts because they account for more injuries and fatalities than any other crash mode and because the potential for countermeasure development is greater, given the amount of available space in which the crash forces can be mitigated.[1] This focus also reflects the fact that, for side crashes, (a) data are not widely available as to how children are being injured and killed in side impacts (*e.g.,* to what degree injuries are caused by intrusion of an impacting vehicle or other object), (b) potential countermeasures for side impact intrusion have not been developed, and (c) there is not a consensus on an appropriate child test dummy and associated injury criteria for side impact testing.

*b. Consumer Ratings Programs*

Nonetheless, some entities around the world have focused attention on side impact safety by developing consumer information rating programs that assess child restraint performance in side impact tests. The European New Car Assessment Program (Euro NCAP) was established in 1997, and is funded by governments, the European Commission, and consumer organizations. Euro NCAP has

[1] That effort has also culminated in a harmonized standard for an improved child restraint anchorage system, which NHTSA incorporated into its regulations in 1999 (Federal Motor Vehicle Safety Standard No. 225, 49 CFR 571.225). Standard No. 225 requires motor vehicle manufacturers to provide vehicles equipped with the child restraint anchorage systems that are standardized and independent of the vehicle seat belts. The new independent system has two lower anchorages, and one upper anchorage. Each lower anchorage includes a rigid round rod or ''bar'' unto which a hook, a jaw-like buckle or other connector can be snapped. The bars are located at the intersection of the vehicle seat cushion and seat back. The upper anchorage is a ring-like object to which the upper tether of a child restraint system can be attached. (The system is widely known as the ''LATCH system,'' an acronym developed by manufacturers and retailers for ''lower anchors and tether for children.'') The LATCH system is required to be installed at two rear seating positions. In addition, a tether anchorage is required at a third position. By requiring an easy-to-use anchorage system that is independent of the vehicle seat belts, NHTSA's standard makes possible more effective child restraint installation and thereby increases child restraint effectiveness and child safety. The standard is estimated to save 36 to 50 lives annually, and prevent 1,231 to 2,929 injuries. See 64 FR 10786; March 5, 1999.

developed a protocol for rating vehicles equipped with child restraints in frontal and side impacts. The protocol is being used in Europe. (This is separate from the performance standard for child restraints that has been issued by the Economic Commission for European (ECE), ECE Regulation R44.[2]) In the Euro NCAP side impact test protocol, vehicles are impacted with a moving deformable barrier traveling at 30 mph at a 90-degree angle. An 18-month-old dummy and a 3-year-old dummy are used in the evaluation, neither of which was specifically designed to evaluate performance in side impacts. The vehicle is rated on dummy head containment, resultant head acceleration, and chest acceleration.

The New South Wales (NSW), Australia RTA, as part of its joint program with the NRMA Limited and the Royal Automotive Club of Victoria (RACV) to assess the relative performance of child restraints available in Australia, administers a program that incorporates a lateral dynamic sled test of tethered child restraints with a 20 mph pulse. NSW RTA assesses the dummy's lateral head excursion relative to a simulated vehicle door. In this test, the door structure is fixed, and there is no attempt to simulate intrusion of the door structure. Child restraints are ranked in part on their ability to prevent the dummy's head from hitting the door.

## IV. Performance in a Dynamic Test

While the child's head seems to be the area most affected in side impact crashes, the agency has not been able to confirm whether the majority of injuries and fatalities occur primarily due to direct head contact with the vehicle interior or other objects in the vehicle, or whether these injuries and fatalities are a result of non-contact, inertial loadings on the head and neck structure. To address these injuries and fatalities, the agency has been considering two side impact performance tests for child restraints. The agency has assumed that child restraints that perform satisfactorily in these tests (*i.e.,* that meet certain performance criteria) when dynamically tested would be able to reduce the likelihood and/or severity of these head strikes in many side impacts.

The tests are modeled after the test that RTA of NSW, Australia, uses today in the child restraint ratings program it administers, and are similar to a proposal issued by NHTSA when dynamic testing of child restraints was first contemplated (42 FR 7959; March 1, 1974). Under the 1974 NHTSA proposal, a 90-degree lateral impact would have been conducted simulating a 20 mph crash. When tested in this fashion, each child restraint would have been required to retain the test dummy within the system, limit head motion to 19 inches in each lateral direction measured from the exterior surface of the dummy's head, and suffer no loss of structural integrity.[3]

### *a. Should Head Excursion Be Limited in a 20 mph Dynamic Test (''No Wall Test'')?*

We have been considering the merits of a dynamic test requirement replicating a side impact, using a 20 mph velocity change (Figure 1 of this preamble depicts the pulse we are considering for the 20 mph test). This speed is consistent with the speed used by RTA of NSW, Australia, in its consumer ratings program and with the 1974 NHTSA proposal. We envision tethering the child restraint, and orienting it at 90 degrees to the direction of sled travel. The 90-degree orientation would be consistent with the Euro NCAP protocol and Australian rating program.

NHTSA conducted a series of 15 HYGE sled tests using the existing FMVSS No. 213 seat fixture oriented at both 90° and 45° relative to the motion of the sled buck. The matrix of tests is shown below.

TABLE 1.—MATRIX OF SIDE-IMPACT TESTS

| | CRABI 12-month-old rear-facing | | | | HIII 3-year-old forward-facing | | | |
|---|---|---|---|---|---|---|---|---|
| | Cosco Triad | | Century STE | | Cosco Triad | | Century STE | |
| | 45° | 90° | 45° | 90° | 45° | 90° | 45° | 90° |
| Tethered | ..... | ..... | ..... | ..... | X | X | X | X |
| Untethered | X | X | X | X | X | X | X | X |

Twelve of the tests (all of the above) were conducted using a ½ sine pulse. The remaining tests were selected repeats from the above matrix, but were conducted using the existing FMVSS No. 213 pulse. All of these tests were conducted at a test velocity of 32 km/h (20 mph) and a peak acceleration of 17 g's. In addition to the amount of dummy head excursion, performances with respect to other injury criteria were recorded and are summarized in the following table:

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[2] Regulation 44, Uniform Provisions Concerning the Approval of Restraining Devices for Child Occupants of Power-Driven Vehicles (''Child Restraint Systems'').

[3] NHTSA subsequently withdrew the proposal after testing a number of restraints at a speed of 20 mph and at a horizontal angle of 60 degrees from the direction of the test platform travel. The research found that for outboard seating positions, only one of those restraints—one that required a tether—could meet the lateral head excursion limits that had been proposed in the NPRM. This was of concern because tethers were widely unused at that time. Further, the agency found that some restraints with impact shields, which performed well in frontal crashes and which were rarely misused, could not pass the lateral test even when placed in the center seating position. The agency decided not to pursue lateral testing of child restraints given the cost of the design changes that would have been necessary to meet the lateral test, the problems with misuse of tethers, and the possible price sensitivity of child restraint sales. (43 FR 21470, 21474; May 18, 1978.)

We have revisited this issue in light of several developments in recent years. Forward-facing child restraints are now subject to a 28-inch head excursion limit that results in most of them having tethers. Vehicles are now required to have user-ready tether anchorages in rear seating positions, along with standardized child restraint anchorage systems, as part of the requirements of Standard No. 225. We expect that with user-ready anchorages in vehicles, and with most new child restraints incorporating tether straps in order to meet the more stringent head excursion requirement of Standard No. 213, tethers will generally be used, and thus there is a greater likelihood that countermeasures that depend on tether use will be effective.

**Table 2: Summary Results for Side Impact Child Restraint Systems @ 45 and 90 Deg., 20 mph**

| Test # | Dummy Size | Test Type | Excursion (in.) | HIC 15 | HIC unlimited | Peak Tension | Peak Compression | Peak Flexion (Y-axis) | Peak Extension (Y-axis) | Peak Flexion (X-axis) | Peak Extension (X-axis) | Chest Deflection (in.) | Chest Accel. (g) |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| TRC591 | 3 yo | Near Side, Cosco Triad-LATCH/ 45 deg.,1/2 Sine | 22.0 | 122 | 226 | 963 | 318 | 6.6 | 12.8 | 0.9 | 36.8 | 0.53 | 29.1 |
| TRC591 | 12 mos. | Far Side, Cosco Touriva-lap only (rear-facing)/ 45 deg., 1/2 Sine | 23.0 | 82 | 146 | 849 | 11 | 3.0 | 8.7 | 1.9 | 2.8 | NA | 30.5 |
| TRC592 | 3 yo | Near Side, Century STE-LATCH/ 45 deg.,1/2 Sine | 23.0 | 150 | 255 | 419 | 950 | 5.1 | 15.3 | 2.2 | 35.5 | 0.46 | 31.8 |
| TRC592 | 12 mos. | Far Side, Century STE-lap only (rear-facing)/ 45 deg., 1/2 Sine | 26.0 | 126 | 163 | 591 | 8 | 2.4 | 8.5 | 2.6 | 3.0 | NA | 29.2 |
| TRC593 | 3 yo | Near Side, Cosco Triad-LATCH (NO Tether)/ 45 deg.,1/2 Sine | 27.0 | 122 | 268 | 493 | 436 | 3.6 | 15.7 | 1.7 | 37.2 | 0.51 | 26.4 |
| TRC594 | 3 yo | Near Side, Century STE-LATCH (NO tether)/ 45 deg.,1/2 Sine | 26.0 | 131 | 240 | 430 | 698 | 2.8 | 15.6 | 1.2 | 33.8 | 0.44 | 27.9 |
| TRC595 | 3 yo | Near Side, Cosco Triad-LATCH/ 90 deg.,1/2 Sine | 20.0 | 76 | 160 | 253 | 670 | 2.5 | 23.8 | 0.7 | 16.6 | 0.08 | 23.8 |
| TRC595 | 12 mos. | Far Side, Cosco Touriva-lap only (rear-facing)/ 90 deg., 1/2 Sine | 25.0 | 180 | 244 | 579 | 46 | 4.6 | 7.9 | 7.1 | 3.9 | NA | 24.1 |
| TRC596 | 3 yo | Near Side, Century STE-LATCH/ 90 deg.,1/2 Sine | 19.0 | 107 | 159 | 600 | 985 | 1.9 | 25.9 | 1.1 | 17.4 | 0.12 | 23.3 |
| TRC596 | 12 mos. | Far Side, Century STE-lap only (rear-facing)/ 90 deg., 1/2 Sine | 28.0 | 247 | 248 | 580 | 7 | 2.1 | 3.8 | 6.7 | 7.9 | NA | 27.5 |
| TRC597 | 3 yo | Near Side, Cosco Triad-LATCH (NO tether)/ 90 deg.,1/2 Sine | 21.0 | 99 | 200 | 113 | 643 | 2.2 | 30.6 | 0.1 | 13.0 | 0.15 | 23.8 |
| TRC598 | 3 yo | Near Side, Century STE-LATCH (NO tether)/ 90 deg.,1/2 Sine | 22.0 | 93 | 170 | 316 | 861 | 3.4 | 24.3 | 0.1 | 12.6 | 0.22 | 25.9 |
| TRC602 | 3 yo | Near Side, Century STE-LATCH/ 90 deg., 213 pulse | 22.0 | 67 | 135 | 278 | 876 | 1.6 | 21.6 | 0.6 | 12.0 | 0.11 | 21.3 |
| TRC602 | 12 mos. | Far Side, Century STE-lap only (rear-facing)/ 90 deg., 213 pulse | 28.0 | 268 | 307 | 707 | 27 | 2.1 | 9.5 | 2.1 | 3.7 | NA | 23.1 |
| TRC603 | 3 yo | Near Side, Century STE-LATCH (No tether) / 90 deg., 213 pulse | 21.0 | 71 | 168 | 322 | 678 | 1.5 | 24.1 | 0.0 | 13.0 | 0.14 | 24.1 |

We are considering a test that would limit head excursion such that no portion of the head of the dummy could pass through a vertical plane that is

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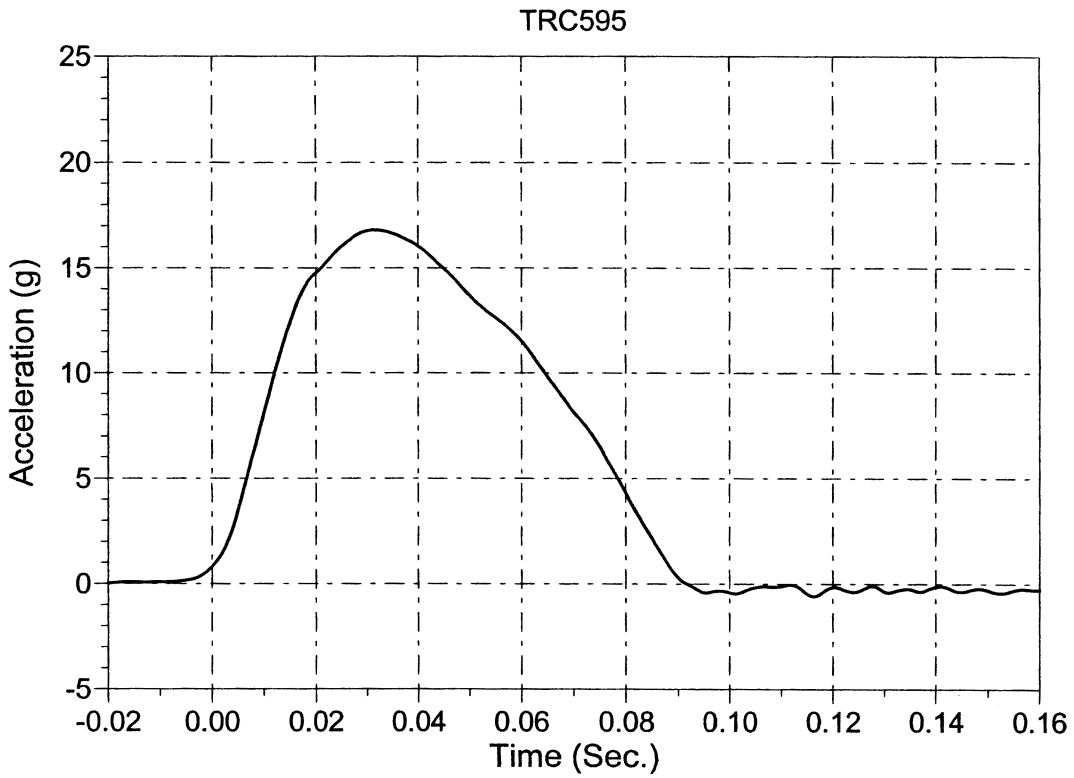
parallel to the longitudinal plane of the test seat assembly, and measured relative to the centerline of the child restraint anchorage (LATCH) bar that is furthest from the simulated impact (Point Z1). The plane would be 508 millimeters (mm) (20 inches) from Point Z1 in the direction toward the side of the simulated impact.

The 508 mm (20-inch) limit was based on the location of the LATCH anchorage bars and the distance we measured from the most inboard anchorage bar to the side door structure of a Pontiac Grand Am passenger car. The Grand Am was used because it was readily available and was thought by the agency to be fairly representative of an average size car in the current fleet. (As discussed later in this document, comments are requested on the representativeness of the vehicle.) It was also based on results from two 90-degree side impact sled tests recently conducted by the agency using a 3-year-old-dummy restrained in forward-facing LATCH child restraint systems. The head excursion values for the dummy in these tests were 19 and 20 inches. (*See* test numbers TRC 595 and TRC 596 in Table 2, *supra*.) The 20-inch limit appeared to be a practicable and reasonable first step toward improving child restraint performance in side impacts. While a lower excursion limit might have greater potential benefits in reducing the likelihood of head impacts against vehicle components even further, not enough was known about the availability and efficacy of possible countermeasure to support a lower limit. It was unknown how manufacturers would be able to meet a lower excursion limit.

**Figure 1 - Pulse for 20 mph Side Impact Sled Test**




*b. Should HIC Be Limited in a 15 mph Dynamic Test With a Rigid Side Structure (''Wall Test'')?*

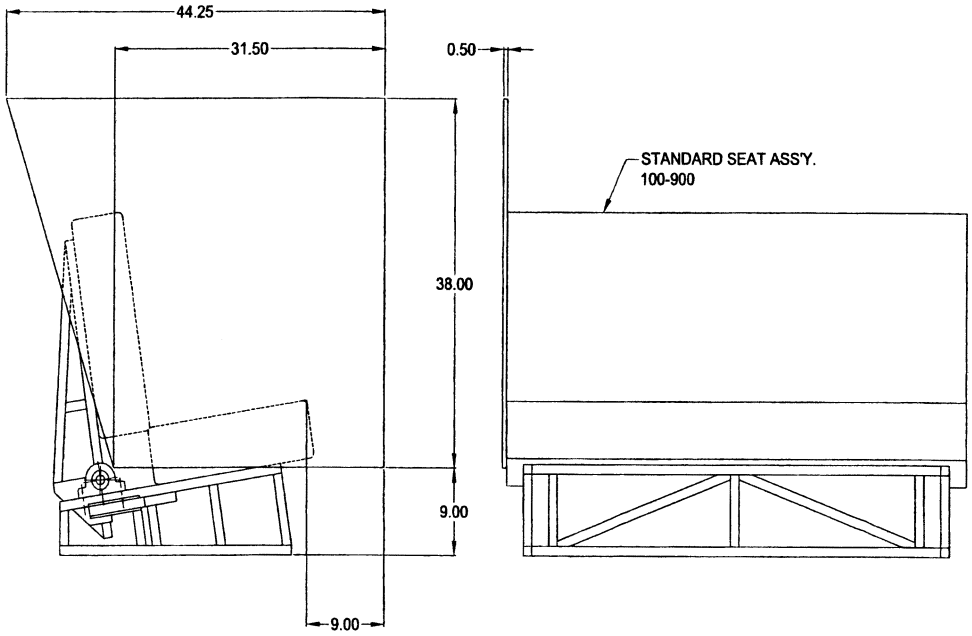
The second test under consideration also involves a simulated lateral impact on a sled, but the test would be conducted at 15 mph. NHTSA settled on a 15 mph test because head excursion sufficient to cause contact with the vehicle interior was found to occur at this speed. We also chose a 15 mph test because it is consistent with a headform impact test used in Standard No. 201, ''Occupant Protection in Interior Impact,'' and in Standard No. 222, ''School Bus Seating and Crash Protection,'' to assess the energy-absorption materials used to provide head protection in vehicle interiors. Comments are requested as to whether the purposes of the tests in each of those standards are sufficiently similar to the purposes in this case.

In this test, we envision the use of a rigid structure that would represent the location of a vehicle's side structure, positioned 508 mm (20 inches) from Point Z1, adjacent to the child restraint.[4] The structure would essentially be a rigid, flat surface adjacent to the seat assembly, extending from the seat cushion to a height of approximately 762 mm (30 inches). The height is intended to be high enough so that if the dummy's head were to contact the structure, the head would contact a flat surface, and not an edge

[4] Under this approach, the LATCH anchorages would be moved from the center seating position on the test seat assembly to an outboard seating position. The rigid structure would be attached next to the seat assembly to the same ''floor'' structure to which the seat assembly is attached.

or curve. The structure would extend forward a distance of approximately 32 inches, again, to ensure that head contact would only be with a flat surface. The structure would be unyielding, and would not bend or flex when loaded. It would be covered with an aluminum plate. Figure 2 of this preamble depicts the rigid structure, aligned with the seat assembly.

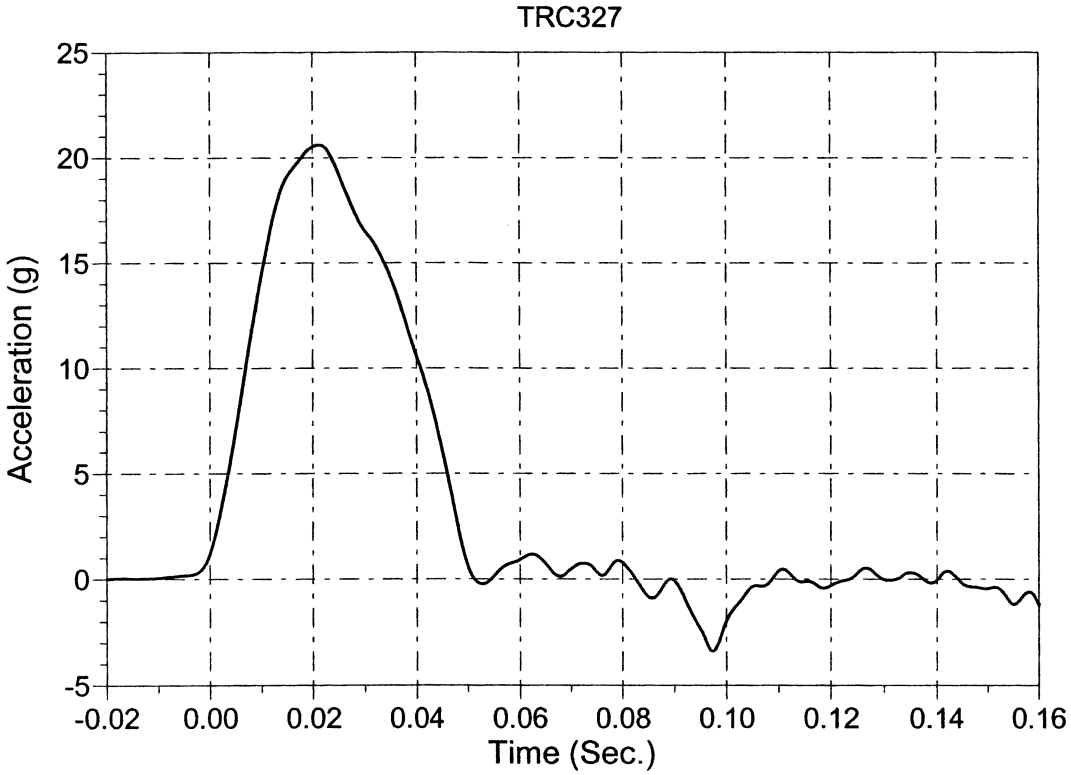
**Figure 2: Seat Assembly with Wall (Dimensions in Inches)**




In this test, head excursion would not be measured because it appears that the presence of the rigid structure would make it unnecessary to do so. A head excursion limit is needed when the test procedure does not include a surface representing the vehicle interior that can be struck during the test. However, in this test procedure, there would be a rigid structure that could be struck by the dummy directly or indirectly while retained in the child restraint. Limits on head and chest acceleration measurements would be measured, to ensure that if the structure were struck, the forces to the dummy's head and chest would not be excessive. Under this approach, other injury criteria limits would also have to be met, such as those relating to neck injury and chest deflection.

The 15-mph test would be conducted with the sled pulse used in the agency's side impact test program. (Figure 3 of this preamble depicts the pulse we are considering for this test.) The test pulse was derived from the crash pulses of the Grand Am when tested under Standard No. 214 (49 CFR 571.214) (velocity of 15 mph with 21g peak acceleration), and in the side impact program of the New Car Assessment Program (NCAP) (21 mph with a 26g peak acceleration). Comments are requested on the appropriateness and representativeness of using the pulses of this vehicle in these tests.

**Figure 3 - Pulse for 15 mph Side Impact Sled Test**




The results of the side impact tests on the Grand Am buck, for the near-side dummy only, are presented below in Table 3.

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**Table 3 - Summary Results for Comparison of HIII 3 yr. Old in European and U.S. CRS in Side Impacts Using Grand Am Sled Buck**

| | | | | In-Position Critical Values | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Test # | Test Type | HIC 15 | HIC unlt'd | Nij ET | Nij EC | Nij FT | Nij FC | Nij Max. | Peak Tension | Peak Compress. | Peak Flexion | Peak Extension | Chest Deflection (mm) | Chest Accel. (g) |
| TRC327 | Near Side; Touriva/ L-S No tether @ 23.3 km/h /214 pulse | 382 | 382 | 0.134 | 0.008 | 0.383 | 0.087 | 0.383 | 778 | 42 | 6.7 | 1.6 | 2.29 | 47.3 |
| TRC454 | Near Side; Britax King/ L-S No tether @ 24.1 km/h /214 pulse | 366 | 366 | 0.420 | 0.011 | 0.145 | 0.087 | 0.420 | 544 | 49 | 5.8 | 5.7 | 2.29 | 45.5 |
| TRC455 | Near Side; Century Accel/ L-S No tether @ 24.1 km/h /214 pulse | 573 | 573 | 0.450 | 0.004 | 0.124 | 0.100 | 0.450 | 775 | 30 | 6.9 | 5.3 | 2.03 | 51.0 |
| TRC328 | Near Side; Touriva/ L-S No tether @ 33.8 km/h /SNCAP Pulse | 1085 | 1085 | 0.793 | 0.008 | 0.165 | 0.046 | 0.793 | 1143 | 46 | 10.0 | 13.4 | 3.56 | 65.9 |
| TRC329 | Near Side; SafeEmb./ L-S No tether @ 33.8 km/h /SNCAP Pulse | 796 | 796 | 0.774 | 0.034 | 0.139 | 0.018 | 0.774 | 1094 | 49 | 5.0 | 10.5 | 1.78 | 73.7 |
| TRC456 | Near Side; Britax King/ L-S No tether @ 33.8 km/h /SNCAP pulse | 709 | 709 | 0.532 | 0.003 | 0.158 | 0.165 | 0.532 | 707 | 81 | 9.6 | 9.9 | 3.30 | 68.2 |
| TRC457 | Near Side; Century Accel/ L-S No tether @ 33.8 km/h /SNCAP pulse | 1029 | 1029 | 0.976 | 0.003 | 0.136 | 0.095 | 0.976 | 1360 | 30 | 8.0 | 14.9 | 2.79 | 71.5 |
| TRC330 | Near Side; Triad LATCH @ 33.8 km/h /SNCAP pulse | 817 | 817 | 1.034 | 0.022 | 0.101 | 0.004 | 1.034 | 1528 | 16 | 3.9 | 11.6 | 12.95 | 45.7 |
| TRC458 | Near Side; Britax King/ L-S w/ Tether @ 33.8 km/h /SNCAP pulse | 478 | 480 | 0.582 | 0.071 | 0.194 | 0.055 | 0.582 | 518 | 111 | 9.1 | 11.9 | 2.03 | 63.9 |
| TRC459 | Near Side; Century Accel/L-S w/Tether @ 33.8 km/h /SNCAP pulse | 899 | 899 | 0.874 | 0.008 | 0.221 | 0.006 | 0.874 | 1034 | 31 | 12.6 | 15.1 | 4.32 | 70.6 |

IARVs: HIC 15 ≤ 570 Nij ≤ 1.0 Chest Acc. ≤ 55 g (FMVSS 208) Chest Deflection ≤ 34 mm
HIC (unlt'd) ≤ 1000 Chest Acc. ≤ 60 g (FMVSS 213)

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*c. Are Both Tests Needed?*

We have been considering the merits of having child restraints be subject to both the 20 mph ''no wall'' and the 15 mph ''rigid wall'' tests. We recognize that the tests may be duplicative to an extent, since the rigid wall of the 15 mph test would be positioned at the 20-inch excursion limit of the 20 mph test. Comments are requested concerning the duplication, and, if it is believed that there is duplication, the extent of the duplication. Which requirement is better, or are both needed? Should we consider proposing to subject child restraints to a second test requirement only if they fail the first test? For instance, if a rear-facing restraint were unable to meet the 20-inch excursion limit of the 20 mph test, we could subject it to hit the 15 mph rigid wall test and require that the injury criteria be met (presumably by additional padding and/or reinforced side structure). If it met those criteria, perhaps it should be considered to have met the side impact protection requirements. As shown in this example, an advantage to the 15 mph test over the 20 mph test is that the former allows the development and assessment of a broader range of countermeasures for child protection. That is, while the 20 mph requirement focuses on better retaining the child's head and torso, the 15 mph requirement could allow manufacturers to incorporate energy-absorption designs into the child restraint, in addition to countermeasures that reduce occupant excursion. Comments are requested on such an approach.

**IV. Countermeasure Development**

We were not able to engage in any type of countermeasure development within the time constraints set by the TREAD Act for an NPRM. However, several possible approaches were identified.

*a. Countermeasures That Better Retain and Cushion the Child's Head*

The legislative history of the TREAD Act indicated an interest in incorporating into Standard No. 213 what was thought to be superior European side impact padding requirements. (''Child Passenger Safety Act of 2000,'' S. 2070, February 10, 2000). NHTSA reviewed Regulation 44 and found that it neither prescribes any side impact tests for the evaluation of child restraints, nor requires special designs or features for enhanced side impact protection, such as deep side structures, or ''wings,'' [5] that differ substantially from the requirements of Standard No. 213.

Notwithstanding the absence of regulatory provisions addressing this aspect of performance, NHTSA evaluated U.S. and European child restraints to compare their performance in a dynamic side impact simulation. The agency ran two series of sled tests using a Pontiac Grand Am passenger car test buck, turned 90 degrees to the direction of impact. The agency used sled pulses derived from the crash pulses of the Grand Am when tested under Standard No. 214 (velocity of 15 mph with 21g peak acceleration), and the side impact program of the New Car Assessment Program (NCAP) (21 mph with a 26g peak acceleration). In the first series of tests to evaluate the performance of current U.S. restraints, Hybrid III 3-year-old dummies were positioned in the outboard rear seating positions in child restraints that were either a Cosco Triad or Touriva, or a Fisher-Price SafeEmbrace or SafeEmbrace II. In each test, one child restraint with dummy was on the ''near-side,'' *i.e.,* same side, as the impact and one child restraint with dummy was on the ''far-side.'' In each test, the near-side dummy's head contacted the interior door structure, resulting in high injury measures. The far-side dummy had minimal interaction with the vehicle interior, the near-side dummy or with any other object.

NHTSA then evaluated the side impact protection capability of child restraint systems that were certified to Regulation 44 (seats manufactured to European regulations by Britax and by Century). NHTSA obtained six child restraints, three each of the Britax King and the Century Accel. Visual review of the European seats prior to testing did not reveal significant differences in the padding or size of the ''wings'' between the Regulation 44 and the Standard No. 213 seats. Because no instrumented side impact dummy was available for use, the agency utilized instrumented Hybrid III 3-year-old dummies, and focused its evaluation of the restraints primarily on the kinematic response of the dummies. During these tests, one Hybrid III 3-year-old dummy was positioned near-side to the impact. Test results indicated that the performance of the European restraint systems was not significantly different from that of the U.S. child restraints. That is, in each case, the near-side test dummy's head went out around the side of the child restraint and impacted the door frame of the sled buck. The side wings on the European restraint did not contain the head of the dummy any better than the U.S. restraints we tested. (The results are discussed in detail in a paper entitled, ''Comparison of European and U.S. Child Restraints in Lateral Grand Am Sled Tests,'' a copy of which is in the docket.)

This finding of no difference in performance between European and U.S. child restraints was relevant to determining the level of performance of current child restraint designs, but does not address the extent of the manufacturers' capabilities to improve designs to provide better protection for a child's head in a side impact. In a study that evaluated rearward-facing child restraints in lateral impacts, researchers conducting side impact testing of prototype child restraints found that ''side protection can be increased by fairly simple methods,'' [6] for example, by providing a reinforced side structure that distributes local loads, energy absorbing materials and a modified head area that prevents the head from rotating out of the confines of the child restraint. Researchers who modified a child restraint to incorporate these features found that the restraint was able to retain the head of a 3-year-old test dummy in a lateral 50-kilometer per hour (km/h) dynamic test. *Id.* Researchers from the RTA of NSW, Australia, found head strikes could be prevented in 90-degree tests depending, in part, on the depth of the side wings.[7] This research indicates that countermeasure work could be promising. However, because NHTSA has not been able to satisfactorily consider and evaluate possible countermeasures for side impact protection, we have decided against proceeding with an NPRM at this time.

NHTSA will be undertaking a research plan later in 2002 to evaluate possible countermeasures that may

[5] The only requirements for ''wings'' in the E.C.E. Regulation 44 apply to rear-facing child restraints. These restraints must have side wings with a depth of minimum 90 mm measured from the median of the surface of the backrest. These side wings start at the horizontal plan passing through point ''A'' and continue to the top of the seat back. Starting from a point 90 mm below the top of the seat back, the depth of the side wing may be gradually reduced. Child restraints meeting these requirements do not appear substantially different in design than convertible restraints manufactured to Standard No. 213.

[6] Kamrén et al., ''Side Protection and Child Restraints—Accident Data and Laboratory Test Including New Test Methods,'' 13th International Technical Conference of Experimental Safety Vehicles, November 4–7, 1991, Paris, France.

[7] Kelly et al., ''Child Restraint Performance in Side Impacts With and Without Top Tethers and With and Without Rigid Attachment (CANFIX),'' 1995 International IRCOBI Conference on the Biomechanics of Impact, September 13–16, 1995, Brunnen, Switzerland.

enable rear-facing infant seats to better retain the child's head in a side impact. The agency hopes to assess whether potential countermeasures such as increased padding and/or depth of the side wings on these restraints could have a positive effect in limiting the head excursion of a restrained dummy. The results of this research will help shape the agency's future work on side impact protection.

*b. Countermeasures That Keep the Child Restraint From Moving Laterally in a Side Impact*

Another countermeasure that might provide side impact benefits is one that keeps the child restraint from moving laterally in the side impact, such as the use of rigid instead of flexible means for attaching a child restraint to the Standard No. 225 LATCH system. RTA of NSW, Australia, conducted dynamic side impact sled tests and found that a child restraint with rigid means of being attached to a LATCH system outperformed a child restraint restrained by a flexible attachment system and a lap belt plus tether system. Kelly et al., ''Comparative Side Impact Testing of Child Restraint Anchorage Systems,'' Special Report 96/100, March 1997.[8] The side impact tests were conducted in accordance with Australian Standard (AS) 3691.1, except for the addition of a simulated door structure, replicating a rear door of a large sedan, adjacent to the test seat. Testing was conducted at 32 km/hr and 14 g, with the test seat mounted at both 90 degrees and 45 degrees to the direction of sled travel. The lower anchorage points for the CAUSFIX (LATCH) system were positioned 280 mm (11 inches) apart on the test seat structure, with the inboard anchorage approximately 610 mm (24 inches) from the inner surface of the door. An instrumented 9-month-old dummy was used in all the tests.

RTA found that, for forward-facing seats, only the rigid-to-rigid CAUSFIX (LATCH) attachment system was able to prevent contact between either the dummy's head or the child restraint and the door structure in the 90-degree test. RTA stated that head contact with the door was evident in the test involving the flexible attachment system, largely due to the restraint's rotating towards the door at the end of its sideway movement.

> As a consequence, the dummy's head moved forward relative to the CRS [child restraint system] and contacted the front portion of the side-wing. In turn, the side-wing deflected and allowed the head to roll around its front edge, as the CRS rebounded from the door. The HIC values shown * * * indicate only light head contact with the door. In contrast, the CAUSFIX system did not allow rotation* * * * The CAUSFIX concept offered better head protection compared to the conventional seat belt/top tether systems. (*Id.,* page 5.)

Comments are requested on these findings. In 1999, NHTSA required the LATCH (or CAUSFIX) system to be installed on new passenger vehicles (64 FR 10786; March 5, 1999). NHTSA required child restraints to be equipped with attachments that connect to the vehicle LATCH system beginning in 2002, but allowed manufacturers to decide what type of connecters to use on their child restraints. The agency did not require that rigid connectors be used because, among other reasons, we lacked data to confirm whether use of rigid attachments on a child restraint would produce the side impact benefits reported by RTA. There was also a concern that rigid connectors would raise the price of child restraints inordinately. (Rigid connectors are estimated to add about $25 to the price of a child restraint.) Without evidence of a clear benefit in having rigid attachments, and in view of the potential price of child restraints with rigid attachment systems and the leadtime necessary for their development, NHTSA decided against mandating that type of connector.[9] In the event that the rigid attachment system with top tether is capable of preventing the dummy's head from striking the side of the vehicle, how should the agency balance that capability against the impact of possible cost increases on the use of child restraints in deciding whether to propose mandating a performance requirement that can be met only by rigid attachments at this time?

Another possible countermeasure that the agency considered to prevent movement of the child restraint toward the vehicle side structure is tethering the bottom of a child restraint to the vehicle floor. Comments are requested on the effectiveness of this approach. Consumer acceptability of this approach is not known at this time.

*c. Countermeasures That Reduce the Local Stiffness of Vehicle Components Areas Where Children Are Most Likely To Hit Their Heads*

It may be that the best way of developing countermeasures that would be effective in protecting children in child restraints on the near side of a side impact would be to consider the child restraint and the vehicle as parts of a single system. Standard No. 201 is intended to provide impact protection in various crash modes, including side impact crashes, while Standard No. 214 focuses on side impact crashes. Standard No. 201, *Occupant Protection in Interior Impact* (49 CFR 571.201), requires passenger vehicles to provide protection when an occupant's head strikes certain portions of target components, such as pillars, side rails, headers, and the roof. The components are subjected to in-vehicle component tests with a headform, and must limit HIC to 1000. The standard could be expanded to apply to the areas of the vehicle interior that are identified as likely to be struck by a child's head in a side impact crash. However, our data files do not clearly identify where head strikes are occurring in vehicles. Since significant work would have to be done to identify the appropriate target areas and assess suitable countermeasures, this approach was not considered responsive to the TREAD Act, given its time limitations.

Another potential countermeasure to reduce the local stiffness of vehicle side structures would be side impact air bags (SIABs). The agency has done considerable research on SIABs.[10] A crucial part of the agency's current research concerns their effectiveness, cost, and any possible harmful effects for in-position and out-of-position occupants. Despite the agency's research to date on SIABs, the agency did not consider SIABs as a countermeasure because of the time limitations of TREAD. However, comments on the potential effectiveness of this approach and suggestions on specific target locations are requested.

## VI. Specific Issues on Side Impact on Which Comments Are Requested

There are a number of issues on which comments would be helpful in shaping NHTSA's decision in this rulemaking.

[8] (RTA refers to the LATCH system as the CAUSFIX system, because ''LATCH'' was a term developed subsequent to the RTA study, primarily by U.S. manufactures and retailers for a U.S. audience. Further, at the time of the RTA study, the rigid lower bars and top tether anchorage design of LATCH was then under development by Canada and Australia.)

[9] At present, we are not aware of any child restraint system that has rigid attachments that is available in the U.S.

[10] Prasad et al., ''Evaluation of Injury Risk from Side Impact Air Bags,'' 17th International Technical Conference on the Enhanced Safety of Vehicles, June 4–7, 2001, Amsterdam, Netherlands. This paper describes NHTSA's program for evaluation of side air bag systems for out-of-position occupants and provides a status report on the current research.

*a. Crash Characteristics*

The agency has been hampered by a lack of specific accident data on children in side impact crashes. There are few available data on how children are being injured and killed in side impacts (*e.g.,* to what degree injuries are caused by intrusion of an impacting vehicle or other object). Using 1999 FARS data, 55 percent of the 91 children between the ages of 0 and 12 that were killed in side impact crashes while restrained in child restraints were seated on the side nearest to the crash, with the remaining fatal injuries evenly distributed in middle and far-side seating positions. Is there any evidence that injuries and fatalities occur more often in compartment impacts than in non-compartment impacts? Is there additional information available to distinguish the contact location (vehicle or child restraint system) causing the most severe injury(ies)?

*b. Child Injury Mechanisms*

Given the agency's limited information regarding the side impact crash characteristics, it is similarly difficult to identify the specific injury mechanisms in children in these crashes. NHTSA researchers have opined that in the absence of autopsies, neck injuries may sometimes occur but be recorded as head injuries. What evidence is there that neck injuries may occur to CRS occupants in side impact crashes? What head injury mechanisms occur? Are they focal point injuries due to direct contact, or do they tend to be diffuse injuries resulting from inertial loadings? Are there other serious and fatal injury mechanisms occurring to children in side impact collisions when they are restrained in a CRS?

*c. Test Procedures*

1. Are the Approaches Reasonable?

We request comments on all aspects of the test procedures, including general methodology; sled test orientation; test speed and pulse; and positioning of the rigid structure (Wall Test). Should LATCH be the sole means of attaching a child restraint for the purposes of testing? (Currently, the LATCH anchorages are in the center seating position on the standard seat assembly described in Standard No. 213. We would consider moving the LATCH anchorages to an outboard seating position.) All passenger vehicles manufactured on or after September 1, 2002 will be equipped with LATCH systems, and all child restraints manufactured on or after September 1, 2002 will have components that attach to the LATCH anchors in vehicles. However, it will be years before the LATCH-equipped vehicles replace the vehicles on the road today. Given these considerations, comments are requested on whether child restraints should also be required to meet the side impact performance requirements when attached to the standard seat assembly by a lap and shoulder belt (and top tether). What practicability problems, if any, would be associated with achieving compliance while using the latter type of attachment?

Comments are requested from manufacturers and researchers as to how they have sought to better protect children in side impacts. To what extent have manufacturers considered side impact protection in designing child restraints and vehicles? What measures have been used thus far in child restraint and vehicle designs to improve side impact performance to children?

2. ISO

The International Organization for Standardization (ISO) has embarked on what has become a comprehensive, long-term endeavor to develop a dynamic side impact test procedure.[11] NHTSA has been monitoring that undertaking. Currently, the Working Group has developed a draft side impact test method that addresses ''near side'' impact conditions. A copy of the draft test method has been placed in the docket. The Working Group will address non-struck side test requirements at a later date. The draft standard has been developed through consideration of a progression of tests from full-scale vehicle impacts to a sled with a hinged door. In the latter procedure, the intruding door is represented by a pivoted door structure that is rotated in relation to the test seat, at a relative velocity within a band of velocities measured in full-scale tests. The movement represents the deformation of the door inner panel relative to the rear seat structure.

During a side impact collision, the compartment undergoes a lateral acceleration and velocity change of the chassis. Furthermore, if a compartment strike occurs, the struck side of that vehicle may intrude rapidly into the passenger compartment, impacting occupants seated on the struck side adjacent to the impact. With respect to a child restraint, the chassis acceleration affects the reaction of the anchorages and the inertial displacement of the child restraint system, while the side intrusion affects the direct loading on the child restraint system.

This complex interaction cannot be replicated entirely in a simple sled test procedure. For the draft ISO test procedure, the chassis acceleration and door intrusion have been specified independently. The chassis acceleration is reproduced by the sled deceleration. The door intrusion is simulated by the motion of a hinged door mounted on the sled. An alternative method using a non-hinged door has also been evaluated. For the evaluation of the performance of a child restraint system on the non-struck side, only the chassis (sled) acceleration is relevant.

The ISO Working Group has recognized that, although a test method and installation procedure has been developed, there are no dummies available at the present time whose construction is designed for side impact validation. Accordingly, the Working Group will conduct method validation tests using dummies recognized as being of limited capability until new dummies are available. Such validation will be conducted in Europe using modified P series dummies.

The ISO working group's draft side impact test method has been circulated within the group for review and comment. However, given the lack of an approved test device, and corresponding injury criteria, a final version of an ISO test procedure is not expected in the near future. The level and amount of effort needed to further develop and validate the ISO side impact test procedure far exceeds what can be accomplished within the time constraints of the TREAD Act. It is not known when ISO will adopt the draft standard for a dynamic side impact test procedure.

Comments are requested on whether the ISO procedure would be appropriate for Standard No. 213. Should NHTSA wait for ISO to finalize it before proceeding with a proposal for side impact protection?

*d. Performance Requirements*

We are contemplating side impact requirements that would generally consist of the same limits on injury criteria as those proposed in the NPRM

[11] The International Organization for Standardization working group ISO TC22/SC12/WG1, ''Child Restraint Systems,'' has declared that the risk of side impacts to children in cars is an important working item, and established an ad-hoc group in 1993 to analyze this area. The ad-hoc group noted that, ''From different accident research units, it was reported that critical or fatal injuries of child restraint-protected children in side collisions show about the same importance as in frontal collisions.'' Therefore, the ISO working group noted that there is an interest in evaluating the risk of injuries to children in side impacts and in analyzing the side impact performance of child restraint systems. The ISO working group was given the task of developing an international standard of uniform test criteria for such evaluation. This work remains ongoing at this time.

published today for inclusion in Standard No. 213 for the frontal impact test. We would limit the forces that are imposed on a dummy's head in the side impact tests by specifying the head injury criteria (HIC) proposed in the pending NPRM on this subject ($HIC_{15}$570, when testing with the 3-year-old dummy, and $HIC_{15}$390, when testing with the CRABI 12-month-old). The purpose of the HIC limits in the No Wall and Wall Tests would be to ensure that (a) the dummy's head would be retained within the child restraint and (b) the child restraint structure surrounding the head would not transfer harmful loads from restraint-to-door impacts to the child, or would not contain stiff components.

We are considering the merits of using the same neck injury criteria in the side impact tests that are being proposed for frontal compliance tests of child restraints. Results from the limited testing that we have conducted show that, although difficult, existing child restraint designs may meet the specified neck injury parameters. Comments are requested on whether reducing head excursions could result in increased neck loading. Comments are also sought on the ability of deep wings to reduce injury. Would the enlarged side structure sufficiently retain the head within the shell of the child restraint system? If not, under what impact conditions might the head not be retained? In those cases in which the head would not be retained, would there be any potential for increased neck injury due to side wings?

We are considering a head excursion limit of 508 mm (20 inches) from the centerline of the child restraint anchorage (LATCH) bar that is furthest from the simulated impact (Point Z1). The 508 mm (20-inch) limit was based, in part, on the location of the LATCH anchorage bars and the distance we measured from the most inboard anchorage bar to the side door structure of a Pontiac Grand Am passenger car. Comments are requested on the reasonableness of basing the limit on the Grand Am interior. How representative is the Grand Am of passenger vehicles? Would the distance in smaller vehicles be significantly less? Would the 20-inch limit be sufficient to provide safety in vehicles with a smaller interior than the Grand Am (smaller distance between LATCH anchorage bar to the side door structure)? The 20-inch limit was also based on the results from two 90-degree side impact sled tests using a 3-year-old-dummy restrained in forward-facing LATCH child restraint systems. The head excursion values for the dummy in these tests were 19 and 20 inches. Comments are requested on the practicability of a head excursion requirement less than 20 inches. Is there a practicable way of meeting a more stringent head excursion requirement in vehicles smaller than the Grand Am? Should a head excursion limit also be based on the potential for side structure intrusion in a side impact? Intruding side structure would reduce the amount of available space in a side impact. Comments are requested on how intrusion should be accounted for in setting an excursion limit and the practicability of meeting such a limit.

*e. Test Dummies*

We are considering the use of the CRABI and Hybrid III 3-year-old dummies to test child restraints. We are mindful that there is some question whether these dummies are appropriate for use in side impact testing. The Hybrid III 3-year-old has a shoulder and torso that are stiffer than the human's in the lateral direction, and probably would not fully replicate a child's kinematics in a side impact. The agency and the biomechanical community are developing more advanced side impact dummies, such as the Q series 3-year-old (Q3) test dummy, which is the product of a European dummy manufacturer. However, the Q3 dummy has yet to show whether it will prove to be suitable for lateral child restraint testing.

We have also conducted preliminary evaluations of prototype neck designs with side impact capabilities for the Hybrid III 3-year-old dummy. During the limited series of side impact tests conducted by the agency at the Vehicle Research and Test Center (VRTC), the dummy appeared to rotate toward the point of impact in each case to yield a generally frontal kinematic response. The shoulder structure for adults—and its relevance to kinematic response—is not currently fully understood by the biomechanical community, let alone the shoulder structure for a child. Yet, given the initial forward rotation of the Hybrid III 3-year-old dummy in a lateral test, it is possible that the shoulder would have little influence on the overall kinematic response of the Hybrid III 3-year-old dummy in the side impact tests under consideration. Comments are requested on whether the existing Hybrid III 3-year-old is the best available dummy and sufficient for use in side impact testing. Has any dynamic side impact testing been performed with the CRABI, Hybrid III, Q- or P-series dummies? What problems, if any, have been experienced in testing with the P-series European dummy? What is the suitability of the P-series dummy relative to the Hybrid III and Q-series dummies?

*f. Design Restriction*

Comments are also requested on the appropriateness of proposing to amend Standard No. 213 to specify a particular design for child restraints, instead of a dynamic test requirement. For example, should S5.2.2.1(b) mandate side wings on child restraints and increase the height of the wings above the current requirement? We recognize that that approach would be more design restrictive and would not allow manufacturers the leeway to develop alternative designs that might better enhance safety and public acceptability. Would it be unnecessarily design restrictive? Further, at this point, we do not know how high the wings would need to be to retain the head in a dynamic environment. How high would they need to be?

Comments are also requested on whether, in lieu of a dynamic test requirement, we should propose specifying the type and amount of improved energy-absorbing material that should be used around the head area of the restrained child. What type of material should be specified? Would that approach be unnecessarily design restrictive? Would the addition of padding increase neck injuries by allowing pocketing of the head and thereby generating increased neck loads?

*g. Consumer Acceptance*

Comments are requested on the reduced ease of use of restraints that would have deep side wings. Deep side wings may make it somewhat more difficult to place a child in the restraint, especially an infant. Would the larger side structure make it significantly harder for parents to move children (especially infants) in and out of the restraint, or make it significantly more difficult to install the restraint in the vehicle? Would the larger side structure substantially reduce the ability of restrained children to see out of the restraint? Would increased inconvenience or lack of visibility lead to any significantly reduced use of the restraint? Are there advanced materials that could overcome these problems?

Comments are also requested on consumers' sensitivity to changes in the price of restraints. Is consumer demand sufficiently sensitive to new child restraint prices such that an increase in the price of a child restraint could lead to a decrease in demand for child restraints, notwithstanding that each of the States and the District of Columbia require the use of child restraints in

motor vehicles? If so, could the resulting changes in child restraint usage partially or totally offset the benefits of a side impact protection rule? Would higher prices lead consumers generally to decide to use older model child restraints instead of purchasing new models? Would a cost increase result in fewer restraints being purchased for giveaway and loaner programs?

*h. Potentially Affected Child Restraints*

As to the possible application of the side impact protection requirements, we are considering only restraints recommended for children up to 40 lb. Comments are requested as to whether tethered convertible restraints with impact shields could meet side impact performance requirements.

Comments are also requested on applying side impact requirements to booster seats. Booster seats, as currently designed, are unlikely to be able to meet the requirements under consideration because, to fit older children, they typically have little or no side structure. (Side structure modification is one of the ways we anticipate manufacturers would be able to meet a side impact test requirement.) Booster seats also are not subject to the requirement in Standard No. 213 that makes it necessary for child restraints to have a tether, since they do not pose the same problems of compatibility with the vehicle as do the restraints for younger children, which have to be installed by the vehicle belt system. Yet, older children could benefit from improved side impact protection. A tether could be added relatively easily, but side structure might cause the restraints to be too large and bulky for use. Further, S5.4.3.2 of FMVSS No. 213 effectively limits the mass of current booster seats to 4.4 kg. Addition of a side structure would likely cause most existing booster designs to exceed this limit. There are a number of combination toddler/belt-positioning booster seats on the market. When used with younger children, these restraints have a full harness system for the child and attach to the vehicle seat by way of the vehicle's belt system or LATCH system. When the child grows to a certain size (typically over 40 lb), parents are instructed to remove the harness and to use the child restraint system as a belt-positioning booster. Because these restraints are used as booster seats when the child is over 40 lb, and since side structure on this type of restraint could impede its use as a booster seat, should these seats be excluded from a proposed side impact requirement? Should booster seat occupants rely on the vehicle structure for side impact protection, as do adult occupants? How could side impact protection best be improved for children in booster seats?

*i. Potential Cost*

At this time, the agency has insufficient information about the particular methods of compliance (''countermeasures'') and their costs. The agency is uncertain what countermeasures manufacturers might use to meet the possible side impact requirements under consideration.

The estimated costs to comply with the contemplated side impact requirements vary, depending on the countermeasure used. For some infant restraints, the addition of one-inch thick padding could be sufficient to meet the requirements (the estimated additional cost per restraint is $2.50.) The total cost of this countermeasure for those restraints is estimated to be $1.750 million. For some forward-facing toddler restraints, the sides (wings) on the top portion of the restraint might be increased to prevent a child's head from passing the sides and contacting the vehicle side structure. We estimate that the larger sides and padding would add about $15.00 to the cost of a convertible child restraint (one that is used rear-facing with an infant and forward-facing with a toddler). A convertible child restraint now typically costs about $70.00. We estimate the total cost of the enlarged wings countermeasure to be $49.5 million.

Tethering the bottom of a forward-facing restraint to an anchor on the floor of the vehicle to impede the ability of the child restraint to rotate toward the side impact is estimated to cost $4.14 per child restraint, and $1.40 per vehicle (for two anchors). The total cost of the tether countermeasure is estimated to be $38.3 million.

Another possible countermeasure could be to use rigid components on child restraints for attaching them to the lower anchorage bars of a vehicle's child restraint anchorage system. We estimate that this countermeasure would add $25.15 per child restraint, for a total cost of $100.6 million.

The agency requests comments on these and other possible countermeasures. Given that some child restraints could meet the side excursion and injury limits in one test mode, and that child restraint manufacturers have never had to design for a side impact test, it is possible that relatively minor changes in design, without significant changes in the child restraints, could allow some manufacturers to pass the tests. We have not evaluated the countermeasures to determine their feasibility and benefit, although we will evaluate the increased padding and enlarged wings approaches in 2002, for rear-facing restraints. Information from that study will help us further evaluate the course of action we should pursue in this rulemaking.

NHTSA requests comments on the effect of additional costs on the number of restraint producers and on competition. The child restraint industry is a very fluid industry; manufacturers are continuously entering and leaving it for a variety of reasons. Would an increase in child restraint prices affect the viability of any of these manufacturers if the profit margins were reduced? If so, would the number of manufacturers decrease, and as a result, cause the competition in this market to decrease? Do retailers tend to dictate the wholesale end of this market by requiring that they be provided child restraints in specified price ranges? If so, would an increase in the cost of child restraints to the manufacturers result in reduced profit margins?

*j. Potential Benefits*

In 1999, 420 of the 1,317 children (about 32 percent) between the ages of 0 to 12 killed in motor vehicle crashes were killed in side impacts. Of these children, 91 were killed while restrained in child restraints. Children seated on the side nearest to the crash accounted for 55 percent of the fatalities. Children seated in a middle seating position, or on the far-side, accounted for 23 and 22 percent, respectively. We believe that limiting head excursion of the dummy in dynamic testing would result in fewer head impacts against the vehicle side structure in a side impact, and, correspondingly, fewer injuries and fatalities. Further, limiting head and chest acceleration would require better energy attenuation by the child restraint in a side impact, which could reduce fatalities and injuries resulting from impacts of the child's head against the child restraint side structure. However, it is difficult to quantify that reduction. We do not know whether the possible countermeasures we have identified are feasible or effective. Further, we do not know enough about how children are dying and getting injured in side impacts. Forty-five percent of the total fatalities for children who are in child restraints in side impact crashes occur when the child is seated in either the middle or far side (non-impacted side) seating positions. Would limiting the lateral excursion for these occupants result in improved protection? Comments are requested on these issues.

## VII. Rear Impact Protection

Data from FARS for 1991–2000 show that 9580 passenger vehicle occupants between the ages of 0 and 8 years old were fatally injured. Of these, 662 (6.9 percent) were killed in rear impact crashes, while 3536 (36.9 percent) were killed in frontal crashes and 2759 (28.8 percent) were killed in side impact crashes. Of the 662 children killed in rear impact crashes between 1991–2000, 214 were restrained in a child restraint; 128 were restrained with a lap or lap/shoulder belt; 266 were unrestrained and 54 were of other or unknown restraint use. Further, of the 104 children under the age of 1 that were killed during this time period, 60 were in child restraints, 2 were in lap or lap/shoulder belts, 38 were unrestrained, and 4 were of other or unknown restraint use.

The breakdown of restraint use for children under the age of 1 is provided to identify the possible benefits associated with establishing a rear impact test for rear-facing restraints in FMVSS No. 213 which would be similar to that which is conducted under the European Regulation R44. In the European test, rear-facing restraints are subjected to a rear impact test conducted at 30 km/hr (18.6 mph), with peak deceleration between 14 g and 21 g over a 70 msec time period. Limits on the amount of allowable head excursion during the dynamic test are specified.

During recent dynamic sled testing in support of FMVSS No. 202 and FMVSS No. 207 research, a rear-facing child restraint with the CRABI 12-month-old dummy was added to three different tests. The tests were conducted using a 1999 Dodge Intrepid vehicle buck. An Evenflo On My Way child restraint, with the attached base, was positioned in the rear seat of the vehicle for each test. One test, simulating a dynamic FMVSS No. 202 condition, was conducted at approximately 17.5 km/h (11 mph). The other two tests were conducted at approximately 30.5 km/h (19 mph). Regardless of simulated impact speed, the CRABI 12-month-old in the rear-facing child restraint was able to easily meet the injury criteria that are proposed under FMVSS No. 208; however, compliance with the ECE Regulation R44 requirements were not verified.

Given the results of the above testing, in conjunction with the data showing that fatalities for children as a result of rear impact crashes constitute a much smaller percentage of the total than other crash modes, the agency is not certain whether the establishment of a rear impact test for rear-facing restraints is warranted. Is there any test data that would support the establishment of a test that would parallel the existing European requirement? Would existing restraints be able to meet the requirements with no modifications? If so, does it make sense to require the test as part of FMVSS No. 213? Are there particular requirements of ECE Regulation R44 for rear-facing child restraints in rear impacts that should be given greater consideration?

## VIII. Rulemaking Analyses

*Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

The agency has considered the impact of this ANPRM under Executive Order (E.O.) 12866 and the Department of Transportation's regulatory policies and procedures and determined that it is ''significant'' because one means of meeting a dynamic side impact requirement could result in costs over $100 million and could therefore be economically significant under E.O. 12866, i.e., have an annual effect on the economy of $100 million or more. [12] This document was reviewed by OMB under E.O. 12866. At this point, NHTSA wants more information about the costs and benefits of this rulemaking before it will decide to issue a proposal that would be economically significant under E.O. 12866. A Preliminary Economic Assessment (PEA) discussing the costs and benefits of the ANPRM is available from the docket.[13]

As discussed in the PEA, the agency is uncertain at this time what countermeasures manufacturers would use to meet side impact requirements. We believe that the side impact tests under consideration could improve the protection afforded to children involved in side impact. In 1999, about 32 percent of the 1,317 children between the ages of 0 to 12 killed in motor vehicle crashes were in side impacts. Of these children, 91 were killed while restrained in child restraints. Children seated on the side nearest to the crash accounted for 55 percent of the fatalities. Children seated in a middle seating position, or on the far-side, accounted for 23 and 22 percent, respectively. Limiting head excursion of the dummy in dynamic testing could result in fewer head impacts against the vehicle side structure in a side impact, and, correspondingly, fewer injuries and fatalities. Limiting head and chest acceleration could lead to better energy attenuation by the child restraint in a side impact, which might reduce fatalities and injuries resulting from impacts of the child's head against the child restraint side structure. Given certain assumptions, the side impact tests under consideration could prevent 14 fatalities and 55 injuries annually.

The tests under consideration may only partially address the harm resulting from near-side (impacted side) crashes. However, comments are requested on whether benefits may result in some side impacts with lower degrees of intrusion (*e.g.,* lower speed crashes), because limits on head excursion and injury reference values may prevent children's heads from striking the vehicle side structure in such crashes, when head contact might have otherwise occurred in the absence of an excursion limit, or might attenuate crash forces on the child in lower speed crashes. Comments are also requested on whether limiting lateral head excursion and/or HIC may benefit children who are in child restraints seated in either the middle or far side (non-impacted side) seating positions.

The estimated costs to meet the side impact tests under consideration vary, depending on the countermeasures used. For some infant restraints, the addition of one-inch thick padding could be sufficient (the estimated cost per restraint is $2.50.) The total cost of this countermeasure is estimated to be $1.750 million. For some forward-facing toddler restraints, the sides (wings) on the top portion of the restraint might be increased to prevent a child's head from passing the sides and contacting the vehicle side structure. Larger sides and padding are estimated to add about $15.00 to the cost of a convertible child restraint (one that is used rear-facing with an infant and forward-facing with a toddler). A convertible child restraint now typically costs about $70.00. The total cost of the enlarged wings countermeasure is estimated to be $49.5 million. A third possible countermeasure involves impeding the ability of the child restraint to rotate toward the side impact. Tethering the bottom of a forward-facing restraint to an anchor on the floor of the vehicle might achieve this result. The cost of such a countermeasure is estimated to be $4.14 per child restraint, and $1.40

[12] This could be the case if the countermeasure involved using rigid components on child restraints that attach to the vehicle's rigid LATCH child restraint anchorage system.

[13] NHTSA's Preliminary Economic Assessment (PEA) discusses issues relating to the potential costs, benefits and other impacts of this regulatory action. The PEA is available in the docket for this rule and may be obtained by contacting Docket Management at the address or telephone number provided at the beginning of this document. You may also read the document via the Internet, by following the instructions in the section below entitled, ''Viewing Docket Submissions.'' The PEA will be listed in the docket summary.

per vehicle (for two anchors). The total cost of the tether countermeasure is estimated to be $38.3 million. Another possible countermeasure could be to use rigid attachment components on child restraints that attach to the lower anchorage bars of a vehicle's child restraint anchorage system. This countermeasure is estimated to add $25.15 per child restraint, for a total cost of $100.6 million. NHTSA wants more information about the costs and benefits of this ANPRM before it will decide to issue a proposal that would be economically significant under E.O. 12866.

The agency requests comments on these and other possible countermeasures. The countermeasures have not been evaluated to determine their feasibility and benefit, although NHTSA will evaluate potential countermeasures in 2002, for rear-facing restraints. Information from that study will help us further evaluate the course of action the agency should pursue in this rulemaking.

## IX. Submission of Comments

*How Can I Influence NHTSA's Thinking on This Rulemaking?*

In developing this ANPRM, we tried to address the concerns of all our stakeholders. Your comments will help us improve this rulemaking. We invite you to provide different views on options we discuss, new approaches we have not considered, new data, descriptions of how this ANPRM may affect you, or other relevant information. We welcome your views on all aspects of this ANPRM, but request comments on specific issues throughout this document. Your comments will be most effective if you follow the suggestions below:

—Explain your views and reasoning as clearly as possible.
—Provide solid technical and cost data to support your views.
—If you estimate potential costs, explain how you arrived at the estimate.
—Tell us which parts of the ANPRM 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 ANPRM, such as the units or page numbers of the preamble, or the regulatory sections.
—Be sure to include the name, date, and docket number with your comments.

*How Do I Prepare and Submit Comments?*

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

Comments may also be submitted to the docket electronically by logging onto the Dockets Management System Web site at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filing the document electronically.

*How Can I Be Sure That My Comments Were Received?*

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

*How Do I Submit Confidential Business Information?*

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

*Will the Agency Consider Late Comments?*

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing an NPRM (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

*How Can I Read the Comments Submitted by Other People?*

You may read the comments received by Docket Management 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 on the Internet. To read the comments 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–2001–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.''

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. However, since the comments are imaged documents, instead of word processing documents, the downloaded comments are not word searchable.

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. Upon receiving the comments, the docket supervisor will return the postcard by mail.

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117, 30166 and Pub. L. 106–414, 114 Stat. 1800; delegation of authority at 49 CFR 1.50.

Issued on April 24, 2002.

**Stephen R. Kratzke,**

*Associate Administrator for Safety Performance Standards.*

[FR Doc. 02–10506 Filed 4–25–02; 10:00 am]

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Federal Register

Wednesday,
May 1, 2002

# Part III

# Department of Agriculture

## Agricultural Marketing Service

**7 CFR Part 929**

**Cranberries Grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Hearing on Proposed Amendment of Marketing Agreement and Order No. 929; Proposed Rule**

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 929**

**[Docket No. AO–341–A6; FV02–929–1]**

## Cranberries Grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Hearing on Proposed Amendment of Marketing Agreement and Order No. 929

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

**ACTION:** Notice of hearing on proposed rulemaking.

**SUMMARY:** Notice is hereby given of a public hearing to consider amending Marketing Agreement and Order No. 929, hereinafter referred to as the ''order.'' The order regulates the handling of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. The purpose of the hearing is to receive evidence on a number of amendments proposed by the Cranberry Marketing Committee (Committee), which is responsible for local administration of the order, and other interested parties. These proposals are intended to improve the administration, operation, and functioning of the order.

**DATES:** The hearing dates are:

1. May 20, 2002, 9 a.m. to 5 p.m., and continuing on May 21, 2002, at 9 a.m., if necessary, Plymouth, Massachusetts.
2. May 23, 2002, 9 a.m. to 5 p.m., Bangor, Maine.
3. June 3, 2002, 9 a.m. to 5 p.m., and continuing on June 4, 2002, at 9 a.m., if necessary, Wisconsin Rapids, Wisconsin.
4. June 6, 2002, 9 a.m. to 5 p.m. and continuing on June 7, 2002 at 9 a.m., if necessary, Portland, Oregon.

**ADDRESSES:** The hearing locations are:

1. Plymouth—Sheraton Inn, 180 Water Street, Plymouth, Massachusetts 02360.
2. Bangor—Bangor Motor Inn, Banquet and Conference Center, Hogan Road, Bangor, Maine 04401.
3. Wisconsin Rapids—Hotel Mead and Conference Center, 451 East Grand Avenue, Wisconsin Rapids, Wisconsin 54494.
4. Portland—Edith Green-Wendell Wyatt Federal Building, 1220 SW 3rd Avenue, Room 322, Portland, Oregon 97204.

**FOR FURTHER INFORMATION CONTACT:** Kathleen M. Finn, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938. Small businesses may request information on this proceeding by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

**SUPPLEMENTARY INFORMATION:** This administrative action is instituted pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impacts of the proposals on small businesses.

The amendments proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the proposals.

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

At a Committee meeting in August 2001, the Committee recommended proposed amendments to the cranberry marketing order. The Committee's request for hearing was submitted to USDA on November 5, 2001. A request to consider amendments to the cranberry marketing order was also received on November 5, 2001, from an attorney representing two cranberry handlers, Clement Pappas & Company, Inc. and Cliffstar Corporation.

In addition, USDA issued a press release on January 15, 2002, that invited cranberry growers, handlers and other interested persons to propose amendments to the marketing order. Two persons submitted additional proposals, the Wisconsin Cranberry Cooperative and Doanne Andresen.

The hearing is called pursuant to the provisions of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

### Proposals Submitted by the Cranberry Marketing Committee

The Committee proposes to revise seven areas of program operations. In addition, the Committee recommended that the amendment proceeding be expedited whereby the recommended decision would be omitted in order to have any approved amendments in place as soon as possible. This can only be done if the Secretary finds, on the basis of the record, that due and timely execution of his or her functions imperatively and unavoidably requires such omission. Participants at the hearing are therefore invited to present testimony on this recommendation. The amendments proposed by the Committee are summarized below.

*Administrative Body*

1. Increase Committee membership to 13 industry members, 1 public member, 9 industry alternate members and 1 public alternate member. The current Committee is composed of 7 industry members, each with an alternate and 1 public member and alternate. This proposal would also incorporate a ''swing'' position whereby the entity (either independent or cooperative) which sells more than 50 percent of the total volume sold is assigned an additional seat.

Related proposed changes would modify §§ 929.22 and 929.23 to incorporate nomination and selection procedures to reflect the change in Committee membership. The change to § 929.22 would also allow the Committee to request tax identification numbers for voting purposes and authorize mail nominations for independent members.

Another related change is proposed in quorum and voting requirements to reflect the increased number of Committee members. In addition, a related change is proposed to reset the clock for tenure limitations to correspond to the change in Committee members.

2. Clarify how alternates may fill positions in any member's absence.

3. Authorize the Committee to reestablish districts within the production area and reapportion grower membership among the various districts.

*Volume Regulations*

4. Simplify criteria considered and set forth more appropriate dates in establishing the Committee's marketing policy.

5. Revise the formula for calculating sales histories under the producer allotment program in § 929.48. The revision includes providing additional sales history to compensate growers for expected production on younger acres. This proposed change to § 929.48 would also allow for more flexibility in recommending changes to the formula; add authority for segregating fresh and processed sales; and allow compensation for catastrophic events that impact a grower's crop for more than 2 years.

6. Remove specified dates relating to when information is required to be filed by growers/handlers in order to issue annual allotments.

7. Allow growers to transfer allotment during a year of volume regulation. Currently, growers must lease their acreage in order to transfer allotment.

8. If volume regulation is recommended by the Committee, require the Committee to recommend producer allotment program by March 1 each year and to recommend a withholding program as soon as practicable after August 1.

9. Authorize the implementation of the producer allotment and withholding programs in the same year.

10. Add specific authority to exempt fresh, organic or other forms of cranberries from order provisions.

11. Allow for greater flexibility in establishing other outlets for excess cranberries.

12. Update and streamline the withholding volume control provisions.

*Production Area*

13. Add Maine, Delaware, and the entire State of New York to the production area.

*Paid Advertising*

14. Add authority for paid advertising under the research and development provision of the order.

*Definition of Cranberry*

15. Add the species *Vaccinium oxycoccus* to the definition of cranberry. Currently, only the species *Vaccinium macrocarpon* is included in the definition of cranberry.

*Definition of Handle*

16. Modify the definition of handle to clarify that transporting fresh cranberries to foreign countries is considered handling and include the temporary cold storage or freezing of withheld cranberries as an exemption from handling.

*Reporting Requirements*

17. Relocate some reporting provisions to a more suitable provision and streamline the language relating to verification of reports and records.

*Deletion of Obsolete Provision*

18. Delete an obsolete provision from the order relating to preliminary regulation.

**Proposals Submitted by Stephen L. Lacey on Behalf of Clement Pappas and Company, Inc., and Cliffstar Corporation**

Two handlers proposed amendments in two areas of program operations. These proposed amendments are summarized below.

*Administrative Body*

19. Require Committee member disclosure of non-regulated cranberry production.

20. Alter the way nominations of cooperative members on the Committee are conducted by requiring cooperative nominees to be selected through an election process administered by the Committee. Currently, the cooperative nominates its members without an election process.

*Volume Regulations*

21. Incorporate a handler marketing pool under the producer allotment program to allow handlers without surplus access to cranberries to meet customer needs. This proposal would allow purchases from the pool by non-surplus handlers at the same price the handlers pay their growers.

22. Modify the withholding volume regulations by allowing growers to be compensated under the buy-back provisions if any funds are returned to the handler by the Committee.

**Proposals Submitted by Wisconsin Cranberry Cooperative**

The Wisconsin Cranberry Cooperative, a cranberry cooperative marketing association, proposed revisions in two areas of program operations. These proposed amendments are summarized below.

*Administrative Body*

23. Recognize that there are more than one cooperative marketing associations in the industry and allow all cooperatives the right to be represented on the Committee.

24. Establish a nomination process for cooperative marketing associations.

*Outlets for Excess Cranberries*

25. Expand the noncompetitive outlets for excess cranberries by clearly defining what countries are authorized for foreign development with excess cranberries.

26. Establish a limit on foreign markets eligible for shipments of excess berries as foreign markets with a total annual consumption of less than the equivalent of 20,000 barrels of cranberries and/or cranberry products.

**Proposal Submitted by Doanne Andresen**

Doanne Andresen, a cranberry grower from Duxbury, Massachusetts, proposed the following amendment.

27. Authorize an exemption from order provisions for the first 1000 barrels of cranberries produced by each grower.

28. The Fruit and Vegetable Programs of the Agricultural Marketing Service (AMS) proposes to allow such conforming changes to the order which may be necessary as a result of the hearing.

None of these proposals have received the approval of USDA. The Committee and the other interested parties believe that the proposed changes would improve the administration, operation, and functioning of the order.

The public hearing is held for the purpose of: (i) Receiving evidence about the economic and marketing conditions which relate to the proposed amendments of the order and any appropriate modifications thereof; (ii) determining whether there is a need for the proposed amendments to the order; (iii) determining the economic impact of proposed amendments on the industry in the production area and on the public affected by the amendments; and (iv) determining whether the proposed amendments or any appropriate modifications thereof will tend to effectuate the declared policy of the Act.

Testimony is invited at the hearing on all the proposals and recommendations contained in this notice, as well as any appropriate modifications or alternatives.

All persons wishing to submit written material as evidence at the hearing should be prepared to submit four copies of such material at the hearing and should have prepared testimony available for presentation at the hearing.

From the time the notice of hearing is issued and until the issuance of a final decision in this proceeding, USDA employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an *ex parte* basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, AMS; Office of the General Counsel, except any designated employees of the General Counsel assigned to represent the Committee in this rulemaking proceeding; and the Fruit and Vegetable Programs, AMS.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

**List of Subjects in 7 CFR Part 929**

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

## PART 929—CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

1. The authority citation for 7 CFR part 929 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Testimony is invited on the following proposals or appropriate alternatives or modifications to such proposals.

Proposals submitted by the Cranberry Marketing Committee:

**Administrative Body**

*Proposal No. 1*

Revise § 929.20 to read as follows:

**§ 929.20 Establishment and membership.**

(a) There is hereby established a Cranberry Marketing Committee consisting of 13 industry members, and 9 industry alternate members. Except as hereafter provided, members and alternate members shall be growers or employees, agents, or duly authorized representatives of growers.

(b) The committee shall include one public member and one public alternate member nominated by the committee and selected by the Secretary. The public member and public alternate member shall not be a cranberry grower, processor, handler, or have a financial interest in the production, sales, marketing or distribution of cranberries or cranberry products. The committee, with the approval of the Secretary, shall prescribe qualifications and procedures for nominating the public member and public alternate member.

(c) Members shall represent each of the following subdivisions of the production areas in the number specified in Table 1. Members shall reside in the designated district of the production area from which they are nominated and selected. Provided, that there shall also be one cooperative or independent member-at-large who may be nominated from any of the marketing order districts.

District 1: The States of Massachusetts, Maine, Rhode Island, Connecticut; and New York.

*District 2:* The States of New Jersey and Delaware.

*District 3:* The States of Wisconsin, Michigan, and Minnesota.

*District 4:* The States of Oregon and Washington.

TABLE 1

| Districts | Cooperative members | Cooperative alternates | Independent members | Independent alternates |
|---|---|---|---|---|
| 1 | 2 | 1 | 2 | 1 |
| 2 | 1 | 1 | 1 | 1 |
| 3 | 2 | 1 | 2 | 1 |
| 4 | 1 | 1 | 1 | 1 |
| Any | 1 cooperative or independent member-at-large | | | |

(d) The committee may establish, with the approval of the Secretary, rules and regulations for the implementation and operation of this section.

Revise § 929.21 to read as follows:

**§ 929.21 Term of office.**

(a) The term of office for each member and alternate member of the committee shall be for two years, beginning on August 1 of each even-numbered year and ending on the second succeeding July 31. Members and alternate members shall serve the term of office for which they are selected and have been qualified or until their respective successors are selected and have been qualified.

(b) Beginning on August 1 of the even-numbered year following the adoption of this amendment, committee members shall be limited to three consecutive terms. This limitation on tenure shall not include service on the committee prior to the adoption of this amendment and shall not apply to alternate members.

(c) Members who have served three consecutive terms must leave the committee for at least one full term before becoming eligible to serve again. The consecutive terms of office for alternate members shall not be so limited.

Revise § 929.22 to read as follows:

**§ 929.22 Nomination.**

(a) Beginning on June 1 of the even-numbered year following the adoption of this amendment, the committee shall hold nominations in accordance with this section.

(b) Whenever any cooperative marketing organization sells more than fifty percent of the total volume of cranberries sold during the fiscal period in which nominations for membership on the committee are made, the cooperative or growers affiliated therewith shall nominate:

(1) Six qualified persons for cooperative members and four qualified persons for cooperative alternate members of the committee. Nominee(s) for cooperative member and cooperative

alternate member shall represent growers from each of the marketing order districts designated in § 929.20.

(2) The seventh cooperative member shall be referred to as member-at-large. The member-at-large may be nominated from any of the marketing order districts.

(3) Six qualified persons for independent members and four qualified persons for independent alternate members of the committee shall be nominated by those growers who market their cranberries through other than cooperative marketing organizations. Nominees for independent member and independent alternate member shall represent growers from each of the marketing order districts as designated in § 929.20(c).

(c) Whenever any cooperative marketing organization sells less than fifty percent of the total volume of cranberries sold during the fiscal period in which nominations for membership on the committee are made, the cooperative or growers affiliated therewith, shall nominate:

(1) Six qualified persons for cooperative members and four qualified persons for cooperative alternate members of the committee. Nominees for member and alternate member shall represent growers from each of the marketing order districts as designated in § 929.20(c).

(2) Six qualified persons for independent members and four qualified persons for independent alternate members of the committee shall be nominated by those growers who market their cranberries through other than cooperative marketing organizations. Nominees for independent member and independent alternate member shall represent growers from each of the marketing order districts as designated in § 929.20(c).

(3) The seventh member nominee shall be referred to as the independent member-at-large. The member-at-large may be nominated from any of the marketing order districts.

(d) Nominations of qualified independent member nominees shall be made through a call for nominations sent to all eligible growers residing within each of the marketing order districts. The call for such nominations shall be by such means as are recommended by the committee and approved by the Secretary.

(1) The names of all eligible nominees from each district received by the committee, by such date and in such form as recommended by the committee and approved by the Secretary, will appear on the nomination ballot for that district.

(2) Election of the independent member nominees and independent alternate member nominees shall be conducted by mail ballot.

(3) Eligible independent growers shall participate in the election of nominees from the district in which they reside.

(4) When voting for independent member nominees, each eligible grower shall be entitled to cast one vote on behalf of him/herself.

(5) The nominee receiving the highest plurality of votes cast in districts two and four shall be the independent member nominee from that district. The nominee receiving the second highest plurality of votes cast in districts two and four shall be the independent alternate member from that district.

(6) The nominees receiving the highest and second highest plurality of votes cast in districts one and three shall be the independent member nominees from that district. The nominee receiving the third highest plurality of votes cast in districts one and three shall be the independent alternate member from that district.

(e) Nominations for the independent member-at-large shall be made through a call for nominations sent to all eligible growers residing within the marketing order districts. The call for such nominations shall be by such means as recommended by the committee and approved by the Secretary.

(1) Election of the member-at-large shall be held by mail ballot sent to all eligible independent growers in the marketing order districts by such date and in such form as recommended by the committee and approved by the Secretary.

(2) Eligible growers casting ballots may vote for a member-at-large nominee from marketing order districts other than where they produce cranberries.

(3) When voting for the member-at-large nominee, each eligible grower shall be entitled to cast one vote on behalf of him/herself.

(4) The nominee receiving the highest plurality of votes cast shall be designated the independent member-at-large nominee. The nominee receiving the second highest plurality of votes cast shall be declared the independent alternate member-at-large nominee.

(f) The committee may request that growers provide their federal tax identification number(s) in order to determine voting eligibility.

(g) The names and addresses of all nominees shall be submitted to the Secretary for selection no later than July 1 of each even-numbered year.

(h) The committee, with the approval of the Secretary, may issue rules and regulations to carry out the provisions or to change the procedures of this section.

Revise § 929.23 to read as follows:

**§ 929.23 Selection.**

(a) From nominations made pursuant to § 929.22(a), the Secretary shall select members and alternate members to the committee on the basis of the representation provided for in § 929.20 and in paragraph (b) or (c) of this section.

(b) Whenever any cooperative marketing organization sells more than 50 percent of the total volume of cranberries sold during the fiscal year in which nominations for membership on the committee are made, the Secretary shall select:

(1) Six cooperative members and four cooperative alternate members from nominations made pursuant to § 929.22(b)(1).

(2) One cooperative member-at-large from nominations made pursuant to § 929.22(b)(2), and

(3) Six independent members and four independent alternate members from growers who market their cranberries through other than cooperative marketing organizations made pursuant to § 929.22(b)(3).

(c) Whenever any cooperative marketing organization sells less than 50 percent of the total volume of cranberries sold during the fiscal year in which nominations for membership on the committee are made, the Secretary shall select:

(1) Six cooperative members and four cooperative alternate members from nominations made pursuant to § 929.22(c)(1).

(2) Six independent members and four independent alternate members from nominations made pursuant to § 929.22(c)(2).

(3) One independent member-at-large from nominations made pursuant to § 929.22(c)(3).

Revise § 929.32 to read as follows:

**§ 929.32 Procedure.**

(a) Ten members of the committee, or alternates acting for members, shall constitute a quorum. All actions of the committee shall require at least ten concurring votes: Provided, if the public member or the public alternate member acting in the place and stead of the public member, is present at a meeting, then eleven members shall constitute a quorum. Any action of the committee on which the public member votes shall require eleven concurring votes. If the public member abstains from voting on

any particular matter, ten concurring votes shall be required for an action of the committee.

(b) The committee may vote by mail, telephone, fax, telegraph, or other electronic means; Provided that any votes cast by telephone shall be confirmed promptly in writing. Voting by proxy, mail, telephone, fax, telegraph, or other electronic means shall not be permitted at any assembled meeting of the committee.

(c) All assembled meetings of the committee shall be open to growers and handlers. The committee shall publish notice of all meetings in such manner as it deems appropriate.

*Proposal No. 2*

Revise § 929.27 to read as follows:

**§ 929.27 Alternate members.**

An alternate member of the committee, shall act in the place and stead of a member during the absence of such member, and may perform such other duties as assigned. In the event of the death, removal, resignation, or disqualification of a member, an alternate shall act for him/her until a successor for such member is selected and has qualified. In the event both a member and alternate member from the same marketing order district are unable to attend a committee meeting, the committee may designate any other alternate member to serve in such member's place and stead at that meeting provided that:

(1) A cooperative alternate member shall not serve in place of an independent member or the public member.

(2) An independent alternate member shall not serve in place of a cooperative member or the public member.

(3) A public alternate member shall not serve in place of a cooperative member or independent member.

*Proposal No. 3*

Add a new § 929.28 to read as follows:

**§ 929.28 Redistricting.**

(a) The committee, with the approval of the Secretary, may reestablish districts within the production area and reapportion membership among the districts. In recommending such changes, the committee shall give consideration to:

(1) The relative volume of cranberries produced within each district.

(2) The relative number of cranberry producers within each district.

(3) Cranberry acreage within each district.

(4) Other relevant factors.

(b) The committee may establish, with the approval of the Secretary, rules and regulations for the implementation and operation of this section.

**Volume Regulations**

*Proposal No. 4*

Revise § 929.46 to read as follows:

**§ 929.46 Marketing policy.**

(a) As soon as practicable before March 1 the committee shall estimate the marketable quantity for the following crop year.

(b) Prior to August 31 of each crop-year, the committee shall submit to the Secretary a report setting forth its marketing policy for the crop-year. Such marketing policy shall contain the following information for the current crop year:

(1) The estimated total production of cranberries;

(2) The expected general quality of such cranberry production;

(3) The estimated carryover, as of September 1, of frozen cranberries and other cranberry products;

(4) The expected demand conditions for cranberries in different market outlets;

(5) The recommended desirable total marketable quantity of cranberries including a recommended adequate carryover into the following crop year of frozen cranberries and other cranberry products;

(6) Other factors having a bearing on the marketing of cranberries.

*Proposal No. 5*

Revise § 929.48 to read as follows:

**§ 929.48 Sales history.**

(a) A sales history for each grower shall be computed by the committee in the following manner:

(1) For growers with acreage with 6 or more years of sales history, the sales history shall be computed using an average of the highest four of the most recent six years of sales.

(2) For growers with 5 years of sales history from acreage planted or replanted 2 years prior to the first harvest on that acreage, the sales history is computed by averaging the highest 4 of the 5 years.

(3) For growers with 5 years of sales history from acreage planted or replanted 1 year prior to the first harvest on that acreage, the sales history is computed by averaging the highest 4 of the 5 years and shall be adjusted as provided in paragraph (6).

(4) For a grower with 4 years or less of sales history, the sales history shall be computed by dividing the total sales from that acreage by 4 and shall be adjusted as provided in paragraph (6).

(5) For growers with acreage having no sales history, or for the first harvest of replanted acres, the sales history will be the average first year yields (depending on whether first harvested 1 or 2 years after planting or replanting) as established by the committee and multiplied by the number of acres.

(6) In addition to the sales history computed in accordance with paragraphs (3) and (4) of this section, additional sales history shall be assigned to growers using the formula $x=(a-b)c$. The letter ''x'' constitutes the additional number of barrels to be added to the grower's sales history. The value ''a'' is the expected yield for the forthcoming year harvested acreage as established by the committee. The value ''b'' is the total sales from that acreage as established by the committee divided by four. The value ''c'' is the number of acres planted or replanted in the specified year. For acreage with five years of sales history: a = the expected yield for the forthcoming sixth year harvested acreage (as established by the committee); b = an average of the most recent 4 years of expected yields (as established by the committee); and c = the number of acres with 5 years of sales history.

(b) A new sales history shall be calculated for each grower after each crop year, using the formulas established in paragraph (a) of this section, or such other formula(s) as determined by the committee, with the approval of the Secretary.

(c) The committee, with the approval of the Secretary, may adopt regulations to alter the number and identity of years to be used in computing sales histories, including the number of years to be used in computing the average. The committee may establish, with the approval of the Secretary, rules and regulations necessary for the implementation and operation of this section.

(d) Sales histories, starting with the crop year following adoption of this part, shall be calculated separately for fresh and processed cranberries. The amount of fresh fruit sales history may be calculated based on either the delivered weight of the barrels paid for by the handler (excluding trash and unusable fruit) or on the weight of the fruit paid for by the handler after cleaning and sorting for the retail market. Handlers using the former calculation shall allocate delivered fresh fruit subsequently used for processing to growers' processing sales. Fresh fruit sales history, in whole or in part, may be added to process fruit sales history with the approval of the committee in the event that the grower's fruit does not qualify as fresh fruit at delivery.

(e) The committee may recommend rules and regulations to adjust a grower's sales history to compensate for catastrophic events that impact the grower's crop for more than 2 years.

*Proposal No. 6*

Revise § 929.49 to read as follows:

**§ 929.49 Marketable quantity, allotment percentage, and annual allotment.**

(a) Marketable quantity and allotment percentage. If the Secretary finds, from the recommendation of the committee or from other available information, that limiting the quantity of cranberries purchased from or handled on behalf of growers during a crop year would tend to effectuate the declared policy of the Act, the Secretary shall determine and establish a marketable quantity for that crop year.

(b) The marketable quantity shall be apportioned among growers by applying the allotment percentage to each grower's sales history, established pursuant to § 929.48. Such allotment percentage shall be established by the Secretary and shall equal the marketable quantity divided by the total of all growers' sales histories including the estimated total sales history for new growers. Except as provided in paragraph (g) of this section, no handler shall purchase or handle on behalf of any grower cranberries not within such grower's annual allotment.

(c) In any crop year in which the production of cranberries is estimated by the committee to be equal to or less than its recommended marketable quantity, the committee may recommend that the Secretary increase or suspend the allotment percentage applicable to that year. In the event it is found that market demand is greater than the marketable quantity previously set, the committee may recommend that the Secretary increase such quantity.

(d) *Issuance of annual allotments.* The committee shall require all growers to qualify for such allotment by filing with the committee a form wherein growers include the following information:

(1) The amount of acreage which will be harvested;

(2) a copy of any lease agreement covering cranberry acreage;

(3) The name of the handler(s) to whom their annual allotment will be delivered;

(4) Such other information as may be necessary for the implementation and operation of this section.

(e) On or before such date as determined by the committee, with the approval of the Secretary, the committee shall issue to each grower an annual allotment determined by applying the allotment percentage established pursuant to paragraph (b) of this section to the grower's sales history.

(f) On or before such date as determined by the committee, with the approval of the Secretary, in which an allotment percentage is established by the Secretary, the committee shall notify each handler of the annual allotment that can be handled for each grower whose total crop will be delivered to that handler. In cases where a grower delivers a crop to more than one handler, the grower must specify how the annual allotment will be apportioned among the handlers.

(g) Growers who do not produce cranberries equal to their computed annual allotment shall transfer their unused allotment to such growers' handlers. The handler shall equitably allocate the unused annual allotment to growers with excess cranberries who deliver to such handler. Unused annual allotment remaining after all such transfers have occurred shall be reported and transferred to the committee by such date as established by the committee with the approval of the Secretary.

(h) Handlers who receive cranberries more than the sum of their growers' annual allotments have ''excess cranberries,'' pursuant to § 929.59, and shall so notify the committee. Handlers who have remaining unused allotment pursuant to paragraph (g) of this section are ''deficient'' and shall so notify the committee. The committee shall allocate unused allotment to all handlers having excess cranberries, proportional to each handler's total allotment.

(i) Growers who decide not to grow a crop, during any crop year in which a volume regulation is in effect, may choose not to assign their allotment to a handler.

(j) The committee may establish, with the approval of the Secretary, rules and regulations necessary for the implementation and operation of this section.

*Proposal No. 7*

Revise § 929.50 to read as follows:

**§ 929.50 Transfers.**

(a) Leases and sales of cranberry acreage.

(1) When total or partial lease of cranberry acreage occurs, sales history attributable to the acreage being leased shall remain with the lessor.

(2) *Total sale of cranberry acreage.* When there is a sale of a grower's total cranberry producing acreage, the committee shall transfer all owned acreage and all associated sales history to such acreage to the buyer. The seller and buyer shall file a sales transfer form providing the committee with such information as may be requested so that the buyer will have immediate access to the sales history computation process.

(3) *Partial sale of cranberry acreage.* When less than the total cranberry producing acreage is sold, sales history associated with that portion of the acreage being sold shall be transferred with the acreage. The seller shall provide the committee with a sales transfer form containing, but not limited to the distribution of acreage and the percentage of sales history, as defined in § 929.48(a)(1), attributable to the acreage being sold.

(4) No sale of cranberry acreage shall be recognized unless the committee is notified in writing.

(b) *Allotment Transfers.* During a year of volume regulation, a grower may transfer all or part of his/her allotment to another grower. If a lease is in effect the lessee shall receive allotment from lessor attributable to the acreage leased. Provided, That the transferred allotment shall remain assigned to the same handler and that the transfer shall take place and the committee shall be notified prior to August 1 of the year of volume regulation, or such other date as recommended by the Committee and approved by the Secretary. Transfers of allotment between growers having different handlers may occur with the consent of both handlers.

(c) The committee may establish, with the approval of the Secretary, rules and regulations, as needed, for the implementation and operation of this section.

*Proposal No. 8*

Revise § 929.51 to read as follows:

**§ 929.51 Recommendations for regulation.**

(a) If the committee deems it advisable to regulate the handling of cranberries in the manner provided in § 929.52, it shall so recommend to the Secretary by the following appropriate dates:

(i) Allotment percentage program by no later than March 1;

(ii) Withholding program as soon as practicable after August 1. Such recommendation shall include the free and restricted percentages for the crop year.

(b) In arriving at its recommendations for regulation pursuant to paragraph (a) of this section, the committee shall give consideration to current information with respect to the factors affecting the supply of and demand for cranberries during the period when it is proposed that such regulation should be imposed.

With each such recommendation for regulation, the committee shall submit to the Secretary the data and information on which such recommendation is based and any other information the Secretary may request.

*Proposal No. 9*

Revise § 929.52 to read as follows:

**§ 929.52 Issuance of regulations.**

(a) The Secretary shall regulate, in the manner specified in this section, the handling of cranberries whenever the Secretary finds, from the recommendations and information submitted by the committee, or from other available information, that such regulation will tend to effectuate the declared policy of the Act. Such regulation shall limit the total quantity of cranberries which may be handled during any fiscal period by fixing the free and restricted percentages, applied to cranberries acquired by handlers in accordance with § 929.54, and/or by establishing an allotment percentage in accordance with § 929.49.

(b) The committee shall be informed immediately of any such regulation issued by the Secretary, and the committee shall promptly give notice thereof to handlers.

*Proposal No. 10*

Revise § 929.58 to read as follows:

**§ 929.58 Minimum exemption.**

(a) Upon the basis of the recommendation and information submitted by the committee, or from other available information, the Secretary may relieve from any or all requirements pursuant to this part the handling of cranberries in such minimum quantities as the committee, with the approval of the Secretary, may prescribe.

(b) Upon the basis of the recommendation and information submitted by the committee, or from other available information, the Secretary may relieve from any or all requirements pursuant to this part the handling of such forms or types of cranberries as the committee, with the approval of the Secretary, may prescribe. Forms of cranberries could include cranberries intended for fresh sales or organically grown cranberries.

(c) The committee, with the approval of the Secretary, shall prescribe such rules, regulations, and safeguards as it may deem necessary to ensure that cranberries handled under the provisions of this section are handled only as authorized.

*Proposal No. 11*

Revise § 929.61 to read as follows:

**§ 929.61 Outlets for excess cranberries.**

(a) *Noncommercial outlets.* Excess cranberries may be disposed of in noncommercial outlets that the committee finds, with the approval of the Secretary, meet the requirements outlined in paragraph (c) of this section. Noncommercial outlets include, but are not limited to:

(1) Charitable institutions; and

(2) Research and development projects.

(b) *Noncompetitive outlets.* Excess cranberries may be sold in outlets that the committee finds, with the approval of the Secretary, are noncompetitive with established markets for regulated cranberries and meet the requirements outlined in paragraph (c) of this section. Noncompetitive outlets include but are not limited to:

(1) Any nonhuman food use; and

(2) Other outlets established by the committee with the approval of the Secretary.

(c) *Requirements.* The handler disposing of or selling excess cranberries into noncompetitive or noncommercial outlets shall meet the following requirements, as applicable:

(1) *Charitable institutions.* A statement from the charitable institution shall be submitted to the committee showing the quantity of cranberries received and certifying that the institution will consume the cranberries;

(2) *Research and development projects.* A report shall be given to the committee describing the project, quantity of cranberries contributed, and date of disposition;

(3) *Nonhuman food use.* Notification shall be given to the committee at least 48 hours prior to such disposition;

(4) *Other outlets established by the committee with the approval of the Secretary.* A report shall be given to the committee describing the project, quantity of cranberries contributed, and date of disposition.

(d) The storage and disposition of all excess cranberries withheld from handling shall be subject to the supervision and accounting control of the committee.

(e) The committee, with the approval of the Secretary, may establish rules and regulations for the implementation and operation of this section.

*Proposal No. 12*

Revise § 929.54 to read as follows:

**§ 929.54 Withholding.**

(a) Whenever the Secretary has fixed the free and restricted percentages for any fiscal period, as provided for in § 929.52(a), each handler shall withhold from handling a portion of the cranberries he acquires during such period.

(b) Withheld cranberries may meet such standards of grade, size, quality, or condition as the committee, with the approval of the Secretary, may prescribe. The committee or representatives of the committee shall inspect all such cranberries. A certificate of such inspection shall be issued which shall include the name and address of the handler, the number and type of containers in the lot, the location where the lot is stored, identification marks (including lot stamp, if used), and the quantity of cranberries in such lot that meet the prescribed standards. Promptly after inspection and certification, each such handler shall submit to the committee a copy of the certificate of inspection issued with respect to such cranberries.

(c) Any handler who withholds from handling a quantity of cranberries in excess of that required pursuant to paragraph (a) of this section shall have such excess quantity credited toward the next fiscal year's withholding obligation, if any B provided that such credit shall be applicable only if the restricted percentage established pursuant to § 929.52 was modified pursuant to § 929.53; to the extent such excess was disposed of prior to such modification; and after such handler furnishes the committee with such information as it prescribes regarding such withholding and disposition.

Revise § 929.56 to read as follows:

**§ 929.56 Special provisions relating to withheld (restricted) cranberries**

(a) A handler shall make a written request to the committee for the release of all or part of the cranberries that the handler is withholding from handling pursuant to § 929.54(a). Each request shall state the quantity of cranberries for which release is requested and shall provide such additional as the committee may require. Handlers may replace the quantity of withheld cranberries requested for release as provided under either paragraph (b) or (c) of this section.

(b) The handler may contract with another handler for an amount of free cranberries to be converted to restricted cranberries that is equal to the volume of cranberries that the handler wishes to have converted from his own restricted cranberries to free cranberries.

(1) The handlers involved in such an agreement shall provide the committee with such information as may be requested prior to the release of any restricted cranberries.

(2) The committee shall establish guidelines to ensure that all necessary documentation is provided to the committee, including but not limited to, the amount of cranberries being converted and the identities of the handlers assuming the responsibility for withholding and disposing of the free cranberries being converted to restricted cranberries.

(3) Cranberries converted to replace released cranberries shall be inspected and meet such standards as are prescribed for withheld cranberries prior to disposal.

(4) Transactions and agreements negotiated between handlers shall include all costs associated with such transactions including the purchase of the free cranberries to be converted to restricted cranberries and all costs associated with inspection and disposal of such restricted cranberries. No costs shall be incurred by the committee other than for the normal activities associated with the implementation and operation of a volume regulation program.

(5) Free cranberries belonging to one handler and converted to restricted cranberries on the behalf of another handler shall be reported to the committee in such manner as prescribed by the committee.

(6) The committee may establish, with the approval of the Secretary, rules and regulations for the implementation of this section.

(c) Except as otherwise directed by the Secretary, as near as practicable to the beginning of the marketing season of each fiscal period with respect to which the marketing policy proposes regulation pursuant to § 929.52(a), the committee shall determine the amount per barrel each handler shall deposit with the committee for it to release to him, in accordance with this section, all or part of the cranberries he is withholding; and the committee shall give notice of such amount of deposit to handlers. Such notice shall state the period during which such amount of deposit shall be in effect. Whenever the committee determines that, by reason of changed conditions or other factors, a different amount should therefore be deposited for the release of withheld cranberries, it shall give notice to handlers of the new amount and the effective period thereof. Each determination as to the amount of deposit shall be on the basis of the committee's evaluation of the following factors:

(1) The prices at which growers are selling cranberries to handlers,

(2) The prices at which handlers are selling fresh market cranberries to dealers,

(3) The prices at which cranberries are being sold for processing in products,

(4) The prices at which handlers are selling cranberry concentrate, and

(5) The prices the committee has paid to purchase cranberries to replace released cranberries in accordance with this section.

(6) Each request for release of withheld cranberries shall include, in addition to all other information as may be prescribed by the committee, the quantity of cranberries the release is requested and shall be accompanied by a deposit (a cashier's or certified check made payable to the Cranberry Marketing Committee) in an amount equal to the twenty percent of the amount determined by multiplying the number of barrels stated in the request by the then effective amount per barrel as determined in paragraph (c).

(7) Subsequent deposits equal to, but not less than, the ten percent of the remaining outstanding balance shall be payable to the committee on a monthly basis commencing on January 1, and concluding by no later than August 31 of the fiscal period.

(8) If the committee determines such a release request is properly filled out, is accompanied by the required deposit, contains a certification that the handler is withholding such cranberries, and the committee is able to determine it can purchase unrestricted (free percentage) from other handlers to replace the withheld cranberries it shall release to such handler the quantity of cranberries specified in his request.

(d) Funds deposited for the release of withheld cranberries, pursuant to paragraph (c) of this section, shall be used by the committee to purchase from handlers unrestricted (free percentage) cranberries in an aggregate amount as nearly equal to, but not in excess of, the total quantity of the released cranberries as it is possible to purchase to replace the released cranberries.

(e) All handlers shall be given an equal opportunity to participate in such purchase of unrestricted (free percentage) cranberries. If a larger quantity is offered than can be purchased, the purchases shall be made at the lowest price possible. If two or more handlers offer unrestricted (free percentage) cranberries at the same price, purchases from such handlers shall be in proportion to the quantity of their respective offerings insofar as such division is practicable. The committee shall dispose of cranberries purchased as restricted cranberries in accordance with § 929.57. Any funds received by the committee for cranberries so disposed of, which are in excess of the costs incurred by the committee in making such disposition, will accrue to the committee's general fund.

(f) In the event any portion of the funds deposited with the committee pursuant to paragraph (c) of this section cannot, for reasons beyond the committee's control, be expended to purchase unrestricted (free percentage) cranberries to replace those withheld cranberries requested to be released, such requested amount of withheld cranberries shall be reduced accordingly and such unexpended funds shall, after deducting expenses incurred by the committee, will be refunded to the handler who deposited the funds. The handler shall equitably distribute such refund account among the growers delivering to such handler.

(g) Inspection for restricted (withheld) cranberries released to a handler is not required.

**Production Area**

*Proposal No. 13*

Revise § 929.4 to read as follows:

**§ 929.4 Production area.**

Production area means the States of Massachusetts, Maine, Rhode Island, Connecticut, New York, New Jersey, Delaware, Wisconsin, Michigan, Minnesota, Oregon, and Washington.

**Paid Advertising**

*Proposal No. 14*

Amend § 929.45 by revising paragraph (a) to read as follows:

**§ 929.45 Research and development.**

(a) The committee, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research, and market development projects, including paid advertising, designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of cranberries. The expense of such projects shall be paid from funds collected pursuant to § 929.41, or from such other funds as approved by the Secretary.

(b) The committee may, with the approval of the Secretary, establish rules and regulations as necessary for the implementation and operation of this section.

**Definition of Cranberries**

*Proposal No. 15*

Revise § 929.5 to read as follows:

**§ 929.5 Cranberries.**

(a) Cranberries means all varieties of the fruit Vaccinium Macrocarpon and Vaccinium oxycoccus, known as

cranberries, grown in the production area.

(b) The Committee, with the approval of the Secretary, may modify this definition.

**Definition of Handle**

*Proposal No. 16*

Amend § 929.10 by revising paragraphs (a)(2) and (b)(4) to read as follows:

**§ 929.10 Handle.**

(a) * * *

(2) To sell, consign, deliver, or transport (except as a common or contract carrier of cranberries owned by another person) fresh cranberries or any other way to place fresh cranberries in the current of commerce within the production area or between the production area and any point outside thereof.

(b) * * *

(4) the cold storage or freezing of excess or restricted cranberries for the purpose of temporary storage during periods when an annual allotment percentage and/or a handler withholding program is in effect prior to their disposal, pursuant to §§ 929.54 or 929.59.

**Reports**

*Proposal No. 17*

Revise § 929.62 to read as follows:

**§ 929.62 Reports.**

(a) Grower report. Each grower shall file a report with the committee by January 15 of each crop year, or such other date as determined by the committee, with the approval of the Secretary, indicating the following:

(1) Total acreage harvested and whether owned or leased.

(2) Total commercial cranberry sales in barrels from such acreage.

(3) Amount of acreage either in production, but not harvested or taken out of production and the reason(s) why.

(4) Amount of new or replanted acreage coming into production.

(5) Name of the handler(s) to whom commercial cranberry sales were made.

(6) Such other information as may be needed for implementation and operation of this section.

(b) Inventory. Each person engaged in the handling of cranberries or cranberry products shall, upon request of the committee, file promptly with the committee a certified report, showing such information as the committee shall specify with respect to any cranberries and cranberry products which were held by them on such date as the committee may designate.

(c) Receipts. Each handler shall, upon request of the committee, file promptly with the committee a certified report as to each quantity of cranberries acquired during such period as may be specified, and the place of production.

(d) Handling reports. Each handler shall, upon request of the committee, file promptly with the committee a certified report as to the quantity of cranberries handled during any designated period or periods.

(e) Other reports. Upon the request of the committee, with the approval of the Secretary, each handler shall furnish to the committee such other information with respect to the cranberries and cranberry products acquired and disposed of by such person as may be necessary to enable the committee to exercise its powers and perform its duties under this part.

(f) The committee may establish, with the approval of the Secretary, rules and regulations for the implementation and operation of this section.

Revise § 929.64 to read as follows:

**§ 929.64 Verification of reports and records.**

The committee, through its duly authorized agents, during reasonable business hours, shall have access to any handler's premises where applicable records are maintained for the purpose of assuring compliance and checking and verifying records and reports filed by such handler.

**Deletion of Obsolete Provision**

*Proposal No. 18*

Remove § 929.47.

Proposals submitted by the Stephen L. Lacey on behalf of Clement Pappas and Company, Inc., and Cliffstar Corporation:

**Administrative Body**

*Proposal No. 19*

In addition to the Committee's recommended changes as set forth in Proposal No. 1, amend § 929.20 by redesignating paragraph (d) as paragraph (e) and adding a new paragraph (d) to read as follows:

**§ 929.20 Establishment and membership**

* * * * *

(d) Disclosure of unregulated production. All grower members and alternate grower members of the committee shall disclose annually any financial interest in the production of cranberries or cranberry products that are not subject to regulation by this part.

* * * * *

*Proposal No. 20*

Revise § 929.22 to read as follows:

**§ 929.22 Nomination**

(a) Beginning on June 1 of the even-numbered year following the adoption of this amendment, the Committee shall hold nominations in accordance with this section.

(b) Whenever any cooperative marketing organization sells more than fifty percent of the total volume of cranberries sold during the fiscal period in which nominations for membership on the committee are made, the growers affiliated therewith shall nominate:

(1) Six qualified persons for cooperative members and four qualified persons for cooperative alternate members of the committee. Nominee(s) for cooperative member and cooperative alternate member shall represent growers from each of the marketing order districts designated in § 929.20.

(2) The seventh cooperative member shall be referred to as member-at-large. The member-at-large may be nominated from any of the marketing order districts.

(3) Six qualified persons for independent members and four qualified persons for independent alternative members of the committee shall be nominated by those growers who market their cranberries through other than cooperative marketing organizations. Nominees for independent member and independent alternate member shall represent growers from each of the marketing order districts as designated in § 929.20(c).

(c) Whenever any cooperative marketing organization sells less than fifty percent of the total volume of cranberries sold during the fiscal period in which nominations for membership on the committee are made, the growers affiliated therewith, shall nominate:

(1) Six qualified persons for cooperative members and four qualified persons for cooperative alternate members of the committee. Nominees for member and alternate member shall represent growers from each of the marketing order districts as designated in § 929.20(c).

(2) Six qualified persons for independent members and four qualified persons for independent alternate members of the committee shall be nominated by those growers who market their cranberries through other than cooperative marketing organizations. Nominees for independent member and independent alternate member shall represent growers from each of the marketing order districts as designated in § 929.20(c).

(3) The seventh member nominee shall be referred to as the independent

member-at-large. The member-at-large may be nominated from any of the marketing order districts.

(d) Nominations of qualified cooperative and independent member nominees shall be made through a call for nominations sent to all eligible growers residing within each of the marketing order districts. The call for such nominations shall be by such means as are recommended by the committee and approved by the Secretary.

(1) The names of all eligible nominees from each district received by the committee, by such date and in such form as recommended by the committee and approved by the Secretary, will appear on the nomination ballot for that district.

(2) Election of the cooperative and independent member nominees and cooperative and independent alternate member nominees shall be conducted by mail ballot.

(3) Eligible cooperative and independent growers shall participate in the election of nominees from the district in which they reside.

(4) When voting for cooperative and independent member nominees, each eligible grower shall be entitled to cast one vote on behalf of him/herself.

(5) The cooperative and independent nominees receiving the highest plurality of votes cast in districts two and four shall be the member nominees from that district. The cooperative and independent nominees receiving the second highest plurality of votes cast in districts two and four shall be the alternate members from that district.

(6) The cooperative and independent nominees receiving the highest and second highest plurality of votes cast in district one and three shall be the member nominees from that district. The cooperative and independent nominees receiving the third highest plurality of votes cast in districts one and three shall be the alternates from that district.

(e) Nominations for the cooperative and independent members-at-large shall be made through a call for nominations sent to all eligible growers residing within the marketing order districts. The call for such nominations shall be by such means as recommended by the committee and approved by the Secretary.

(1) Election of the cooperative and independent members-at-large shall be held by mail ballot sent to all eligible growers in the marketing order districts by such date and in such form as recommended by the committee and approved by the Secretary.

(2) Eligible growers casting ballots may vote for a member-at-large nominee from marketing order districts other than where they produce cranberries.

(3) When voting for the member-at-large nominee, each eligible grower shall be entitled to cast one vote on behalf of him/herself.

(4) The cooperative and independent nominees receiving the highest plurality of votes cast shall be designated the member-at-large nominees. The cooperative and independent nominees receiving the second highest plurality of votes cast shall be declared the alternate member-at-large nominees.

(f) The committee may request that growers provide their federal tax identification number(s) in order to determine voting eligibility.

(g) The names and addresses of all nominees shall be submitted to the Secretary for selection no later than July 1 of each even-numbered year.

(h) The committee, with the approval of the Secretary, may issue rules and regulations to carry out the provisions or to change the procedures of this section.

**Volume Regulations**

*Proposal No. 21*

Replace § 929.47 to read as follows:

**§ 929.47 Handler marketing pool**

(a) Handler marketing pool. In any crop year in which a producer allotment is recommended, the committee shall also recommend, subject to approval by the Secretary, the establishment of a Handler Marketing Pool as part of the Marketable Quantity.

(b) The committee shall determine on or before March 1, the estimated number of barrels of cranberries necessary for a handler marketing pool, and this amount shall be included with the recommendation for the producer allotment regulation. The number of barrels of cranberries necessary for the pool may be adjusted on or before September 1 of the year in which volume regulation is established.

(c) Calculating the size of the pool. At the time of the recommendation of a producer allotment along with a handler marketing pool, the committee shall determine, based on handler reports, which handlers will have surplus inventory and which handlers will be deficient under the recommended volume regulation.

(d) From the most recent completed year of handler reports, the committee shall use the figures reported by each handler for total sales (including sales to other handlers), the carry-in inventory and the number of barrels handled to establish a handler marketing pool by calculating the following for each handler:

(1) *Current Year's Sales Potential*—calculated as a specified percent of the prior year's sales plus an estimate for shrink. This sales potential estimate may be reviewed and adjusted by the committee based on actual sales reports or demonstrated projected sales from the handlers submitted prior to September 1 of the year of volume regulation.

(2) *Current Year's Ending Inventory*—calculated as carry-in plus the current year's handle minus the current year's sales potential. This estimate may be reviewed and adjusted by the committee based on actual sales reports from the handlers submitted prior to September 1.

(3) *Regulated Year's Projected Allotment*—calculated as the handler's sales history times the allotment percent recommended by the committee plus any adjustments for new acreage.

(4) *Regulated Year's Total Available Supply*—calculated as the handler's projected allotment plus the handler's current year's ending inventory.

(5) *Regulated Year's Projected Sales*—calculated as a specified percent of the prior year's sales plus an estimate for shrink.

(6) *Regulated Year's Desired Ending Inventory*—calculated as a percent of each handler's regulated year's projected sales.

(7) *Handler's Total Needs*—calculated as each handler's regulated year's projected sales plus the regulated year's desired ending inventory.

(8) *Deficit/Surplus*—calculated as the difference between the handler's total needs and the regulated year's total available supply.

(e) Supply and access to the pool. If a handler's total needs for cranberries are more than its total available supply in the regulated year, then the handler is considered to be in deficit and is entitled to purchase cranberries from the pool. If a handler's total available supply of cranberries exceeds its needs in the regulated year, then that handler is considered to be in surplus and shall be required to contribute cranberries to the pool.

(f) If the total needs of those handlers with deficits is less than the total of surplus cranberries available, then the handlers with surplus shall contribute to the pool up to the total of the deficits in proportion to their percentage of the total surplus.

(g) If the total deficit is greater than the total of surplus cranberries available, then the size of the pool is limited to the total of the calculated

surplus. In this case handlers with surplus cranberries shall contribute their entire volume of surplus cranberries to the pool. No handler is obligated to contribute more than the handler's surplus.

(h) Once the pool contributions by the handlers with surplus have been assigned by the committee, the handlers with surplus shall maintain such volume in inventory to be available for purchases by handlers with deficits. The committee may request an accurate accounting of the pool fruit by the handler at any time.

(i) Any pool cranberries not purchased by June 30 shall be released to the handler who contributed the cranberries.

(j) Forms of cranberries, specifications and location. Pool fruit may be made available to handlers with deficits as process fruit directly from the field during harvest where agreeable to handlers with surplus. Pool fruit shall be made available as frozen fruit and as 50-brix concentrate. The committee based on the generally accepted specifications of the industry or specifications used by USDA purchasing programs shall establish quality specifications for each form of fruit.

(k) The minimum amount of surplus Pool fruit handlers shall make available in a particular growing area shall be in direct proportion to that handler's handle in that growing area. For example, if a handler with surplus receives 50% of its crop in Massachusetts, then that handler shall source at least 50% of its pool fruit from Massachusetts.

(l) Handlers may make a request to the committee for pool cranberries. The committee shall endeavor to source the form of fruit and preferred location to meet the request of the handler based on availability of cranberries requested. If the specifications requested cannot be met, the committee shall negotiate with handlers who have surplus to meet the request to the extent possible.

(m) Pool pricing.

(1) A deficit handler may purchase cranberries from the pool at an acquisition price that is equal to the price that handler is paying its growers for the current crop.

(2) The reimbursement price received for pool cranberries by handlers contributing to the pool shall be the same as the acquisition price determined under subparagraph (1).

(n) Payment Terms. Handlers acquiring cranberries from the pool shall deposit an initial payment of $5.00 per barrel with the committee within 30 days of receipt of product. Subsequent payments shall be made every 60 days in the amount specified by the committee based on handler payments to growers to date. Full settlement shall be made no later than August 31. The committee shall immediately remit all partial payments received from acquiring handlers to handlers supply the pool cranberries. Final reimbursement shall be made no later than August 31.

(o) Pool expenses and proceeds. Expenses incurred by the committee in administering the marketing pool shall be paid from assessment funds.

(p) Reports. Each handler shall file with the committee grower price information necessary to establish pool prices in such a manner as the committee may prescribe. This information shall be treated as confidential and subject to the disclosure provisions of § 929.65.

(q) Regulations. The committee may establish, with the approval of the Secretary, rules and regulations, as needed, for the implementation and operation of this section.

*Proposal No. 22*

Amend § 929.56 by revising paragraphs (c) and (d) to read as follows:

**§ 929.56 Special provisions relating to withheld (restricted) cranberries.**

* * * * *

(c) Funds deposited for the release of withheld cranberries, pursuant to paragraph (a) of this section, shall be used by the committee to purchase from handlers unrestricted (free percentage) cranberries in an aggregate amount as nearly equal to, but not in excess of, the total quantity of the released cranberries as it is possible to purchase to replace the release cranberries. All handlers shall be given an opportunity to participate in such purchase. If a larger quantity is offered than can be purchased, the purchases shall be made at the lowest prices possible. If two or more handlers offer at the same price, purchases from such handlers shall be in proportion to the quantity of their respective offerings insofar as such division is practicable. The cranberries so purchased shall be disposed of by the committee as restricted cranberries in accordance with § 929.57. Any funds received by the committee for cranberries so disposed of, which are in excess of the costs incurred by the committee in making such disposition, shall be paid or credited to the handler which deposited the funds for equitable distribution to its growers.

(d) In the event any portion of the funds deposited with the committee pursuant to paragraph (a) of this section cannot, for reasons beyond the committee's control, be expended to purchase unrestricted (free percentage) cranberries to replace those released, such unexpended funds shall, after deducting expenses incurred by the committee in connecting with the purchase and disposition of cranberries pursuant to paragraph (c) of this section, be offered and paid or credited to the handler which deposited the funds for equitable distribution to its growers. In the event that the offer is not accepted or directions given by a handler to credit the funds within 90 days, the funds will accrue to the committee's general account.

Proposals submitted by the Wisconsin Cranberry Cooperative:

*Proposal No. 23*

Revise § 929.22 to read as follows:

**§ 928.22 Nomination.**

(a) Beginning on June 1 of the even-numbered year following the adoption of this amendment, the committee shall hold nominations in accordance with this section.

(b) Whenever the combined sales of cranberries by all cooperative marketing organizations equals or exceeds fifty percent of the volume of cranberries sold during the fiscal period in which nominations for membership on the committee are made:

(1) Six qualified persons for cooperative members and four qualified persons for cooperative alternative members of the committee shall be nominated by the cooperative growers in accordance with the nomination procedure in paragraph (d) of this section. Nominee(s) for cooperative member(s) and cooperative alternative member(s) shall represent growers from each of the marketing order districts designated in § 929.20.

(2) Six qualified persons for independent members and four qualified persons for independent alternate members of the committee shall be nominated by those growers who market their cranberries through other than cooperative marketing organizations, in accordance with the nomination procedure in paragraph (e) of this section. Nominee(s) for independent member(s) and independent alternate member(s) shall represent growers from each of the marketing order districts as designated in § 929.20(c).

(3) The seventh member shall be referred to as cooperative member-at-large. The member-at-large may be nominated from any of the marketing order districts in accordance with paragraph (f) of this section.

(c) Whenever the combined sales of cranberries by all cooperative marketing organizations is less than fifty percent of the total volume of cranberries sold during the fiscal period in which nominations for membership on the committee are made:

(1) Six qualified persons for cooperative members and four qualified persons for cooperative alternative members of the committee shall be nominated by the cooperative growers in accordance with the nomination procedure in paragraph (d) of this section. Nominee(s) for member(s) and alternate member(s) shall represent growers from each of the marketing order districts as designated in § 929.20(c).

(2) Six qualified persons for independent members and four qualified persons for independent alternate members of the committee shall be nominated by those growers who market their cranberries through other than cooperative marketing organizations, in accordance with the nomination procedure in paragraph (e) of this section. Nominee(s) for independent member(s) and independent alternate member(s) shall represent growers from each of the marketing order districts as designated in § 929.20(c).

(3) The seventh member nominee shall be referred to as the independent member-at-large. The member-at-large may be nominated from any of the marketing order districts in accordance with paragraph (g) of this section.

(d) Nominations of qualified cooperative member nominees shall be made through a call for nominations sent to all eligible growers affiliated with a cooperative marketing organization residing within each of the marketing order districts. The call for such nominations shall be by such means as are recommended by the committee and approved by the Secretary.

(1) The names of all eligible nominees from each district received by the committee, by such date and in such form as recommended by the committee and approved by the Secretary, will appear on the nomination ballot for that district.

(2) Election of the cooperative member nominees and cooperative alternate member nominees shall be conducted by mail ballot.

(3) Eligible cooperative growers shall participate in the election of nominees from the district in which they reside.

(4) When voting for cooperative member nominees, each eligible grower shall be entitled to cast one vote on behalf of him/herself.

(5) The nominee receiving the highest plurality of votes cast in Districts 2 and 4 shall be the cooperative member nominee from that district. The nominee receiving the second highest plurality of votes cast in Districts 2 and 4 shall be the cooperative alternate member from that district.

(6) The nominees receiving the highest and second highest plurality of votes cast in Districts 1 and 3 shall be the cooperative member nominees from that district. The nominee receiving the third highest plurality of votes cast in Districts 1 and 3 shall be the cooperative alternate member from that district.

(e) Nominations of qualified independent member nominees shall be made through a call for nominations sent to all eligible independent growers residing within each of the marketing order districts. The call for such nominations shall be by such means as are recommended by the committee and approved by the Secretary.

(1) The names of all eligible nominees from each district received by the committee, by such date and in such form as recommended by the committee and approved by the Secretary, will appear on the nomination ballot for that district.

(2) Election of the independent member nominees and independent alternate member nominees shall be conducted by mail ballot.

(3) Eligible independent growers shall participate in the election of nominees from the district in which they reside.

(4) When voting for independent member nominees, each eligible grower shall be entitled to cast one vote on behalf of him/herself.

(5) The nominee receiving the highest plurality of votes cast in Districts 2 and 4 shall be the independent member nominee from that district. The nominee receiving the second highest plurality of votes cast in Districts 2 and 4 shall be the independent alternate member from that district.

(6) The nominees receiving the highest and second highest plurality of votes cast in Districts 1 and 3 shall be the independent member nominees from that district. The nominee receiving the third highest plurality of votes cast in Districts 1 and 3 shall be the independent alternate member from that district.

(f) Nominations for the cooperative member-at-large shall be made through a call for nominations sent to all eligible cooperative growers residing within the marketing order districts. The call for such nominations shall be by such means as recommended by the committee and approved by the Secretary.

(1) Election of the member-at-large shall be held by mail ballot sent to all eligible cooperative growers in the marking order districts by such date and in such form as recommended by the committee and approved by the Secretary.

(2) Eligible cooperative growers casting ballots may vote for a member-at-large nominee from marketing order districts other than where they produce cranberries.

(3) When voting for the member-at-large nominee, each eligible cooperative grower shall be entitled to cast one vote on behalf of him/herself.

(4) The nominee receiving the highest plurality of votes cast shall be designated the cooperative member-at-large nominee. The nominee receiving the second highest plurality of votes cast shall be declared the cooperative alternate member-at-large nominee.

(g) Nominations for the independent member-at-large shall be made through a call for nominations sent to all eligible independent growers residing within the marketing order districts. The call for such nominations shall be by such means as recommended by the committee and approved by the Secretary.

(1) Election of the member-at-large shall be held by mail ballot sent to all eligible independent growers in the marketing order districts by such date and in such form as recommended by the committee and approved by the Secretary.

(2) Eligible independent growers casting ballots may vote for a member-at-large nominee from marketing order districts other than where they produce cranberries.

(3) When voting for the member-at-large nominee, each eligible independent grower shall be entitled to cast one vote on behalf of him/herself.

(4) The nominee receiving the highest plurality of votes cast shall be designated the independent member-at-large nominee. The nominee receiving the second highest plurality of votes cast shall be declared the independent alternate member-at-large nominee.

(h) The committee may request that growers provide their federal tax identification number(s) in order to determine voting eligibility.

(i) The names and addresses of all nominees shall be submitted to the Secretary for selection no later than July 1 of each even-numbered year.

(j) The committee, with the approval of the Secretary, may issue rules and regulations to carry out the provisions or to change the procedures of this section.

*Proposal No. 24*

Revise § 929.23 to read as follows:

**§ 929.23 Selection.**

(a) From nominations made pursuant to § 929.22, the Secretary shall select members and alternate members to the committee on the basis of the representation provided for in § 929.20(c) and in paragraphs (b) and (c) of this section.

(b) Whenever the combined sales of cranberries by all cooperative marketing organizations equals or exceeds fifty percent of the volume of cranberries sold during the fiscal period in which nominations for membership on the committee are made, the Secretary shall select:

(1) Six cooperative members and four cooperative alternate members from nominations made pursuant to § 929.22(b)(1) and (d),

(2) Six independent members and four independent alternate members from growers who market their cranberries other than through cooperative marketing organizations, pursuant to § 929.22(b)(2) and (e), and

(3) One cooperative member-at-large from nominations made pursuant to § 929.22(b)(3) and (f).

(c) Whenever the combined sale of cranberries by all cooperative marking organizations is less than fifty percent of the total volume of cranberries sold during the fiscal period in which nominations for membership on the committee are made, the Secretary shall select:

(1) Six cooperative members and four cooperative alternate members from nominations made pursuant to § 929.22 (c)(1) and (d).

(2) Six independent members and four independent alternate members from nominations made pursuant to § 929.22(c)(3) and (g).

(3) One independent member-at-large from nominations made pursuant to § 929.22(c)(2) and (e).

*Proposal No. 25*

Revise § 929.61 to read as follows:

**§ 929.61 Outlets for excess cranberries.**

(a) Noncommercial outlets. Excess cranberries may be disposed of in noncommercial outlets that the committee finds, with the approval of the Secretary, meet the requirements outlined in paragraph (c) of this section. Noncommercial outlets include but are not limited to:

(1) Charitable institutions; and

(2) Research and development projects approved by the U.S. Department of Agriculture.

(b) Non-Competitive Outlets. Excess cranberries may be sold in outlets that the committee finds, with the approval of the Secretary, are non-competitive with established markets for regulated cranberries and meet the requirements outlined in paragraph (c) of this section. Noncompetitive outlets include but are not limited to:

(1) Any non-human food use; and

(2) Foreign markets with a total annual consumption of less than the equivalent of 20,000 barrels of cranberries and/or cranberry products. The committee will annually publish a report which lists foreign markets which have a total consumption of more than the equivalent of 20,000 barrels of cranberries and/or cranberry products.

(c) Requirements. The handler disposing of or selling excess cranberries into noncompetitive or noncommercial outlets shall meet the following requirements, as applicable:

(1) Charitable institutions. A statement from the charitable institution shall be submitted to the committee showing the quantity of cranberries received and certifying that the institution will consume the cranberries;

(2) Research and development projects. A report shall be given to the committee describing the project, quantity of cranberries contributed, and date of disposition;

(3) Non-human food use. Notification shall be given to the committee at least 48 hours prior to such disposition;

(4) Foreign markets with a total annual consumption of less than the equivalent of 20,000 barrels of cranberries and/or cranberry products. A copy of the onboard bill of lading shall be submitted to the committee showing the amount of cranberries loaded for export; and

(5) Other outlets established by the committee with the approval of the Secretary. A report shall be given to the committee describing the project; quantity of cranberries contributed, and date of disposition.

(d) The storage and disposition of all excess cranberries withheld from handling shall be subject to the supervision and accounting control of the committee.

(e) The committee, with the approval of the Secretary, may establish rules and regulations for the implementation and operation of this section.

*Proposal No. 26*

Revise § 929.56 to read as follows:

**§ 929.104 Outlets for excess cranberries.**

(a) In accordance with § 929.61, excess cranberries may be disposed of only in the following noncommercial or noncompetitive outlets, but only if the requirements in paragraph (b) of this section are complied with:

(1) Charitable institutions;

(2) Research and development projects;

(3) Any non-human food use;

(4) Foreign markets with a total annual consumption of less than the equivalent of 20,000 barrels of cranberries or cranberry products; and

(5) Other outlets established by the committee with the approval of the Secretary.

(b) Excess cranberries may not be converted into canned, frozen, or dehydrated cranberries or other cranberry products by any commercial process. Handlers may divert excess cranberries in the outlets listed in paragraph (a) of this section only if they meet the requirements specified in § 929.61(c).

Proposal submitted by Doanne Andresen, a Massachusetts grower:

*Proposal No. 27*

Amend § 929.58 by revising paragraph (a) to read as follows:

**§ 929.58 Minimum exemption.**

(a) Upon the basis of the recommendation and information submitted by the committee, or from other available information, the Secretary may relieve from any or all requirements pursuant to this part the handling of cranberries in such minimum quantities as the committee, with approval of the Secretary, may prescribe including the first one thousand barrels produced by each grower.

* * * * *

The Fruit and Vegetable Programs, Agricultural Marketing Service, submitted the following proposal:

*Proposal No. 28*

Make such changes as may be necessary to the order to conform with any amendment thereto that may result from the hearing.

Dated: April 23, 2002.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 02–10526 Filed 4–25–02; 1:11 pm]

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Wednesday,
May 1, 2002

# Part IV

# Environmental Protection Agency

**40 CFR Parts 51, 52, et al.**

**Response to Court Remand on $NO_X$ SIP Call and Section 126 Rule; Final Rule**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 51, 52, 96, and 97**

**[FRL–7203–3]**

## Response to Court Remand on $NO_X$ SIP Call and Section 126 Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Response to court remand of rules.

**SUMMARY:** In today's document, EPA is responding to two court decisions directing EPA to reconsider heat input growth rates projected and used in setting nitrogen oxides ($NO_X$) emission budgets in two rules designed to reduce interstate transport of ozone and $NO_X$, an ozone precursor. After reviewing the heat input growth rates and considering the court decisions and additional comments, EPA has decided to continue to use the heat input growth rates developed in the rules. One rule, the $NO_X$ State Implementation Plan Call ($NO_X$ SIP Call) under Section 110 of the Clean Air Act (CAA), set ozone season $NO_X$ emission budgets based, in part, on emissions reductions calculated for large, fossil fuel-fired electric generating units (EGUs) in 22 States and the District of Columbia. The second rule, issued in response to petitions by northeastern States under Section 126 of the CAA (Section 126 Rule), included ozone season $NO_X$ emission budgets for EGUs in 12 States and the District of Columbia. The U.S. Court of Appeals for the District of Columbia Circuit (the Court) remanded the heat input growth rates to EPA to either properly justify the growth rates currently used by EPA or to develop and justify new growth rates. After reviewing the matter, EPA believes that the methodology used in developing the heat input growth rates and the resulting growth rates are reasonable based on the information available at the time the rules were issued, confirmed by new information concerning activity to date.

**ADDRESSES:** Documents relevant to this action are available for inspection at the Docket Office, located at 401 M Street, SW., Waterside Mall, Room M–1500, Washington, DC 20460, between 8:00 a.m. and 5:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** General questions, and questions on technical issues concerning today's notice should be addressed to Kevin Culligan, Office of Atmospheric Programs, Clean Air Markets Division, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW. (6204N), Washington, DC 20460, telephone (202) 564–9172, e-mail at *culligan.kevin@epa.gov.* Questions on legal issues concerning today's notice should be addressed to Howard J. Hoffman, Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW. (2344A), Washington, DC 20460, telephone (202) 564–5582, e-mail at *hoffman.howard@epa.gov* or Dwight C. Alpern, Clean Air Markets Division, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW. (6204N), Washington, DC 20460, telephone (202) 564–9151, e-mail at *alpern.dwight@epa.gov.*

**SUPPLEMENTARY INFORMATION:** In today's notice, EPA is responding to two rulings by the Court directing EPA to reconsider growth rates for heat input (i.e., fossil fuel use) for the ozone season (May 1–September 30) projected and used in setting State $NO_X$ emission budgets in two rules designed to reduce interstate transport of ozone and $NO_X$.[1] On May 15, 2001, the Court issued a decision in *Appalachian Power* v. *U.S. EPA,* 249 F.3d 1032 (D.C. Cir. 2001) concerning the Section 126 Rule (''Section 126 Decision''). As part of that decision, the Court remanded the heat input growth rates that EPA used to calculate $NO_X$ emission budgets set in response to several petitions by northeastern States under Section 126 of the CAA. The Court remanded these growth rates to EPA to either properly justify the growth rates currently used by EPA or to develop and justify new growth rates. On June 8, 2001, the Court issued a similar decision in *Appalachian Power* v. *U.S. EPA,* 251 F.3d 1026 (D.C. Cir. 2001) concerning heat input growth rates used to develop $NO_X$ emission budgets used in the $NO_X$ SIP Call related to interstate transport of ozone (''Technical Amendments Decision''). The Court raised concerns about EPA's explanation of the methodology for developing projected heat input growth rates and about States for which heat input for EGUs had already exceeded the heat input that EPA projected for 2007.

In response to the Court's decisions, EPA has reviewed the heat input growth rates for EGUs and the methodology used to develop those growth rates. Based on that review, EPA believes that the heat input growth rates and the methodology used to develop them were reasonable. Furthermore, in response to the Court's and commenters' concerns, EPA has also reviewed new information concerning current activity. This notice explains why EPA thinks that the growth rates were reasonable based on the information that EPA had available at the time of the original rulemakings, as confirmed by new information.

### Availability of Related Information

The official record for the Section 126 rulemaking has been established under docket number A–97–43. The official record for the $NO_X$ SIP Call rulemaking has been established under docket number A–96–56. The public version of both records, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information, is available for inspection from 8:00 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. The rulemaking record is located at the U.S. Environmental Protection Agency, 401 M Street, SW, Waterside Mall, Room M–1500, Washington, DC 20460. In addition, the **Federal Register** rulemakings and associated documents are located at *http://www.epa.gov/ttn/rto/,* and certain documents are located at *http://www.epa.gov/airmarkets/fednox/126noda2/index.html.*

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[1] Unless otherwise stated, all references in this notice to actual or projected ''heat input'' or ''heat input growth rates'' concern heat input during the ozone season for EGUs.

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## I. Background

### *A. $NO_X$ SIP Call*

In October 1998, EPA issued the $NO_X$ SIP Call—a final rule under Section 110(k)(5) of the CAA, 42 U.S.C. 7410(k)(5)—requiring 22 States and the District of Columbia (''upwind States'') to revise their SIPs to impose additional controls on $NO_X$ emissions.[2] *See* Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone, 63 FR 57,356 (Oct. 27, 1998). EPA concluded that emissions from the upwind States ''contribute significantly'' to ozone nonattainment in downwind States, in violation of section 110(a)(2)(D)(i). Under the $NO_X$ SIP Call, upwind States are required to reduce emissions by amounts that would allow meeting $NO_X$ emission budgets. EPA determined these budgets by projecting $NO_X$ emissions to 2007 for all source categories and then reducing those amounts by the emissions reductions achievable using the controls that EPA determined to be highly cost effective. EPA defined highly cost-effective controls as those controls capable of removing $NO_X$ at an average cost of $2,000 or less per ton. For EGUs, EPA determined that it was highly cost effective to achieve an average emission rate of 0.15 lb/mmBtu, based on projected 2007 fossil fuel use (i.e., heat input). Projected 2007 heat input for each State was calculated by applying ozone season heat input growth rates developed by EPA for each State for EGUs (referred to as ''State heat input growth rates'') to baseline (the higher of 1995 or 1996) EGU heat input.

EPA recommended that a State could meet the State's $NO_X$ emission budget in part by establishing a cap-and-trade program for $NO_X$ emissions from EGUs. Covered sources would be required to hold $NO_X$ allowances at least equal to their $NO_X$ emissions and could either obtain additional allowances or reduce emissions, e.g., by installing additional controls. The total number of allowances distributed to EGUs would equal the EGU portion of the $NO_X$ emission budget, i.e., the projected 2007 heat input multiplied by a $NO_X$ emission rate of 0.15 lb/mmBtu. States had the option of adopting approaches other than a cap-and-trade program to meet the budgets.

### *B. Section 126 Rule*

On January 18, 2000, EPA issued a final rule to control emissions of $NO_X$ under Section 126 of the CAA, 42 U.S.C. 7426. In the rule, EPA made final its findings that stationary sources of $NO_X$ emissions in 12 upwind States and the District of Columbia contribute significantly to ozone nonattainment in northeastern States.[3] This finding triggered direct Federal regulation of stationary sources of $NO_X$ in the upwind States. The Section 126 Rule further established a cap-and-trade program for $NO_X$ emissions within each upwind jurisdiction, including $NO_X$ emissions from EGUs. This program was essentially the same as that suggested by EPA for State implementation in the $NO_X$ SIP Call. EPA determined the total number of $NO_X$ allowances to be distributed to EGUs in each individual State based on the same methodology used in the $NO_X$ SIP Call (i.e., projected 2007 heat input multiplied by a $NO_X$ emission rate of 0.15 lb/mmBtu).

### *C. Technical Amendments*

When EPA promulgated the $NO_X$ SIP Call on October 27, 1998, EPA reopened public comment on the accuracy of data upon which the emission inventories and budgets were based (63 FR 57,427). On December 24, 1998, EPA extended the comment period ''for emission inventory revisions to 2007 baseline sub-inventory information used to establish each State's budget in the $NO_X$ SIP Call'' and further explained that it was seeking comment on the relevant data and assumptions so the Agency could correct errors and update information used to compute the 2007 budgets. (Correction and Clarification to the Finding of Significant Contribution and Rulemaking for Purposes of Reducing Regional Transport of Ozone, 63 FR 71,220, Dec. 24, 1998). EPA also announced that it would reopen the comment period on equivalent inventory data for the section 126 rulemaking because the rules relied upon the same inventories. *Id.*

Subsequently, EPA published two Technical Amendments revising the $NO_X$ SIP Call emission budgets. In the first Technical Amendment, EPA made some modifications to source-specific 1995 and 1996 emissions data, which resulted in changes in the 2007 $NO_X$ emission budgets (Technical Amendment to the Finding of Significant Contribution and Rulemaking for Certain States for Purposes of Reducing Regional Transport of Ozone, 64 FR 26,298, May 14, 1999). In the second Technical Amendment, EPA made more corrections based upon additional public comments it received and EPA's own internal review of the accuracy of its data and calculations (Technical Amendment to the Finding of Significant Contribution and Rulemaking for Certain States for Purposes of Reducing Regional Transport of Ozone, 65 FR 11,222, Mar. 2, 2000). EPA also explained that the March 2000 Technical Amendment was ''necessary to make the $NO_X$ SIP Call inventory consistent with the inventory adopted'' by the EPA in the Section 126 rule, as the two rules were to be based upon the same inventory. *Id.*

## II. Court Decisions

### *A. Section 126 Decision*

On May 15, 2001, the Court ruled on a number of challenges to EPA's Section 126 Rule. *See Appalachian Power* v. *EPA,* 249 F.3d 1032. While the Court's decision largely upheld the Section 126 Rule, the Court remanded two issues to EPA. The Court remanded the Section 126 Rule to EPA to allow EPA to (1)

[2] The States were: Alabama, Connecticut, Delaware, Georgia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin.

[3] The States were: Delaware, Indiana, Kentucky, Maryland, Michigan, North Carolina, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia.

Properly justify either the current or new State heat input growth rates for EGUs used in calculating projected State heat input for 2007 and (2) either properly justify or alter its categorization of cogenerators that sell electricity to the electricity grid as EGUs. With regard to heat input growth rates, the Court was concerned that EPA may have used inconsistent growth rates in different parts of the Agency's analysis and that some States already had heat input exceeding the levels projected by EPA for 2007. EPA is responding to the remand related to the categorization of cogenerators in a separate rulemaking (Interstate Ozone Transport: Response to Court Decisions in $NO_X$ SIP Call, $NO_X$ SIP Call Technical Amendments, and Section 126 Rules, 67 FR 8396, Feb. 22, 2002).

*B. Technical Amendments Decision*

On June 8, 2001, the Court ruled on a number of challenges to EPA's Technical Amendments. *See Appalachian Power* v. *EPA,* 251 F.3d 1026. In its decision, the Court remanded to EPA the same issues as in the Section 126 Decision concerning (1) State heat input growth rates for EGUs and (2) cogenerators. The Court cited its decision in the Section 126 Decision. *Id.,* 251 F.3d at 1034.

**III. Notices of Data Availability**

A Notice of Data Availability (NODA) of documents that EPA was considering in response to the remand concerning heat input growth rates was published on August 3, 2001, 66 FR 40609). These documents were placed in the $NO_X$ SIP Call and section 126 Rule dockets. The new documents contain, among other things, information and data on more recent electricity sales and generation. The information and data were not available when the two rules were promulgated. Table 1 of the NODA contains actual heat input values for the 1995–2000 ozone seasons for the District of Columbia and 21 States, which are subject to the $NO_X$ SIP Call and include the States subject to the Section 126 Rule. Comments on the new information and data were requested. Thirty-four comments were received.

The NODA explains that there are substantial fluctuations in State heat input for EGUs on a year-by-year basis. Some of the reasons mentioned for these fluctuations are forced outages, variations in energy costs, weather, and economic conditions. A discussion of the growth rate methodology used by EPA to develop State heat input growth rates for EGUs and of the rationale for different components of the methodology is included in the NODA. EPA states in the NODA that the Agency's preliminary view is that the new data and the existing record in the $NO_X$ SIP Call and Section 126 rulemakings appear to confirm the reasonableness of the heat input growth rates used by EPA in developing $NO_X$ emission budgets for EGUs.

A second NODA was published on March 11, 2002, 67 FR 10844. Documents referenced in this NODA include, among other things, 2001 ozone season heat input data and 1960–2000 annual heat input data and 1970–1998 ozone season heat input data for the District of Columbia and 21 States, which are subject to the $NO_X$ SIP Call. One comment was received on this notice. In the March 11, 2002 NODA, EPA stated that it might place additional documents in the docket, with notice thereof provided on a particular website. EPA did so at various times after March 11, 2002. EPA also stated that if the Agency decided to confirm its previously adopted heat input growth rates, it intended to issue its response to the remand by March 29, 2002.

EPA received a comment on the March 11, 2002 NODA stating that there was no reason to expect that EPA would take additional comments into consideration since the Agency would be issuing its response by March 29, 2002. The commenter also asserted that both NODA's failed to explain the relevance of the documents that were added to the docket.

On March 29, 2002, EPA informed the commenter in writing that the Agency's response to the remand would be issued on or about April 17, 2002 and that the Agency would consider comments submitted sufficiently in advance. In addition, EPA noted that additional documents would be placed in the docket. EPA also identified the purposes for which the data referenced in the March 11, 2002 NODA had been added to the docket. (Docket # A–96–54, Item # XV–E–2.) Copies of all these documents and information were placed in the docket. EPA subsequently received a second comment that was similar to the first comment, and EPA referred the commenter to the relevant documents and information in the docket. Finally, EPA received a third comment stating that the data referenced in the March 29, 2002 NODA were highly germane and supported EPA's heat input growth rate methodology.

**IV. States Addressed in Today's Notice**

At the outset, it should be established which States should be addressed in today's notice on the heat input growth rate issue, in light of the Court's decisions vacating EPA's rules with respect to certain States and EPA's response to those vacaturs.

*A. $NO_X$ SIP Call*

As noted above, the $NO_X$ SIP Call covered 22 States and the District of Columbia. In reviewing the $NO_X$ SIP Call, the Court vacated the $NO_X$ SIP Call for Georgia and Missouri on the ground that there was insufficient record evidence concerning portions of those States. *Michigan* v. *EPA,* 213 F.3d 663, 685 (D.C. Cir., 2000). The record included modeling by the Ozone Transport Assessment Group (OTAG)—a partnership among EPA, 37 eastern States and the District of Columbia, industry, and environmental groups—that divided the eastern U.S. into two grids, the ''fine grid'' and the ''coarse grid.'' The grids did not track State boundaries, and Georgia and Missouri were split between the fine and coarse grids. OTAG stated that, based on air quality impacts, it was recommending $NO_X$ emission controls for the fine grid area but not the coarse grid area. In light of OTAG's recommendations, the Court concluded that EPA had not sufficiently explained the basis for including the entire States of Georgia and Missouri, rather than simply the fine grid portions. The Court vacated and remanded the $NO_X$ SIP Call for these States for agency reconsideration. The Court also vacated the rule for Wisconsin on grounds not relevant here. *Id.* at 681.

On February 22, 2002, EPA issued a notice of proposed rulemaking in response to the Court's remand, (67 FR 8396). In that notice, EPA stated that the Agency does not intend to proceed at this time with further action evaluating whether $NO_X$ emissions should be reduced for ozone transport reasons in Wisconsin or the coarse grid portions of Georgia and Missouri. In addition, EPA noted that, while not addressed by the Court, Alabama and Michigan also are divided between the fine grid and the coarse grid in OTAG's modeling. EPA stated that it would therefore treat all four States the same and include in the $NO_X$ SIP Call only counties that are fully within the fine grid portions of the four States. EPA proposed partial State $NO_X$ emission budgets for Alabama, Georgia, Michigan, and Missouri using the State heat input growth rates established for the whole States.

EPA has taken the position that a single heat input growth methodology should be consistently applied to each State, and EPA received numerous comments disputing the application of EPA's heat input growth methodology to these four States, as well as to three

other States (i.e., Illinois, Virginia, and West Virginia). Consequently, in the context of responding to the remand on the heat input growth issue in today's notice, EPA's analysis of the reasonableness of that methodology and the resulting heat input growth rates includes Alabama, Georgia, Michigan, and Missouri. As noted below, for Alabama, Georgia, and Missouri, EPA has evaluated the reasonableness of the methodology with respect to both the entire State and the fine grid portion alone. For Michigan, EPA evaluated the methodology for the entire State and not for the fine grid portion alone because the amount of $NO_X$ emissions in the coarse grid portion was trivial for present purposes.[4]

*B. Section 126 Rule*

As noted above, the Section 126 Rule covered 12 States and the District of Columbia. Of the four States that EPA proposed to include only partially in the $NO_X$ SIP Call, only Michigan is subject to the Section 126 Rule. As discussed above, the $NO_X$ emission budget for Michigan changes very little when the coarse grid portion of the State is excluded, and EPA has therefore analyzed the heat input growth only for the entire State. In addition, with regard to the three other States concerning which EPA received adverse comments on its heat input projections, the Section 126 Rule covers Virginia and West Virginia, but not Illinois. As a result, strictly speaking, the validity of EPA's growth rate methodology for the Section 126 Rule should not depend on its application to Alabama, Georgia, Missouri, Illinois, or any other State covered under the $NO_X$ SIP Call, but not the Section 126 Rule.

## V. EPA's Explanation of Heat Input Growth Rate Methodology and Response to Court Remand and Public Comments

*A. Overview*

After a thorough review, EPA has concluded that its methodology for developing State heat input growth rates, and the resulting growth rates themselves, were reasonable in light of the record developed for the $NO_X$ SIP Call and Section 126 Rule, and remain reasonable in light of new information concerning current activity that has since become available. The reasons are summarized below and explained more fully in the remainder of this notice.

1. EPA believes that its methodology was reasonable in light of the record for the $NO_X$ SIP Call and the Section 126 Rule, based on the following considerations: a. EPA's methodology for projecting future heat input was logical and was consistently applied to all $NO_X$ SIP Call States. EPA used an actual State heat input baseline (the higher of 1995 or 1996 levels) in view of year-to-year variability of State heat input. EPA applied to each State's baseline a heat input growth rate estimated using the Integrated Planning Model (the IPM), a state-of-the-art model for analyzing future electricity markets. EPA's use of the IPM was upheld by the Court.

b. Contrary to the Court's understanding, EPA used consistent State heat input growth rates (i.e., growth rates based on 2001–2010 heat input growth determined using IPM projections for 2001 and 2010) throughout the analysis for the $NO_X$ SIP Call and the Section 126 Rule. EPA did not use, or even have available, 1996–2000 heat input growth rates determined using IPM projections for 1996 and 2000. EPA acknowledges that the Court's misunderstanding on this point stemmed from inadvertently confusing statements EPA made in the record.

c. The specific assumptions that EPA made in using the IPM to develop State heat input growth rates were reasonable. These included assumptions that: (i) Heat input growth rates during 2001–2010 are reasonably representative of heat input growth during 1996–2007; (ii) electricity demand projections should be reduced to take account of demand reductions under the Climate Challenge Action Program (CCAP); and (iii) the use of available data on new units and the historical distribution of generating capacity among States could be used to project the location of new units.

2. The State heat input growth rates and projections were generated using a reasoned methodology and reasonable assumptions, along with data that went through full public review (and were not at issue in the Court remands), and this suggests that the resulting heat input projections are reasonable. To confirm this, and to respond to concerns expressed by the Court and commenters about the plausibility of EPA's projections based on recent, actual heat input data, EPA has examined the projections in light of historical heat input data and new heat input data that have become available since the Agency developed the projections. EPA believes that its heat input projections remain plausible and reasonable based on the following considerations:

a. The State heat input amounts projected by EPA are reasonably consistent with the actual heat input data that have become available since the projections were made. On a regionwide basis, EPA's projected heat input for 2000 and 2001 are 0.1% lower and 2.0% higher respectively than actual regional heat input. Further, for most States, EPA's heat input growth rates have not been specifically challenged. Commenters have disputed EPA's heat input growth rates for seven out of the 22 jurisdictions under the $NO_X$ SIP Call on the ground that the States involved had recent heat input amounts exceeding, or close to, EPA's 2007 heat input projections. However, recently, heat input for several of these States declined significantly. Moreover, State heat input is quite variable from year-to-year and so, in one year or over several years, may increase and then decrease. Indeed, there have been many instances in the past when State heat input has decreased significantly for the last year of a multi-year period as compared to the first year of such period. Consequently, the fact that a State's recent heat input exceeds, or is close to, EPA's 2007 heat input projection does not by itself demonstrate that the projection, or the underlying heat input growth rate, is unreasonable.

b. Commenters who argue that EPA's 2007 projection is unreasonable based on recent heat input data are in effect asserting that predicting a State's 2007 heat input based on trends in recent, short-term heat input data is a better methodology than the one employed by EPA. Some commenters explicitly recommended this approach. In response, EPA examined this approach using historical annual heat input data and found that in most States, recent, short-term data is an unreliable predictor of a State's heat input in the future. Therefore, EPA believes that its methodology, using a state-of-the-art model that takes into account many factors, including the dynamics of regional electricity markets, is more rational.

c. Contrary to the Court's understanding, EPA's 2007 heat input projections do not assume negative growth in electricity generation. State heat input (i.e., fossil fuel use for generation) can decrease while electricity generation increases in the State or in the region as a whole. Within a State, electricity generation does not necessarily vary with heat input because: (i) Significant amounts of

[4] EPA is not analyzing the reasonableness of the growth methodology with respect to Wisconsin because the Court vacated the $NO_X$ SIP Call for that State and EPA does not intend, at present, to further evaluate Wisconsin in the context of ozone transport.

electricity are produced using non-fossil fuel generation; and (ii) efficiency improvements (e.g., from replacement of old units with new, more efficient units) make it possible to produce more electricity with less heat input. Further, electricity is generated and sold on a regional, not on a State-by-State basis. Heat input and electricity generation may decrease in one State because that State is importing more electricity generated in another State in the region. This is consistent with increased electricity generation in the region as a whole.

d. EPA's heat input projections are simply required to be reasonable, not to match perfectly actual heat input. This is because the Courts recognize that predictions of the results of complex activities (in this case, future State heat input, which will result from operation of the regional electricity market) will not necessarily match actual, future results exactly. To require such perfection would be to preclude the use of projections or of a model to develop such projections. EPA's heat input projections thus should not be considered unreasonable even if there were a substantial risk that they would turn out to be less than States' actual 2007 heat input, in light of all the other circumstances. In this case, unavoidable limitations on the accuracy of heat input projections result from: (i) The complexity of the electricity marketing system, which cannot be modeled perfectly because of the necessity to use simplifying assumptions about factors (e.g., fuel prices and electricity demand in the future) affecting future heat input; (ii) the necessity to make State-by-State projections of heat input even though electricity is generated and sold on a regional basis; and (iii) significant variability—on a year-to-year and several year basis—inherent in State heat input. Therefore, EPA's heat input projections should not be considered unreasonable in the current context, even if there were a substantial risk that they would turn out to be less than States' actual 2007 heat input.

e. Commenters overstated the impacts of a State's 2007 heat input exceeding EPA's 2007 heat input projection for that State. The $NO_X$ SIP Call and the Section 126 Rule limit $NO_X$ emissions, not heat input. Even if a State's actual heat input for 2007 turns out to exceed the projected heat input, $NO_X$ emissions would increase at a much lower rate than heat input because the vast majority of new units are, and will continue to be, gas-fired with very low $NO_X$ emission rates and high efficiency. The impact on the stringency of the $NO_X$ emission budget and on the State economy therefore would be much less than claimed by commenters. Further, the $NO_X$ SIP Call and the Section 126 Rule are being implemented through a $NO_X$ cap-and-trade program that further mitigates the cost impact of any differences between projected and actual State heat input.

f. No commenter has identified an alternative methodology for developing State heat input growth rates that would be likely to yield growth rates that would comport better with actual heat input data than the growth rates under EPA's methodology. In light of the variability of State heat input, it is quite possible that any alternative methodology for predicting State heat input will result in projected values for some States that will not match actual heat input in some future year.

g. Commenters failed to show that EPA's heat input growth rate for any of the seven individual States for which adverse comments were received (Alabama, Georgia, Illinois, Michigan, Missouri, Virginia, and West Virginia) are unreasonable. The heat input for several of the States has already decreased to levels below or only slightly above EPA's projection. In addition, the comments failed to address the fact that, in the past, each State has had many multi-year periods when heat input has declined significantly for the last year, as compared to the first year of such periods. Further, in arguing that economic growth or planned new capacity prove that heat input will increase substantially for particular States, the commenters limited the information they provided to statewide data and failed to provide regional data. As a result, these comments are not persuasive because any particular State's heat input is determined by regional, not just that individual State's, demand and supply.

*B. Description of EPA's Methodology*

1. EPA's Methodology for Determining State $NO_X$ Emission Budgets and Heat Input Growth Rates

EPA used a multi-step procedure to determine for each State the portion of the $NO_X$ SIP Call emissions budget attributable to EGUs. In brief, EPA started with the State's baseline of the higher of EGU heat input for 1995 and 1996 and grew that amount to the 2007 level using the projected heat input growth rate for that State based on the IPM. Then, EPA determined the appropriate level of $NO_X$ emissions control (which was the same level for each State) and applied this level to each State's projected 2007 heat input. The result was each State's $NO_X$ emissions budget for EGUs.

Throughout the methodology, EPA relied on the IPM. The IPM simulates the operation of the electricity market in the continental U.S. by using inputs (such as electricity demand and fuel and emission control costs) and by modeling electricity generation, transmission, and distribution on a subregional basis. The IPM projects the least cost scenario for the region for generating electricity consistent with this set of inputs. This scenario includes projections of which units operate at what levels, which units install emission controls, and what type, when, and where new units are built.

To develop the State heat input growth rates, EPA first conducted an IPM run (the ''base case run''). This base case run was designed to yield, as outputs, projections of the heat input necessary to generate electricity sufficient to meet projected electricity demand in the 2001 and 2010 ozone seasons. To conduct this run, EPA used, as model inputs, assumptions regarding, among many other things: (i) electricity demand in 2001–2020, which EPA calculated by determining actual electricity demand in 1997 and applying growth rates in electricity demand for 1997–2020; (ii) reductions in electricity demand based on the CCAP, discussed below; (iii) $NO_X$ emission control requirements and associated costs; (iv) location and costs of projected new units; and (v) fuel costs. For this base case run, EPA assumed no additional $NO_X$ emission controls would be required for ozone transport purposes (62 FR 60318, 60347, Nov. 7, 1997).

With these inputs, the base case run produced, as outputs, the sources of electricity generation for years selected by EPA, including 2001, 2007, 2010, and 2020. In addition, the outputs included the amounts of heat input used by the fossil-fuel-fired sources in those years, the projected $NO_X$ emissions for the 2007 ozone season, and the total cost for generating electricity for the 2007 ozone season.

EPA used the 2001 and 2010 heat input to generate heat input growth rates for each State. For example, the base case run projected that Virginia's base case 2001 and 2010 heat input would be 194,000,000 mmBtu and 243,000,000 mmBtu, respectively. An annual heat input growth rate was then mathematically determined. For Virginia, this annual growth rate is 1.025.

Then, EPA applied each State's annual heat input growth rate to the baseline heat input for the State (the higher of the 1995 or 1996 actual heat input for EGUs) to develop the State's

emission budget for 2007 (63 FR 57406–57408). For example, for Virginia, the 1995 heat input was 154,233,310 mmBtu, the 1996 heat input was 172,633,028 mmBtu, and so EPA used the 1996 heat input as the baseline heat input. For West Virginia the opposite occurred. The 1995 heat input was 347,687,307 mmBtu, and the 1996 heat input was 341,738,426 mmBtu, and so EPA used the 1995 heat input as the baseline heat input.

Then, EPA applied to each State's baseline amount—which EPA treated as the 1996 value even if the higher heat input amount actually occurred in 1995—that State's annual heat input growth rate to determine the projected 2007 heat input. For Virginia, this computation (172,633,028 mmBtu multiplied by 1.025 over an 11-year period) yielded 227,875,597 mmBtu.

Next, EPA used projected 2007 heat input to test the cost effectiveness of various $NO_X$ emission control levels. First, EPA selected a set of $NO_X$ emissions control levels as candidates to be tested for appropriateness. The levels tested were, 0.12 pounds of $NO_X$ per mmBtu of heat input (lbs/mmBtu), 0.15 lb/Btu, 0.2 lb/Btu, and 0.25 lb/Btu. Then, EPA applied one of the control levels to each State's projected 2007 heat input. For example, for Virginia the 2007 projected heat input of 227,875,597 mmBtu was multiplied by 0.15 lb/mmBtu to obtain an EGU $NO_X$ emission budget of 34,181,340 pounds or 17,091 tons. In this manner, EPA calculated the $NO_X$ emission budget for each State based on the level of $NO_X$ emissions control to be tested. Then, EPA summed each State's $NO_X$ emissions budget to determine the regionwide $NO_X$ emissions budget for the $NO_X$ control level tested.

Then, EPA conducted another IPM run (the ''cost-effectiveness run'') to determine the cost effectiveness of meeting the regionwide $NO_X$ emission budget for the control level tested. For this run, EPA included in the model each of the assumptions that were used in the base case run. However, EPA added one additional assumption, i.e., the requirement that total $NO_X$ emissions for EGUs in the $NO_X$ SIP Call region could not exceed the regionwide $NO_X$ emission budget (i.e., the sum of the State $NO_X$ emission budgets for EGUs developed using the 2001–2010 heat input growth rates from the base case run and the specified level of $NO_X$ emission controls being tested). This cost-effectiveness run yielded, as an output, the total cost of generating electricity for the 2007 ozone season for the control level. EPA repeated this process for each control level tested.

EPA then performed, for each $NO_X$ emission control level, three calculations to determine the cost per ton of $NO_X$ emissions reduced, of meeting the regionwide $NO_X$ emission budget associated with that control level. First, EPA subtracted the total $NO_X$ emissions in the cost-effectiveness run from the total $NO_X$ emissions in the base case run to calculate the tons of $NO_X$ reduced due to the imposition of the control level. Second, EPA subtracted the total cost of generating electricity in the base case run from the total cost in the cost-effectiveness run to calculate the total cost of meeting the regionwide budget. Third, EPA divided the total cost of meeting the budget by the total tons reduced due to the imposition of the control level to calculate the cost effectiveness of meeting the budget associated with the control level (in dollars per ton). For example, the cost effectiveness of meeting the 0.15 lb/mmBtu control level was $1,440 per ton of $NO_X$ emissions reduced in 2007 (Regulatory Impact Analysis for the $NO_X$ SIP Call, FIP, and Section 126 Petitions, Volume 1: Costs and Economic Impacts, September 1998, at p. ADD–2). Of course, the cost effectiveness was a higher dollar amount for more restrictive control levels (e.g., 0.08 lb/mmBtu) and a lower dollar amount for less restrictive control levels (e.g., 0.2 lb/mmBtu).

Finally, EPA evaluated the cost-effectiveness level for each control level against certain criteria and selected 0.15 lb/mmBtu as the highly cost effective level for EGUs. The basis for this selection, which is not at issue in today's notice, is discussed at 63 FR 57401–2.

Having selected 0.15 lb/mmBtu, EPA set, as the $NO_X$ emission budget for EGUs for each State in the $NO_X$ SIP Call, the State's budget associated with that control level. For example, for Virginia, the $NO_X$ emission budget for EGUs was 17,091 tons.

For the Section 126 Rule, which imposed requirements on individual EGUs in certain States, but did not impose statewide control limitations, EPA used the same State $NO_X$ emission budgets that were developed for the $NO_X$ SIP Call. For the individual EGUs in a given State, EPA allocated a total amount of allowances equal to the amount of tons of $NO_X$ in the State $NO_X$ emission budget for EGUs. Individual EGUs were allocated a proportionate share of the State $NO_X$ emission budget based on its share of the total heat input for EGUs in that State.

2. Use of Consistent Heat Input Growth Rates for Different Parts of EPA's Analysis

One concern that the Court had about the reasonableness of EPA's approach was the belief that EPA ''utilized one set of growth-rate projections to set allowance budgets, [and] another to assess emission reduction costs.'' *Appalachian Power* v. *EPA,* 249 F.3d at 1054. The Court therefore believed that ''EPA had other ways of generating 2007 utilization projections.'' *Id.* The above description of EPA's multi-step procedure makes clear that, in fact, EPA utilized only IPM heat input growth rate projections for 2001–2010. The methodology required (i) developing many inputs in the IPM, including assumptions about growth in electricity demand during 1997–2020; (ii) conducting an IPM base case run and a set of cost effectiveness runs; and (iii) using IPM outputs to make various computations. However, at any step that required IPM generated heat-input growth rate projections—whether for purposes of determining a budget or for purposes of determining the cost effectiveness of control levels—EPA used only the projections for 2001–2010, and not any other period.

EPA respectfully observes that the Court's views to the contrary are misperceptions that resulted from what EPA now realizes was EPA's own inadvertently confusing statement by EPA in the Response to Comment document for the Section 126 Rule. The Response to Comment document states, in relevant part:

> The budgets were constructed using growth rates for 1996–2007 that were consistent with the growth rates in IPM for 2001–2010, which may be higher or lower than the growth rates for the years 1996–2001. EPA's analysis of the costs of complying with these budgets, however, was conducted using IPM, which incorporates internally consistent growth assumptions—i.e., the growth for 1996 through 2001 is based on IPM assumptions for 1996 through 2001, and the growth for 2001 through 2010 is based on IPM assumptions for 2001 through 2010. These IPM growth forecasts are consistent with the NERC forecasts.

Docket # A–97–43, Item # VI-C–01, ''Response to Significant Comments on the Proposed Findings of Significant Contribution and Rulemaking on Section 126 Petitions for Purposes of Reducing Interstate Ozone Transport,'' April 1999 at p. 112.

The first two sentences in the response refer to ''growth rates,'' ''growth assumptions,'' or ''growth,'' but unfortunately fail to provide further clarification as to what type of ''growth'' is being referenced. The first sentence

indicates that, for budget purposes, EPA determined the ''growth rates'' for 1996–2007 based on ''the growth rates in IPM for 2001–2010.'' The second sentence indicates that, for cost analysis purposes, EPA used ''growth'' for 1996–2001 ''based on IPM assumptions for 1996 through 2001'' and ''growth'' for 2001 through 2010 ''based on IPM assumptions for 2001 through 2010.'' However, the response fails to explain that the references in the first sentence to ''growth rates'' are to growth in heat input, which is an output from IPM runs for the years 2001 and 2010, while the references in the second sentence to the ''growth assumptions'' and ''growth'' for 1996–2001 and 2001–2010 are to growth in electricity demand, which is an input into the IPM. The third sentence confirms that the ''growth assumptions'' in the second sentence are—like the ''North American Electric Reliability Council (NERC) forecasts''—for electricity demand.

The second sentence of the Response to Comment document should not be read to indicate that EPA had available IPM-generated growth rates in heat input for the 1996–2001 period. It is simply not true that EPA had that data available. Rather, EPA had available IPM-generated heat input data for only 2001–2010, and EPA developed the budgets and cost analyses in the manner described in section V.B.1 of this notice. Therefore, of course, EPA did not use such data ''to assess emission reduction costs'' and could not have used such data as another way ''of generating 2007 utilization projections.'' *Appalachian Power* v. *EPA,* 249 F.3d at 2054.[5]

*C. Justification for EPA's Methodology and Reasonableness of EPA's Underlying Assumptions*

1. Court's and Commenters' Concerns

While upholding in general EPA's use of the IPM and not finding that any specific assumptions or other aspects of EPA's methodology were unreasonable, the Court stated that ''even in the face of evidence [i.e., actual State heat input in excess of EPA's projection] suggesting the EPA's projections were erroneous, EPA never explained why it adopted this particular methodology.'' *Appalachian Power* v. *EPA,* 249 F.3d at 1053.

Moreover, commenters raised concerns about certain assumptions that EPA made in the IPM, or in using the results from the IPM, to develop heat input growth rates. In particular, commenters were concerned about:

(1) The assumption that State-by-State heat input growth rates, derived from the IPM outputs for 2001 and 2010, were reasonably representative of, and reasonably used to calculate, heat input growth rates for 1996 to 2007.

(2) The assumption that electricity demand projections were reasonably reduced by reductions under the CCAP; and

(3) The assumption that the locations of new units were reasonably projected using currently available data on new units and the historical distribution of generating capacity.

As discussed below, EPA believes that its methodology and, in particular, all of the challenged assumptions had a reasonable basis.

2. EPA Reasonably Decided To Develop State $NO_X$ Emission Budgets by Using Heat Input Growth Rates

As noted above, EPA's methodology for projecting 2007 heat input was based, in essence, on establishing a baseline based on actual heat input, and then applying an IPM-determined growth rate to that baseline. The overall approach of using an actual baseline and applying a growth rate was reasonable and consistent with the way EPA projected utilization for other stationary source categories. (Docket # A–96–56, Item # X–B–09, ''Development of Emission Budget Inventories for Regional Transport $NO_X$ SIP Call'', U.S. EPA, Office of Air Quality Planning and Standards, May 1999.)

Starting with an actual baseline obviously constitutes a reasonably accurate starting point for the calculation. Because of the year-to-year variability in heat input, as discussed below, EPA decided to allow each State to use the higher of two years as the baseline. EPA initiated the $NO_X$ SIP Call rulemaking in 1997, and so EPA selected as the two years 1995 and 1996. EPA's approach overstated total actual heat input for the region. Since some States had higher heat input in one year and other States had higher heat input in the second year, the total of the States' baselines exceeded the total heat input for the States in either of the years.

Applying to that baseline an IPM-generated heat input growth rate is also reasonable because the IPM provides a reasonably accurate method of predicting growth in heat input. The model has been thoroughly vetted through public comment in several rulemakings and generally has been upheld by the Court in both the $NO_X$ SIP Call Decision and an earlier decision. *Appalachian Power* v. *EPA,* 247 F.3d at 1052–53; *Appalachian Power* v. *EPA,* 135 F.3d 791, 814–15 (D.C. Cir., 1998). As discussed below, EPA's approach of determining the growth rate of State heat input from one modeled year (here, 2001) to a later modeled year (here, 2010) minimized the effect of necessary, simplifying assumptions used by the IPM and thereby increased the accuracy of the determination.

EPA considered alternative ways to handle heat input growth in determining State $NO_X$ emission budgets. For example, EPA considered not allowing for heat input growth at all. Under this method, EPA would base each State's $NO_X$ emission budget on heat input as of a selected year for which historical data was available, without accounting for changes in future heat input. In the $NO_X$ SIP Call, EPA rejected this method, explaining that although it would have been simpler, it ''may be viewed as less equitable for States with significantly higher projected utilization,'' (62 FR 60318, 60351, Nov. 7, 1997).

EPA also considered using, as the State $NO_X$ emission budget for each State, the amount of $NO_X$ emissions that the IPM projected for the State in 2007 in the cost-effectiveness run.[6] EPA did not use this approach for several reasons. First, this approach would have made it difficult to accommodate changes in the State inventory of EGUs as EPA received better information regarding existing units. EPA undertook multiple notice-and-comment rulemakings to obtain the most accurate data possible about existing units and received new data through each rulemaking. It was relatively simple for EPA to use this new information to adjust the State's 1995 and 1996 emission inventories, and thus the State's baseline, and then apply projected future growth from the IPM to adjust the State's $NO_X$ emission budget. If instead EPA had used the IPM 2007 projected heat input, then, each time new data were received, EPA would have had to rerun the IPM for 2007 with the State inventory of EGUs revised to include the new information. It would have taken significant resources and time to change the IPM on several occasions to reflect this new information.

Further, the IPM is likely to be more accurate in projecting State-by-State

[5] The portion of EPA's brief on the growth rate issue in *Appalachian Power* v. *EPA* reflects the confusing response to comments. As discussed above and contrary to the suggestion in the brief (at 71–2), the cost-effectiveness run and EPA's cost-effectiveness analysis did not use ''1996–2001 growth rates'' for heat input.

[6] In addition, EPA considered, but rejected, the approach of using a single, uniform heat input growth rate in developing all of the State $NO_X$ emission budgets. (See section D.IV.10 of this notice.)

rates of change of an output from one year in an IPM run to another year in that IPM run (here, growth in State heat input from 2001–2010) than in predicting an actual output State-by-State in a particular year (here, actual heat input in 2007). This is because modeling of complex activities requires the use of simplifying assumptions in order to make the model feasible—from the standpoint of resources and time—to run. This is particularly true here, where EPA must develop State-by-State projections of heat input that results from complex activities (i.e., the operation of the regional electricity market). (See sections V.C.3 and V.D.7 of this notice.) Because the same assumptions were made for every year modeled, calculating differences between two model years reduces any inaccuracies caused by these assumptions. Therefore, EPA believes that, on a State-by-State basis, the IPM is likely to be more accurate in projecting rates of change between modeled years.

For these reasons, EPA decided that the approach of applying an IPM-generated heat input growth rate for each State to a baseline State heat input based on historical data would be a reasonably accurate predictor of the State's actual heat input in 2007 and a more accurate predictor, and significantly simpler and less costly from an administrative standpoint, than IPM's projection of the State's 2007 heat input.

3. State Heat Input Growth Rates Based on IPM Outputs for 2001–2010 Were Reasonably Representative of 1996–2007 Heat Input Growth

*a. EPA's Methodology.* A number of commenters suggested that instead of using heat input growth rates based on 2001 to 2010 projections, EPA should have used State heat input growth rates based on 1996 data and 2007 projections. EPA believes that relying on the IPM projections for 2001 to 2010 is reasonably accurate.

Although EPA had information on, and projections of, annual growth rates in regionwide electricity demand from 1995 or 1996 to 2007 (which EPA used as inputs to the IPM), EPA was not aware of any projected heat input growth rates for that period for each State in the $NO_X$ SIP Call region that were developed using a consistent set of assumptions. *See, e.g.,* 63 FR 57409. Since, as discussed in section V.D.6 of this notice, electricity is generated, transmitted, and distributed on a regional basis, consistent assumptions about regional and subregional factors (*e.g.,* demand for electricity, fuel costs, and cost of new units) must be used to develop the heat input growth rates for all States. The Court has already upheld EPA's decision to rely on an internally consistent methodology for determining heat input, as opposed to recommendations by various commenters favoring State-specific growth rates that would have been inconsistent with each other. *Appalachian Power* v. *EPA,* 249 F.3d at 1052–53.

Since EPA was not aware of any available consistent set of heat input growth rate projections, EPA developed its own projections. EPA decided to use the heat input values from IPM runs for 2001 and 2010 to calculate a long term heat input growth rate for each State. Because, as discussed above, the IPM is a comprehensive model of the electricity market, EPA believes that it provides reasonable heat input growth rate projections. Further, EPA believes that heat input growth rates for the nine-year period 2001–2010 were reasonably representative of the eleven-year period 1996–2007 because, among other things, the periods overlap and are of similar length. In addition, EPA believes that the assumptions used in the IPM runs for 2001 and 2010 are reasonably applicable to the 1996–2001 period as well as 2001–2007. (See section V.D.7 of this notice discussing assumptions in the IPM.) In fact, out of the many assumptions in the IPM, commenters have pointed to only a few that they believe differ pre- and post-2001. As discussed below, EPA examined the assumptions discussed by commenters and maintains that these assumptions do not differ in any way that would affect the reasonableness of the heat input growth rates.

EPA considered developing heat input growth rates based on data developed by OTAG. OTAG developed a heat input growth projection separately for each individual State for the years 1990 to 2007 without considering the interactions among the individual States. EPA chose to use the IPM growth rates because, unlike the OTAG growth projections, the IPM's were not developed separately for each State, but were developed by analyzing performance of the electric industry as a regionwide system. Therefore, the IPM growth rates are a more internally consistent set of growth rates than the OTAG growth rates, (62 FR 60353).

b. Cost of adding run years. Some commenters questioned why EPA did not program the IPM to provide outputs for 1996 in order to generate 1996–2007 heat input growth rates (in lieu of 2001–2010 growth rates) using the IPM. EPA believes that its decision to program the IPM beginning with 2001 was reasonable.

As explained by the Court in the Section 126 Decision:

> [T]he EPA has ''undoubted power to use predictive models'' so long as it ''explain[s] the assumptions and methodology used in preparing the model'' and ''provide[s] a complete analytic defense'' should the model be challenged. *Small Refiner Lead Phase-Down Task Force* v. *EPA,* 705 F.2d 506, 535 (D.C. Cir. 1983) * * * (citations and internal quotation marks omitted). That a model is limited or imperfect is not, in itself, a reason to remand agency decisions based upon it.
>
> Ultimately * * * we must defer to the agency's decision on how to balance the cost and complexity of a more elaborate model against the oversimplification of a simpler model. We can reverse only if the model is so oversimplified that the agency's conclusions from it are unreasonable. *Id.*

*Appalachian Power* v. *EPA,* 294 F.3d at 1052.

The IPM was programed to model specified years starting with 2001. EPA selected these run years to provide information not just for the $NO_X$ SIP Call and Section 126 Rule, but also for several other programs over the next few years, including implementation programs for the recently revised National Ambient Air Quality Standards for ozone and fine particles. (Regulatory Impact Analysis for the $No_X$ SIP Call, FIP and Section 126 Petitions, Volume 1: Costs and Economic Impacts, September 1998, at p.4–2., *http://www.epa.gov/ttn/rto/sip/related.html#doc.*) Adding more run years (*e.g.,* 1996) would not have provided information useful for those other programs, but would have added significant complexity and costs to the modeling.

The model consists of model plants that represent individual generating units (*e.g.,* fossil-fuel-fired boilers, nuclear units and hydro-electric units) that comprise the inventory of electricity producers. Duplicating precisely each of the boilers and generators would be impracticable; accordingly, the model aggregates the fossil-fuel fired units into a series of model plants and aggregates the non-fossil-fuel fired units into separate model plants. (Docket # A–96–56, Item # V–C–03, Report on Analyzing Electric Power Generation Under the Clean Air Act Amendments, at p. 5.)

For each run year, EPA provides various inputs (*i.e.,* constraints), such as the requirement to meet a certain electricity demand for each season and each geographic subregion modeled. In addition, for each run year, the model provides variables, which are values based on the inputs, such as the level of electricity generation from each model

plant and the level of emission controls at a model plant. For each year the model is run, the model must optimize (*i.e.,* determine the least cost scenario, including fuel mix, emission controls, and amount of operation) for every model plant to reach each constraint in the model. The IPM includes thousands of constraints and variables.

The complexity of the model—its simulations, inputs, and variables—means that each additional run year adds many more calculations to the model, a task that requires time and resources. To keep the model manageable, meet time schedules, and conserve resources, adding an additional run year would have meant simplifying other assumptions within the model. In other words, because the number of equations would be increased by adding constraints and variables associated with a new run year, other ways would have had to be found to reduce the number of equations. This would have meant either reducing the number of (i) model plants; (ii) constraints, such as the number of subregions, which determines the number of electricity demand constraints; or (iii) variables, such as $NO_X$ emission control technology options.

When developing the model, EPA had to decide ''how to balance the cost and complexity of a more elaborate model against the oversimplification of a simpler model.'' *Small Refiner Lead Phase-Down Task Force* v. *EPA,* 705 F. 2d 506, 535 (D.C. Cir., 1983). Balancing these factors, EPA decided to develop the IPM to start in 2001. Under these circumstances, the model adequately served the needs of several programs—the $NO_X$ SIP Call, the Section 126 Rule, and other programs. Moreover, EPA believed that heat input growth rates for the years 2001 to 2010 were reasonably representative of growth during the period 1996 through 2007. In EPA's judgment, any further refinement in the heat input growth rate that may have resulted from adding a 1996 run year would not have merited the additional time and cost and may have been offset by the increase in model inaccuracy that may have resulted from the consequent need to further simplify or otherwise limit the model. Therefore, EPA decided, on balance, that it was reasonable to use 2001–2010 heat input growth rates to develop the 2007 State $NO_X$ emission budgets.

*c. Consistency of assumptions.* Some commenters questioned whether the 2001–2010 heat input growth rate was representative of growth during 1996–2007, alleging that specific assumptions in the IPM were different for those two time periods and would result in different heat input growth rates for those periods.

As noted above, one of the inputs for the base case and cost-effectiveness IPM runs for 2001 and 2010 was projected electricity demand. To determine electricity demand, EPA began with available information for actual annual electricity demand for 1997, projected the increases out to the IPM run years, and then reduced those projections to take account of reductions in electricity demand expected to result from CCAP. CCAP is a Federal program started in 1993 to significantly reduce emissions of carbon dioxide ($CO_2$) and thereby address concerns about global climate change. Since consumption of fossil fuel to generate electricity is a significant contributor to $CO_2$ emissions, a major component of CCAP was a broad set of voluntary programs designed to reduce electricity demand and generation.

Commenters claimed that the assumptions for electricity demand reductions due to CCAP for the years 2001–2010 differed from what would have been used for the years 1996–2001. According to a commenter:

> [b]ecause EPA's assumed CCAP reductions increased by almost 300% from 2001 to 2010 . . . the electricity demand growth rate that EPA used in its analysis decreased substantially from 2001 to 2010. Thus the record establishes that EPA itself assumed vastly different electricity demand growth rates for the 1996–2000 period than the 2001–2010 period * * *

In fact, however, the commenter's conclusion is contradicted by the record. The data in the record supporting IPM runs shows that EPA assumed electricity demand growth rates of 1.6% for 1997–2000 and 1.8% for 2001–2010. Actual electricity demand in 1996 was 3,305 billion KWh.[7] EPA's projected electricity demand without accounting for CCAP was 3,575 billion KWh for 2001 and 4,198 billion KWh for 2010. EPA projected that CCAP would result in electricity demand reductions of 100 billion KWh for 2001, and 389 billion KWh for 2010 (Analyzing Electric Power, Appendix 2 at A2–2). After subtracting projected CCAP electricity demand reductions from assumed electricity demand, EPA projected electricity demand of 3,475 billion KWh for 2001,and 3,809 billion KWh for 2010. This resulted in an annual growth rate for adjusted electricity demand of 1.03% for 1996–2001 and 1.07%, for 2001–2010. (Docket # A–96–56, Item # XV–C–22.) In short, while EPA assumed somewhat lower CCAP reductions in 1996–2001 than in 2001–2010, the Agency also assumed lower electricity demand growth without CCAP adjustments in 1996–2001 than in 2001–2010. The net result was that EPA's projected electricity demand growth rates after CCAP adjustments were very similar for 1996–2001 and 2001–2010.[8]

4. EPA Did Not ''Double Count'' Electricity Demand Reductions Under CCAP

As noted above, one input into the IPM was electricity demand. EPA projected electricity demand by starting with certain industry-sponsored forecasts for demand and then reducing them by projected CCAP demand reductions in accordance with a multi-agency task force's projections, made for purposes of a U.S. Department of State report on the subject.

EPA received comments on the August 3, 2001 NODA alleging that EPA failed to explain, and, indeed, double counted the projected electricity demand reductions under CCAP. According to commenters, the double counting led EPA to underestimate projected heat input for 2007. The EPA believes that its CCAP assumptions are well supported by the record and that no double counting occurred.

a. *EPA's Methodology for Determining Electricity Demand.* EPA started with electricity demand forecasts from the NERC, which is a voluntary association of most of the large electricity generators and sellers in the U.S. and whose purpose is to promote the reliability and security of the electricity system. NERC divides the continental U.S. into regions, each of which has its own council comprised of representatives of the utilities generating and selling electricity in the region. Each utility makes forecasts of electricity demand by its end-use customers and of electricity supply available to that utility and submits these forecasts to the appropriate NERC region. NERC compiles the individual utilities' demand and supply projections by region and reports the compiled projections to the Energy Information Agency (EIA).[9] Since NERC forecasted

[7] Note that while EPA started its electric demand forecasts using NERC forecasts for the year 1997, EPA used here the actual electricity demand for 1996 in order to demonstrate the effective growth rate for 1996–2001, which is referenced by the commenters.

[8] In addition, EPA notes that since the CCAP reductions are assumed to occur on a nationwide basis, any assumptions regarding CCAP would not have been the cause of State-by-State variation in heat input growth rates.

[9] EIA is an independent agency within the U.S. Department of Energy (DOE) that is responsible for, among other things, collecting, compiling, and reporting information on the U.S. electricity industry.

electricity demand out to only 2006 at the time that EPA was developing the IPM for the $NO_X$ SIP Call, EPA used the NERC electricity demand projections for 1996 to 2006 and extended them to 2010 using a 1995 forecast by DRI, a private consulting group. (Analyzing Electric Power, Appendix 2 at A2–3.)

Then, EPA reduced these electricity demand projections by the amounts of demand reductions expected to occur as a result of CCAP. As described above, CCAP, a Federal program established in 1993, includes a broad collection of voluntary programs designed to reduce electricity demand and generation to reduce $CO_2$ emissions. Some of these programs were in existence before CCAP's establishment in 1993 and were incorporated into CCAP, along with a new set of programs. CCAP was updated in 1995, a process that included revised estimates of the effectiveness of its programs, based on public input solicited through a **Federal Register** notice (60 FR 44022, Aug. 24, 1995) and a public hearing held on September 22, 1995. *See* Review of Climate Change Action Plan: Request for Public Comment; Notice of Meeting, 60 FR 44022, August 24, 1995 (Council on Environmental Quality solicitation of public comment).

In 1997, the U.S. Department of State (''State Department'') developed and issued a report, Climate Action Report, setting forth the expected results from CCAP. The report was developed to fulfill an obligation under the 1992 United Nations Framework Convention on Climate Change.[10] The State Department first issued a draft report and requested public comment on two occasions, in December 1996 and May 1997. (*See* Preparation of Second U.S. Climate Action Report: Request for Public Comments, 62 FR 25988, May 12, 1997). After considering the comments received, the State Department issued the final report in 1997. The report presented a consensus view of the Federal agencies involved, including EPA, the U.S. DOE, and the State Department.

In particular, to determine the effectiveness of the CCAP programs, an interagency work group polled the program managers at EPA, DOE, the U.S. Department of Transportation, and the U.S. Department of Agriculture who were responsible for the various CCAP programs. The program managers provided estimates of reductions for each CCAP program, generally expressed in billion kilowatt hours (billion KWh) of electricity usage and mmBtu of heat input, or other units of measure appropriate for the program. The workgroup compiled and reviewed those projections (Docket # A–96–56, Item # XIV–F–03). EPA used those estimates to reduce the NERC-based electricity demand projections for 2001 through 2020. (*See* Analyzing Electric Power, Appendix 2, at A2–3). In addition, DOE used those estimates to project the amount of greenhouse gas emissions reductions that would result from the CCAP programs. These emissions reductions and other types of savings were included in the State Department's Climate Action Report.

*b. The record contains sufficient documentation of the additional CCAP demand reductions that EPA took into account.* Some commenters claimed, in response to the August 3, 2001 NODA, that EPA did not provide adequate documentation to explain how the electricity demand reductions under CCAP were derived.

EPA notes that this issue—as well as the issue of double-counting of CCAP demand reductions, discussed below—was not raised in any of the rulemakings to this point or brought to the Court's attention in either the Section 126 or the Technical Amendments cases. Commenters had a full opportunity to raise the issues during the development of the $NO_X$ SIP Call and Section 126 Rule. In fact, some of the parties raising the issues now claimed, in comments in the $NO_X$ SIP Call and Section 126 rulemakings, that no CCAP electricity demand reductions should be considered in projecting electricity demand. These commenters based these claims on the ground that CCAP was a voluntary, rather than a mandatory, program. Thus, these commenters clearly had the opportunity during the earlier rulemakings to raise the issues concerning CCAP that they are raising only now.

The lack of attention to these issues by commenters during the earlier rulemakings has some impact on the extent to which the record addresses them. Had commenters raised these issues earlier, EPA would have been obliged to respond, and the record would have included that dialogue. Thus, if the commenters view the record as deficient, their failure to raise this issue at several earlier junctures should be considered. Moreover, it is questionable whether EPA is required, at this point, to address these issues in light of the commenters' earlier opportunities.

Even so, EPA maintains that its assumptions about the CCAP demand reductions are well supported. The IPM documentation shows the amount of actual electricity demand in 1997, and the amount of projected electricity demand from 1997 to 2010 (and beyond), all expressed in billion Kwh, (IPM basecase modeling runs, *http://www.epa.gov/capi/ipm/npr.htm).* As noted above, EPA based these projections on information supplied by NERC. In addition, other IPM documentation shows the total amount of CCAP reductions, expressed in billion kwh, for 2001 through 2010 (and beyond) (Analyzing Electric Power, Appendix 2 at A2–2).

These total amounts of CCAP reductions ''were taken from the supporting analysis that was done to forecast future U.S. carbon emissions from the power industry that appeared in the U.S. Department of State's Climate Action Report, July 1997,'' (Analyzing Electric Power, Appendix 2 at A2–3). Specifically, this supporting analysis consisted of a spreadsheet, entitled ''CCAP Inputs for April 1997 Update,'' developed by the above-described interagency work group tasked with projecting the amount of reductions for each CCAP program, (Docket # A–96–56, Item # XIV–F–03). The workgroup solicited information from the various agencies charged with administering CCAP programs and, based on that information, prepared the spreadsheet. No commenter requested this information during the $NO_X$ SIP Call and Section 126 rulemakings until the comment period for the August 3, 2001 NODA. At that time, EPA provided the spreadsheet—annotated to reflect the adjustment related to the NERC forecasts, described below—to commenters when requested and placed it in the docket, (Letter from John Seitz to Andrea Bear Field, August 31, 2001, Docket #A–96–56, Item #XIV–F–01, included as Attachment D to Docket Item #A–96–56–XIV–D–31).

The spreadsheet identifies the amount of reductions, expressed in billion Kwh and mmBtu of each of the dozen or so relevant CCAP programs, for the years 2000 and 2010 (as well as 2020). The amount of reductions from these programs for 2010—after the adjustment related to the NERC forecasts, described below—equals the amount included for that year in Analyzing Electric Power, Appendix 2 at A2–2. Moreover, the IPM documentation states that ''EPA did a linear interpolation'' to determine the amount of CCAP reductions assumed for years between 2000 and 2010, including 2001, (Analyzing Electric Power, Appendix 2 at A2–3).

One commenter claimed that it was not clear how EPA converted the $CO_2$

[10] Parties to the 1992 United Nations Framework Convention on Climate Change (including the U.S.) agreed to submit reports detailing their emissions of greenhouse gases (such as $CO_2$) and any strategies to reduce those emissions.

reductions cited in the State Department's Climate Action Report into the electricity demand reductions set forth in Analyzing Electric Power or the spreadsheet used by EPA to adjust the NERC electricity demand forecasts. Actually, the $CO_2$ reductions in the State Department report were based on the electricity demand reductions in the spreadsheet, not the other way around. As noted above, these electricity demand reductions were developed by the agencies involved in implementing CCAP and then were converted to $CO_2$ reductions for purposes of the State Department report, using a U.S. DOE model (the Integrated Dynamic Energy Analysis Simulation (IDEAS)) of the U.S. energy system. These values were then included in the proposed and final versions of that report.[11]

*c. Commenters failed to prove their claim that NERC and EIA projections already included the CCAP demand reductions that EPA took into account.* Commenters suggested that the NERC electricity demand forecasts that EPA adjusted for certain CCAP reductions already assumed those reductions. According to commenters, the NERC members that supplied the information used in the NERC forecasts would have been aware of, and in some cases participated in, CCAP programs and so ''would have * * * taken into account'' CCAP programs in the information supplied to NERC. The commenters emphasized that NERC projected electricity demand growth at an annual rate of 1.7%, which is higher than EPA's projection of 1.1%, and therefore concluded that EPA, by purportedly double-counting CCAP reductions, underestimated electricity demand. The commenters made a similar point with respect to electricity demand forecasts by EIA, emphasizing that in 1997, EIA projected electricity demand growth at 1.6% annually, and that, in making this projection, EIA explicitly noted that it was taking account of CCAP.

As discussed below, after weighing all the evidence in the record relevant to the claim that EPA double-counted CCAP demand reductions, EPA concludes that no such double-counting occurred and that commenters failed to show otherwise.

(i) NERC Forecasts

When EPA developed electricity demand forecasts for the $NO_X$ SIP Call and the Section 126 Rule, the NERC forecasts did not mention the energy efficiency programs as a factor that was considered. NERC explained only that it considered an ''economic variable, weather and a random component that expresses unknown determinants of net energy for load.'' (Docket # A–96–56, Item # XV–C–23, *Peak Demand and Energy Projection Bandwidths: 1997–2006 projections,* p. 4, Load Forecasting Work Group of the Engineering Committee North American Electric Reliability Council, June 1997). Consequently, EPA had to exercise its best judgement in determining the extent to which the NERC forecasts took into account CCAP demand reductions. Rather than assuming, from the absence of any affirmative statements by NERC about CCAP reductions, that NERC did not consider any CCAP reductions, EPA took the more conservative approach of assuming that some of the reductions were likely to have been considered by NERC. (*See* Docket # A–96–56, Item # XIV–F–03.) EPA reduced the NERC electricity demand forecasts only to take account of the additional CCAP demand reductions beyond those EPA believed were included in the NERC forecasts. EPA believed that it was appropriate to factor in these additional CCAP demand reductions ''given the extensive Administration, State, and business efforts underway and the promising early results that EPA has seen in some of the CCAP's programs that have substantially lowered electric energy use and saved money for many businesses.'' (Responses to Significant Comments on the Proposed Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group (OTAG) Region for Purposes of Reducing Regional Transport of Ozone, September 1998, at 182).

In applying this approach to CCAP reductions, EPA did not factor in reductions from either the Green Lights Program or the Energy Star-Products Office Equipment Program, which existed before CCAP and that were simply put under the umbrella of CCAP when CCAP was established in 1993. Green Lights was one of EPA's earliest voluntary energy efficiency programs and was aimed at encouraging the use of energy efficient lighting products. This program was expanded under CCAP. Similarly, the Energy Star Products program included a pre-1993 program to encourage the purchase of energy efficient office equipment. EPA assumed that because Green Lights and Energy Star Products-Office Equipment were pre-existing programs, they were better established and their benefits more predictable by the utilities in forecasting demand; as a result, EPA assumed that the NERC forecasts were more likely to have already taken their reductions into account. These two programs were categorized as commercial programs and were projected to result in over 89 billion Kwh in reduced electricity demand by 2010. (Docket # A–96–56. Item # XIV–F–01). By comparison, the remaining CCAP commercial programs resulted in reduced electricity demand of 119.6 billion Kwh. *Id.* Therefore, EPA assumed that the NERC forecasts accounted for over 42 percent of the reductions from the commercial CCAP programs, including the pre-1993 programs.

EPA also decided not to include reductions from a fuel cells program and renewable energy program, which were projected to total 24.5 billion Kwh by 2010, both for reasons of erring on the side of the conservative (not including those reductions had the effect of increasing electricity demand) and because adding them would have created some technical modeling complexities. Specifically, EPA would have had to decide at what level, and where, to allocate this capacity among the States within and outside of the $NO_X$ SIP Call region. EPA decided, rather than make that judgment, to err on the side of the conservative by assuming that the fuel cell program and renewable energy program did not reduce electricity. In addition, the emission factors for fuel cells and biomass facilities that could have been employed were highly uncertain. (*See* Docket # A–96–56, Item # XIV–F–01).

Nor did EPA factor in reductions from the Climate Challenge program, which was initiated in 1994 as part of CCAP. Under Climate Challenge, utilities agreed to voluntarily reduce emissions of $CO_2$ through projects for, e.g., improving electricity generation or transmission efficiency. Because Climate Challenge was specifically directed towards utilities, EPA assumed that the utilities submitting their demand estimates to NERC would be familiar with the program and would be more likely to have taken demand reductions from that program into account. In any event, the Climate Action Report workgroup did not assign a specific amount of reductions to this program.

[11] A commenter questioned the accuracy of the projections of reductions attributable to the programs on the spreadsheet because those projections were done a program-by-program basis, without consideration of the interactive effects of the programs. The IDEAS model run, noted above, in effect considered those interactive effects on the programs and provided as an output the total electricity savings expressed in billion Kwh (along with other outputs, including the emissions reductions). The total electricity savings indicated by the IDEAS model run are virtually identical to the total amounts projected on a program-by-program basis. (Docket #A–96–56, XIV–F–03).

All told, EPA assumed that CCAP programs would result in 389 billion Kwh in reductions by 2010 and further assumed that an additional 113.5 billion Kwh from CCAP programs and their pre-1993 predecessors, or 22.6% of the total, had already been included in the NERC estimates. Thus, it is evident that EPA conservatively assumed that NERC took into account demand reductions from some CCAP programs, even though NERC's documentation did not indicate that any CCAP reductions were taken into account and no utility commenter provided documentation that the demand forecasts they submitted to NERC assumed any CCAP reductions.[12]

On the other hand, EPA did factor into the electricity demand projections the reductions from the CCAP programs initiated in 1993 or later that were aimed at a broader group of potential participants than only utilities. Some of the largest of these programs included (i) WasteWise (a voluntary program designed to reduce municipal waste through waste prevention and recycling); (ii) Motor Challenge (a program designed to help industry realize electricity savings by providing industry with the technical expertise concerning management of electric motor systems and purchase of more energy efficient electric motors); (iii) Rebuild America (a program designed to encourage partnerships of various types of companies and organizations—ranging from builders to local governments—to retrofit existing public housing as well as commercial and multifamily buildings to be more energy efficient); (iv) Energy Star Buildings (a program designed to encourage individual building owners, developers, and others to make comprehensive, energy-efficient building upgrades); and (v) Residential Appliance Standards (a program under which DOE would establish by rulemaking standards for improved energy-efficient appliances such as room air conditioners, refrigerators, water heaters, and others). (Docket # A–96–56, Item # XIV–F–01; Climate Action Report, Appendix A). Because such programs were relatively new and were geared primarily to companies other than utilities, it is less likely that utilities would have included demand reductions from these programs in their electricity demand projections.

A commenting group of utilities argued that the NERC forecasts likely already included the CCAP reductions that EPA used to adjust those forecasts, resulting in double-counting. The commenting utility group noted that some utilities participated in two CCAP programs (i.e., WasteWise and Motor Challenge) and speculated that the participating utilities ''would have'' included CCAP reductions in developing the information provided for the NERC forecasts.

However, utilities comprise only a small number of companies participating in WasteWise and Motor Challenge. In 1996, WasteWise involved over 600 partners, representing over 30 industries, including some utilities. (Docket # A–96–56, Item # X–V–C–24, *Wastewise, Third Year Progress Report,* USEPA, November, 1997, at p.2.) Motor Challenge is aimed primarily at industrial end-users, not utilities, (60 FR 61443–47, Nov. 29, 1995). Thus, the commenter's evidence that a few utilities were among the many participants in these two programs provides a very weak basis for speculating that the NERC forecasts included CCAP demand reductions factored in by EPA. Similarly, many other CCAP programs, including the Rebuild America and Energy Star Buildings programs, were generally directed at entities other than utilities.

Moreover, except for Climate Challenge, the CCAP programs are designed to achieve electricity demand reductions from a wide range of electricity end-users (i.e., residential, commercial, and industrial end-users) and were relatively new—only a few years old when the utilities reported their 1997 demand estimates to NERC. The interagency workgroup had estimated amounts of demand reductions from these programs on a national basis, but had not broken those estimates down to the NERC region level that was the basis for individual utilities' reports to NERC. Accordingly, it appears that the individual utilities would have had relatively little experience in analyzing the extent to which their particular customers followed the CCAP programs and would not have had any other source of information for quantifying the CCAP demand reductions in their respective regions.[13]

For these reasons, it seems reasonable to conclude that as of 1997, the only CCAP program reductions that utilities are likely to have included in their reports to NERC would have been the few older programs or those primarily targeting utilities, and not the many other CCAP programs. Indeed, while a commenting group of utilities speculated that utilities must have taken CCAP into account in submitting their electricity demand information to NERC in 1997, EPA did not receive any direct evidence from the utilities that made the submissions stating (much less demonstrating) that their submissions actually took into account any specific CCAP programs or otherwise reflected any specific demand reductions.[14] Particularly, in light of the silence of the individual utilities about what CCAP reductions they actually included (as distinguished from speculation about what they would have included), EPA maintains that its assumptions about what CCAP reductions were included are reasonable.

In addition, the argument that utilities accounted for all CCAP reductions is undercut by utilities' comments in the $NO_X$ SIP Call proceeding. Several utilities commented that because CCAP reductions are voluntary, such reductions should not be considered when making future demand assumptions. Given this view of the CCAP reductions, it seems doubtful that these utilities would have considered, in their demand forecasts submitted to NERC, the CCAP reductions factored in by EPA. Moreover, an analysis, included in comments by the utility group on whether the $NO_X$ SIP Call would have an impact on the reliability of the region's electricity supply in meeting electricity demand, did not take into account any demand reductions under CCAP (Responses to Significant Comments on the Proposed Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group (OTAG) Region for Purposes of Reducing Regional Transport of Ozone, September 1998, at 181–82; see also Docket # A–96–56, Item # V–J–66, UARG briefing entitled ''The Impact of EPA's Regional SIP Call on the Reliability of the Electric Power Supply in the Eastern United States,'' September 11, 1998.)

Finally, one utility commenter stated that NERC's forecasts were unlikely to consider CCAP demand reductions. The commenter explained:

[12] Many other CCAP programs generated energy savings but in ways other than reducing electricity demand, so that EPA did not take into account benefits from these programs either.

[13] For example, the Residential Appliance Program depended on a series of DOE regulations establishing standards for numerous appliances. By 1997, DOE had not yet promulgated the first of these regulations. As of 1997, the DOE program manager would nevertheless be in a position to estimate the impact of this program on a national level for future years, but individual utilities estimating electricity demand in their areas would not be in a position to do so.

[14] Indeed, several commenters critical of EPA's electricity demand assumptions nevertheless acknowledged that it is unclear to what extent individual utilities incorporated CCAP programs into their demand projections. (Docket # A–96–56, Item # XIV–D–14, Michigan, Attachment, p. 5, and Item # XIV–D–31, UARG, Attachment H, p. 7).

NERC's reliability planning mission suggests just the opposite. NERC projections of future demand growth are used to determine how much capacity is needed to meet demand to ensure electric system reliability. The projections are a compilation of individual utility projections sent to each of the NERC regional councils to ensure adequate supply exists to meet demand in each region. The projections must be conservative and err on the side of overstating demand to avoid supply shortfalls—it is of little consequence if NERC overestimates demand, but of potentially great consequence if it underestimates it. For this reason, although the compiled nature of NERC's forecasts makes it virtually impossible to assess its underlying assumptions, it is reasonable to assume NERC projections largely ignore new, uncertain electricity demand dampening impacts, such as voluntary programs with no clear track record of affecting electricity consumption. (See Docket # A–96–56, Item # XIV–E–01, Letter from Mark Brownstein, Public Service Electric & Gas, Sept. 15, 2001, at p. 8)

(ii) EIA Forecasts

Several commenters pointed out that NERC's electricity demand forecast (1.8% demand growth per year) and EIA's electricity demand forecast (1.7% demand growth per year) are similar and higher than EPA's forecast. Emphasizing that EIA explicitly took CCAP reductions into account, commenters suggested that the EIA forecast factored in the proper amount of CCAP demand reductions and that the similarity of the EIA and NERC forecasts therefore shows that the NERC forecasts already properly factored in such demand reductions.

However, EIA's explanation, in the Annual Energy Outlook for 1998, of its electricity demand forecast indicated that while EPA factored into its forecasts all the CCAP demand reductions projected by the State Department's Climate Action Report, described above, EIA factored into its forecasts only a small portion of those reductions. This different treatment of CCAP reductions explains much of the difference in demand reductions between EIA and EPA.

The Climate Action Report organizes virtually all of the CCAP programs that affect electricity demand into three categories: residential, commercial, and industrial, (Climate Action Report, Table 1–2). The report indicates that the residential and commercial programs were expected to generate reductions of carbon emissions totaling 53 million metric tons by 2010. *Id.* Not including the reductions from programs that EPA assumed were included in the NERC estimates, EPA reduced projected electricity demand in 2010 due to these programs by 282.5 billion KWh (Docket # A–96–56, Item # XIV–F–01). EIA, however, reduced projected electricity demand in 2010 from these programs by much less. In explaining its analysis of the impact of CCAP residential and commercial programs, EIA stated:

Other CCAP programs which could have a major impact on residential energy consumption are the Environmental Protection Agency's (EPA) Green Programs. These programs which are cooperative efforts between the EPA and home builders and energy appliance manufacturers encourage the development and production of highly energy-efficient housing and equipment. At fully funded levels, residential CCAP programs are estimated by program sponsors to reduce carbon emissions by approximately 28 million metric tons by the year 2010. For the reference case, carbon reductions are estimated to be 8 million metric tons, primarily because of differences in the estimated penetration of energy-saving technologies. * * *

At fully funded levels, commercial CCAP programs are estimated by program sponsors to reduce carbon emissions by approximately 25 million metric tons by the year 2010. For the reference case, carbon reductions are estimated to be just over 9 million metric tons in 2010, primarily because of differences in estimated penetration of energy-saving technologies.

(*Annual Energy Outlook 1998* (AEO98), Energy Information Administration, December 1997 at 209–10).

In other words, EIA believed that CCAP residential and commercial programs would be about one-third as effective at reducing energy use (including electricity use) as the State Department and EPA and other sponsors projected and included the lower estimate of the energy use reductions in the ''reference case'' on which EIA based its electricity demand forecasts.

EIA similarly assumed much fewer energy savings from CCAP industrial programs than EPA believed based on the Climate Action Report. As EIA explained:

For their annual update, the program offices estimated that full implementation of these programs would reduce industrial electricity consumption by 20 billion kilowatt hours * * * However since the energy savings associated with the voluntary programs are, to a large extent, already contained in the AEO98 baseline total CCAP energy savings were reduced. Consequently, CCAP is assumed to reduce electricity consumption by 9 billion kilowatt hours. *Id.* at 210.

EIA essentially assumed that CCAP industrial programs resulted in relatively few additional energy saving activities beyond those activities that industrial companies were already carrying out and that were therefore already reflected in the ''AEO98 baseline'' or ''reference case'' on which EIA based its electricity demand forecasts. By comparison, the State Department analysis projected that industrial CCAP programs would generate reductions of 96.4 billion Kwh (counting an adjustment from programs categorized as commercial) (Docket # A–96–56, Item # XIV–F–01). Thus, EIA projected that these industrial programs would generate savings of less than one-tenth the amount that EPA did.

As discussed above, EPA's more aggressive assumptions were taken from the supporting analysis for the State Department's Climate Action Report, which included reduction estimates that were developed through interagency consultation and were subject to public comment. EPA believes it was appropriate to use them.

Some commenters suggest that EPA should assess whether the CCAP demand reductions are still justified based on any new information that has become available since EPA issued the Section 126 Rule and the Technical Amendments. EPA believes that it is appropriate for the Agency to rely on the information that was available during the rulemakings that resulted in those rules. However, EPA notes that commenters did not provide any specific information showing that EPA's projected CCAP demand reductions were incorrect.[15] Further, new, current information provides some confirmation that EPA's projected CCAP demand reductions were reasonable. A recent report, (Docket # A–96–56, Item # XV–C–25, *The Power of Partnerships Energy Star and Other Voluntary Programs—2000 Annual Report*, EPA , 2001 at p. 6) states that the Energy Star Program, which promotes highly efficient equipment such as energy efficient refrigerators, dish washers, and windows, has exceeded the level forecasted by CCAP for 2000 by more than 20 percent of the forecasted level in the CCAP.[16] Furthermore, EPA has expanded CCAP to cover other uses of electricity (e.g., at hospitals) that will increase savings further. (See Docket # A–96–56, Item # XV–C–26, EPA Administrator Launches New Energy

[15] A commenter stated that CCAP has not generated the expected level of reductions because it did not achieve its goal of reducing U.S. greenhouse gas emissions to 1990 levels. However, the amounts of reductions projected by the Climate Action Report for particular CCAP programs affecting electricity demand, which are the ones relevant for present purposes, were far less than would be necessary to reduce overall U.S. greenhouse gas emissions to 1990 levels.

[16] Only a small part of the Energy Star reductions were considered to be included in the NERC forecasts because they involved programs in existence before 1993.

Star Rating Tool for Hospitals, Honors First Hospital to Earn Energy Star Label, November 15, 2001.)

In short, commenters failed to show that the EIA electricity demand forecast properly factored in the CCAP demand reductions, much less that the NERC forecast (which was higher than the EIA forecast) already included the CCAP demand reductions that EPA used to reduce the NERC forecast.

(iii) Consistency With Regional Heat Input

Finally, EPA notes that ''the electricity demand reductions [under CCAP] were distributed evenly throughout the United States, and therefore have no influence on the share of the total amount of $NO_X$ emissions that each State receives,'' (63 FR 57414). Any overestimation of the CCAP demand reductions would therefore be likely to result in regionwide projections of heat input being lower than actual levels, rather than in only a few States' projections being lower than actual levels. Yet, as explained below, EPA's heat input projections have been reasonably accurate on a regionwide basis. EPA's projections were 0.1% lower than actual regionwide heat input for 2000 and 2% higher than actual regionwide heat input for 2001. This indicates that the CCAP assumptions were reasonable and did not lead to ''stark disparities between [EPA's] projections and real world observations.'' *Appalachian Power* v. *EPA*, 249 F.3d 1054.[17]

5. EPA's Assumptions Regarding the Location of New Units Were Reasonable

Commenters on EPA's August 3, 2001 NODA expressed concern about the methodology that EPA used to assign new units to individual States.[18] The IPM divided the country into geographic regions that are based on NERC regions. These regions are further subdivided to account for transmission bottlenecks or areas that have different environmental requirements. These regions and subregions do not correspond to State boundaries, in many cases. For example, part of Illinois and part of Missouri is split between two NERC Regions, the East Central Reliability Area Council (ECAR) and the Mid America Interconnected Network. Similarly, Virginia and Kentucky are split between ECAR and the Southern Electric Reliability Council (SERC). While Alabama and Georgia are both located entirely within the SERC Region, in IPM they have been further subdivided into multiple IPM subregions to more closely match the constraints within the electric distribution system. The IPM runs indicated which new units would operate in which subregions but did not specify in which States in these subregions. In order to develop State budgets, EPA had to develop a methodology to disaggregate these new units from the subregional level to the State level.

Under EPA's methodology, new units that had commenced construction or received financing, at the time that the model was updated (i.e., in 1998) for use in the $NO_X$ SIP Call and the Section 126 Rule, were included in the State in which they existed or were planned. Second, new units that had not commenced construction or received financing at that time, but that were projected by the IPM to be built were assigned to an individual State based on the share of the subregion's generation capacity (both fossil and non-fossil) that was located in the State. EPA maintains that this was a reasonable approach that took into account the then most current, available information on new unit construction and financing.

EPA also notes that the only alternative approach suggested by commenters was to use new information on the commencement of construction and financing of new units. To the extent that this type of information was available at the time that EPA updated the IPM (i.e., in 1997) for use in the $NO_X$ SIP Call and the Section 126 Rule, EPA did use such information. However, EPA rejects the approach of now using new information of this type, for units that have been more recently built or are currently being built, that was not available when the IPM was updated. EPA believes that it reasonably relied on the most current information available around the time the IPM was updated and that it would not be reasonable to require the Agency to redo its analysis whenever, as inevitably occurs, more recent information becomes available. Imposing such a requirement would be a prescription for endless rulemaking.

It should also be noted that, while coal-fired and nuclear units make up about 77% of existing electricity generation capacity (with gas- and oil-fired units making up 13% and hydroelectric and renewal facilities making up the rest), the only new units projected by the IPM in the runs for the $NO_X$ SIP Call (and applicable to the Section 126 Rule) were gas-fired units. Because new gas-fired units will likely have very high levels of $NO_X$ control and much lower $NO_X$ emissions as compared to existing units (see discussion of new units' low $NO_X$ emissions in section V.D.8 of this notice), these units will have a much smaller impact on $NO_X$ emissions than do existing units. Therefore, even if some new units locate in different States than those projected by the IPM, those units will not significantly increase the $NO_X$ emissions in the States where they locate and so will not significantly increase the stringency of the $NO_X$ emission reduction requirements for other units in such States. In conclusion, EPA believes that its heat input growth rate methodology—including the challenged assumptions on new unit location, electricity demand, and representativeness of the 2001–2007 heat input growth rates—is reasonable.

*D. Actual Heat Input Compared to EPA Projections of Heat Input*

1. Court's and Commenters' Concerns

The Court expressed concern about the perceived discrepancies between EPA's heat input projections and actual heat input data. The Court stated: ''In Michigan and West Virginia, for example, actual utilization in 1998 already exceeded the EPA's projected levels for 2007. This, on its face, raises questions about the reliability of the EPA's projections.'' (*Appalachian Power* v. *EPA,* 249 F.3d at 1053). The Court added that ''[f]urther growth projections that implicitly assume a baseline of negative growth in electricity generation over the course of a decade appear arbitrary, and the EPA can point to nothing in the record to dispel this appearance.'' *Id.*

Commenters expressed similar concerns. Through the August 13, 2001 NODA, EPA put in the docket data indicating ozone season heat input for each State in the $NO_X$ SIP Call region for the years 1997–2000. Commenters pointed out that this data indicated that in 2000, actual heat input for four other States—Alabama, Georgia, Illinois, and Missouri—exceeded EPA's projected heat input for the year 2007. Commenters claimed that this showed

[17] EPA also notes that the Agency's use of assumed CCAP reductions did not significantly affect the cost effectiveness of the $NO_X$ emissions reductions on which the State $NO_X$ emission budgets are based and did not change whether the reductions met EPA's cost effectiveness criteria. As explained in the $NO_X$ SIP Call, EPA examined the impact of the CCAP reductions and found that ''even if the Agency did not assume the CCAP reductions, it was still highly cost effective to develop a regional level $NO_X$ budget for the electric power industry, based on the level of control that EPA has assumed,'' (63 FR 57414). (*See also* Regulatory Impact Analysis for the Regional $NO_X$ SIP Call, at 6–24 and 6–25, September 1998).

[18] This issue, like the CCAP issues, was raised by commenters for the first time in response to the August 3, 2001 NODA and was not raised in any earlier rulemaking or before the Court. Nevertheless, EPA is addressing all these issues on the merits in today's notice.

that EPA's heat input growth rates and projections were unreasonable. Through the March 11, 2002 NODA, EPA put in the docket comparable data for the year 2001 and, subsequently, put in annual data for each State for 1960–2000. (See Docket # A–96–56, Item #'s XV–C–18 and XV–C–19).

After careful review of these and other data in the record and the Court's and commenters' concerns, EPA concludes that the available, actual heat input does not indicate that the Agency's heat input growth methodology is unreasonable.

2. EPA's Heat Input Projections for the Region Are Consistent With Actual Heat Input Data

EPA's heat input projections for EGUs for the $NO_X$ SIP Call region (21 States and the District of Columbia), taken as a whole, are consistent with the actual heat input data that are available. EPA projected heat input for 2007 by applying State heat input growth rates to 1995 or 1996 baseline heat input. Although 2007 is the only year for which EPA was projecting heat input and for which EPA established $NO_X$ emission budgets for EGUs, the EPA methodology can be applied to yield heat input values for other years, such as 2000 and 2001. When compared with actual heat input data now available for 2000 and 2001, EPA projections for those years are consistent with the actual data.

Specifically, EPA's projections for total regionwide heat input for EGUs are 6,250,350,678 mmBtu for 2000 and 6,328,056,922 mmBtu for 2001.[19] These projections are 0.1% lower and 2% higher respectively than actual regionwide heat input for EGUs for 2000 and for 2001 (see Table 1).

In commenting on the data presented by the August 3, 2001 NODA, which included the actual heat input values for years up to 2000, commenters stated that the closeness of the regionwide projection for 2000 and actual regionwide heat input did not cast doubt on their view that EPA's heat input growth methodology provided unreasonably low growth rates. Rather, commenters asserted, the closeness was ''pure coincidence'' resulting from EPA using an inflated 1995–1996 baseline and applying to it a ''less-than-reasonable'' heat input growth rate. According to the commenters, in subsequent years, EPA's regionwide projection would diverge significantly from actual regionwide heat input.

The actual heat input values for 2001 became available after the submission of comments on the August 3, 2001 NODA and were put in the docket. As noted above, the regionwide, actual heat input for 2001 remains quite close to, and in fact is a little lower than, the EPA's regionwide heat input projection for 2001. Of course, regionwide electricity demand, and so regionwide heat input, in the 2001 ozone season were probably somewhat lower than they otherwise would have been because of the unusual reduction in economic activity immediately after the September 11, 2001 terrorist attacks. Even so, regionwide electricity demand still grew slightly over 2000 ozone season levels. (Docket #A–96–56, Item # XV–C–12, summarizing EIA electricity sales data for the ozone season for the $NO_X$ SIP Call States during 1995–2001). With the continued closeness of EPA's projected and the actual values for regionwide heat input, it is difficult to give the commenters' assertion of ''pure coincidence'' much credence. Moreover, as discussed above, EPA's methodology for developing heat input growth rates, and the assumptions underlying the methodology, are reasonable, and so it is logical to expect that the heat input projections resulting from that methodology are reasonable.

3. EPA's Heat Input Growth Rates and 2007 Projections for Most States Are Not Disputed by Commenters

EPA's heat input growth rates and 2007 projections for most States in the $NO_X$ SIP Call region, and for most States covered by the Section 126 Rule, are not specifically disputed by commenters. Of the 21 States and the District of Columbia covered by the $NO_X$ SIP Call, or recently proposed to be covered, the heat input growth rates and 2007 projections for only seven States (Alabama, Georgia, Illinois, Michigan, Missouri, Virginia, and West Virginia) are disputed by commenters. Of the 12 States and the District of Columbia covered by the Section 126 Rule, these values for only three States (Michigan, Virginia, and West Virginia) are disputed by commenters.

As noted above, petitioners and the Court raised concerns about EPA's growth rates and projections for Michigan and West Virginia, stating that EPA's State heat input growth rates resulted in State projections for 2007 below the 1998 actual heat input values. Subsequently, in comments on the August 3, 2001 NODA, commenters raised concerns that the heat input growth rates for five other States (Alabama, Georgia, Illinois, Missouri, and Virginia) were too low because, for each State, the actual heat input in 2000 exceeded or were close to EPA's 2007 projection. For the remaining 15 jurisdictions in the $NO_X$ SIP Call region, EPA's heat input growth rates and projections were not disputed by any petitioner and are not disputed in any comments on the August 3, 2001 and March 11, 2002 NODA's or on any other documents added to the docket concerning the remand on growth rates.

The fact that no objections have been raised with respect to the majority of the States is an indication of the reasonableness of EPA's heat input growth methodology. Further, as discussed below, all of the States about which the Court or commenters expressed concern have recently had decreases in their heat input, in some cases to levels below EPA's 2007 projections. Also as discussed below, because in a number of instances State annual heat input has decreased significantly over multi-year periods, the fact that a State has recently had heat input exceeding or close to EPA's 2007 projections does not mean that the projection is unreasonable.

4. Historical Data Show That a State's Heat Input Can Decrease Significantly Over Multi-Year Periods

As noted above, the Court indicated significant doubt that a State's heat input could decrease over a long period of years. The Court seemed to be concerned that underlying a decrease in State heat input would have to be a decrease in electricity generation. Consequently, the Court questioned the reasonableness of EPA's heat input growth rate methodology because the methodology resulted in a State exceeding its 2007 level nine years in advance. However, historical heat input data shows that, on many occasions, State annual and ozone season heat input has decreased significantly for the last year, as compared to the first year, of multi-year periods.

Table 1 below shows the ozone season heat input for EGUs for 1995–2001 for each State in the $NO_X$ SIP Call region. For each ozone season, EPA summed the heat input data for Acid Rain Program units, as reported to EPA under 40 CFR part 75, and for other EGUs, as reported to EIA.

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[19] As noted in the August 3, 2001 NODA, EPA's methodology called for projecting 2007 heat input, not heat input at interim points in time. However, for purposes of responding to concerns about the reasonableness of the methodology, it is useful to examine what the methodology would project if applied to interim points in time when data concerning actual heat input are available.

**Table 1 - Heat Input for EGUs for 1995-2001 Ozone Seasons**

| State | 1995 Ozone Season Heat Input | 1996 Ozone Season Heat Input | 1997 Ozone Season Heat Input | 1998 Ozone Season Heat Input | 1999 Ozone Season Heat Input | 2000 Ozone Season Heat Input | 2001 Ozone Season Heat Input |
|---|---|---|---|---|---|---|---|
| AL | 350,059,204 | 350,907,982 | 350,328,372 | 369,978,200 | 389,364,461 | 400,689,850 | 391.665,691 |
| CT | 48,093,524 | 61,678,648 | 64,381,511 | 56,591,808 | 75,967,544 | 61,324,920 | 54,430,209 |
| DC | 2,026,082 | 128,205 | 645,846 | 3,113,446 | 3,173,633 | 1,153,593 | 1,272,251 |
| DE | 42,077,856 | 45,204,267 | 39,315,387 | 45,932,682 | 39,394,171 | 35,185,752 | 38,898,944 |
| GA | 356,963,346 | 335,977,013 | 351,207,750 | 403,716,898 | 387,781,101 | 420,260,694 | 374,355,956 |
| IL | 347,985,300 | 379,029,184 | 406,127,886 | 450,929,580 | 418,420,171 | 436,052,570 | 434,282,881 |
| IN | 514,611,872 | 523,672,522 | 536,772,484 | 577,059,852 | 582,006,636 | 523,711,122 | 564,472,583 |
| KY | 410,472,859 | 414,304,687 | 406,480,534 | 431,861,492 | 455,747,249 | 440,776,959 | 447,829,251 |
| MA | 124,983,468 | 113,298,531 | 123,844,201 | 136,001,859 | 147,443,919 | 124,327,323 | 122,126,098 |
| MD | 143,395,098 | 136,794,146 | 146,128,637 | 182,217,612 | 183,980,736 | 148,950,008 | 153,654,978 |
| MI | 362,883,707 | 351,493,214 | 356,684,564 | 408,239,157 | 396,605,048 | 381,142,911 | 374,318,406 |
| MO | 283,776,902 | 276,038,736 | 298,106,042 | 314,731,878 | 335,273,139 | 332,332,587 | 329,668,165 |
| NC | 320,845,066 | 340,609,864 | 325,299,250 | 372,494,163 | 351,368,932 | 330,683,806 | 340,211,360 |
| NJ | 106,479,866 | 88,074,347 | 92,928,677 | 78,088,747 | 113,385,505 | 106,900,335 | 117,188,481 |
| NY | 374,784,148 | 286,550,572 | 291,440,062 | 360,671,489 | 408,149,310 | 347,004,497 | 354,257,069 |
| OH | 554,457,657 | 566,131,821 | 543,431,600 | 596,937,824 | 590,290,990 | 571,651,486 | 540,109,544 |
| PA | 527,611,362 | 566,917,544 | 534,849,419 | 578,757,472 | 493,042,169 | 516,308,527 | 499,158,768 |
| RI | 16,066,757 | 43,102,370 | 12,029,849 | 11,140,079 | 34,133,203 | 30,158,008 | 28,428,750 |
| SC | 136,790,135 | 156,359,804 | 148,194,438 | 175,584,043 | 186,256,000 | 187,329,450 | 186,606,291 |
| TN | 281,896,512 | 269,960,693 | 268,808,769 | 256,156,350 | 261,568,838 | 281,169,294 | 269,012,650 |
| VA | 154,233,310 | 172,633,028 | 179,436,621 | 219,246,917 | 225,665,092 | 212,075,792 | 213,583,835 |
| WV | 347,687,307 | 341,738,426 | 364,757,289 | 386,442,663 | 391,592,231 | 380,868,435 | 360,185,154 |
| Total | 5,808,181,338 | 5,820,605,605 | 5,841,199,188 | 6,415,894,211 | 6,467,884,728 | 6,268,189,238 | 6,195,717,293 |

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This ozone season data shows decreases in State heat input for several States for the last year, as compared to the first year, of multi-year periods of 3 to 6 years.[20] For example, during 1995 through 2001, Delaware, Georgia, Illinois, Indiana, Massachusetts, Maryland, Michigan, North Carolina, Ohio, Pennsylvania, Virginia, and West Virginia had decreases in heat input for the last year, as compared to the first year, of the 3-year period 1998–2001. Heat input decreases for other multi-year periods occurred during 1995 through 2001 for Delaware (6-year period 1995–2001), North Carolina (5-year period 1996–2001), New Jersey (3-year period 1995–1998), New York (6-year period 1995–2001), Pennsylvania (6-year period 1995–2001) Rhode Island (4-year period 1996–2000), and Tennessee (6-year period 1995–2001).

EPA also examined long-term, fossil fuel use data. The long-term data from EIA show fossil fuel use (in mmBtu) on an annual, not an ozone season, basis for the 21 States subject to the $NO_X$ SIP Call for 1960–2000.[21] (Because of the large amount of data, the full set of 1960–2000 annual data is provided in Docket #A–96–56, Item #XV–C–18, rather than being included in today's notice.) These data demonstrate that decreases in State annual heat input, like decreases in State ozone season heat input, are not unusual.

Specifically, the 1960–2000 annual heat input data show significant decreases in State annual heat input for the last year, as compared to the first year, of multi-year periods of 3 to 10 years (or longer). In fact, all but one of the 21 States under the $NO_X$ SIP Call has had significant decreases in annual heat input over many multi-year periods ranging from 3 to 10 years; one of the States (Indiana) has had such decreases over multi-year periods, within that range, of only 3-years. Tables 2, 3, 4, 5, 6, 7 ,8, and 9 summarize this information by showing the largest percentage decreases (for the last year, as compared to the first year, of multi-year periods) that the listed States have had in annual heat input over 3-year, 4-year, 5-year, 6-year, 7-year, 8-year, 9-year and 10-year periods respectively.

TABLE 2.—LARGEST DECREASES IN STATE ANNUAL HEAT INPUT OVER THREE YEARS

| State | 3-year period | % decrease in heat input |
|---|---|---|
| Alabama | 1979—1982 | 17 |
| Connecticut | 1989—1992 | 6 |
| Delaware | 1995—1998 | 24 |
| Georgia | 1989—1992 | 9 |
| Illinois | 1986—1989 | 17 |
| Indiana | 1979—1982 | 3 |
| Kentucky | 1997—2000 | 8 |
| Massachusetts | 1997—2000 | 42 |
| Maryland | 1978—1981 | 26 |
| Michigan | 1979—1982 | 19 |
| Missouri | 1990—1993 | 12 |
| New Jersey | 1989—1992 | 46 |
| New York | 1990—1993 | 34 |
| North Carolina | 1981—1984 | 17 |
| Ohio | 1979—1982 | 11 |
| Pennsylvania | 1996—1999 | 14 |
| Rhode Island | 1990—1993 | 88 |
| South Carolina | 1981—1984 | 19 |
| Tennessee | 1979—1982 | 16 |
| Virginia | 1979—1982 | 35 |
| West Virginia | 1988—1991 | 13 |

TABLE 3.—LARGEST DECREASES IN STATE ANNUAL HEAT INPUT OVER FOUR YEARS

| State | 4-year period | % decrease in heat input |
|---|---|---|
| Alabama | 1980—1984 | 9 |
| Connecticut | 1989—1993 | 55 |
| Delaware | 1996—2000 | 25 |
| Georgia | 1988—1992 | 12 |
| Illinois | 1984—1988 | 18 |
| Indiana | None | None |
| Kentucky | 1996—2000 | 5 |
| Massachusetts | 1989—1993 | 34 |
| Maryland | 1978—1982 | 23 |
| Michigan | 1979—1983 | 19 |
| Missouri | 1989—1993 | 13 |
| New Jersey | 1989—1993 | 48 |
| New York | 1990—1994 | 37 |
| North Carolina | 1983—1987 | 48 |
| Ohio | 1979—1983 | 12 |
| Pennsylvania | 1980—1984 | 14 |
| Rhode Island | 1989—1983 | 86 |
| South Carolina | 1980—1984 | 15 |
| Tennessee | 1978—1982 | 24 |
| Virginia | 1979—1983 | 35 |
| West Virginia | 1989—1993 | 14 |

TABLE 4.—LARGEST DECREASES IN STATE ANNUAL HEAT INPUT OVER FIVE YEARS

| State | 5-year period | % decrease in heat input |
|---|---|---|
| Alabama | 1977—1982 | 15 |
| Connecticut | 1989—1994 | 55 |
| Delaware | 1993—1998 | 28 |
| Georgia | 1987—1992 | 14 |
| Illinois | 1983—1988 | 23 |
| Indiana | None | None |
| Kentucky | 1995—2000 | 2 |
| Massachusetts | 1989—1994 | 35 |
| Maryland | 1976—1981 | 24 |
| Michigan | 1978—1983 | 17 |
| Missouri | 1988—1993 | 13 |
| New Jersey | 1989—1994 | 44 |
| New York | 1989—1994 | 40 |
| North Carolina | 1982—1987 | 25 |
| Ohio | 1979—1984 | 11 |
| Pennsylvania | 1980—1985 | 13 |
| Rhode Island | 1988—1993 | 90 |
| South Carolina | 1981—1986 | 14 |
| Tennessee | 1977—1982 | 23 |
| Virginia | 1977—1982 | 38 |
| West Virginia | 1988—1993 | 12 |

TABLE 5.—LARGEST DECREASES IN STATE ANNUAL HEAT INPUT OVER SIX YEARS

| State | 6-year period | % decrease in heat input |
|---|---|---|
| Alabama | 1976—1982 | 11 |
| Connecticut | 1989—1994 | 52 |
| Delaware | 1993—1999 | 28 |
| Georgia | 1985—1991 | 14 |
| Illinois | 1983—1989 | 25 |
| Indiana | None | None |
| Kentucky | 1993—1999 | 2 |
| Massachusetts | 1989—1995 | 37 |
| Maryland | 1974—1980 | 27 |
| Michigan | 1976—1982 | 13 |
| Missouri | 1987—1993 | 9 |
| New Jersey | 1989—1995 | 45 |
| New York | 1990—1996 | 44 |
| North Carolina | 1981—1987 | 29 |
| Ohio | 1977—1983 | 8 |
| Pennsylvania | 1980—1986 | 15 |
| Rhode Island | 1987—1993 | 91 |
| South Carolina | 1977—1983 | 11 |
| Tennessee | 1976—1982 | 24 |
| Virginia | 1977—1983 | 38 |
| West Virginia | 1985—1991 | 11 |

TABLE 6.—LARGEST DECREASES IN STATE ANNUAL HEAT INPUT OVER SEVEN YEARS

| State | 7-year period | % decrease in heat input |
|---|---|---|
| Alabama | 1975—1982 | 8 |
| Connecticut | 1986—1993 | 53 |
| Delaware | 1993—2000 | 31 |
| Georgia | 1985—1992 | 17 |
| Illinois | 1981—1988 | 22 |

[20] EPA, of course, recognizes that there also can be significant increases in State heat input over multi-year periods. However, commenters suggested that significant decreases could not occur. The point is that, since significant decreases can occur, the fact that State's recent heat input exceeds or is close to EPA's 2007 projection does not make the projection unreasonable.

[21] EIA collected, on a long term historical basis, monthly and annual plant-by-plant data on quarterly and heat content of fuel used. EIA used these data to determine annual heat input for each State and did not determine State heat input on an ozone season basis. EPA notes that its analysis does not include the District of Columbia, for which a full set of historical, annual heat input data was not available. However, the heat input growth rate for the District of Columbia is not disputed by commenters.

TABLE 6.—LARGEST DECREASES IN STATE ANNUAL HEAT INPUT OVER SEVEN YEARS—Continued

| State | 7-year period | % decrease in heat input |
|---|---|---|
| Indiana | None | None |
| Kentucky | 1993—2000 | 1 |
| Massachusetts | 1989—1996 | 40 |
| Maryland | 1974—1981 | 37 |
| Michigan | 1975—1982 | 15 |
| Missouri | 1984—1991 | 7 |
| New Jersey | 1989—1996 | 54 |
| New York | 1989—1996 | 47 |
| North Carolina | 1981—1988 | 27 |
| Ohio | 1977—1984 | 7 |
| Pennsylvania | 1980—1987 | 14 |
| Rhode Island | 1986—1993 | 89 |
| South Carolina | 1977—1984 | 6 |
| Tennessee | 1976—1983 | 15 |
| Virginia | 1976—1983 | 38 |
| West Virginia | 1984—1991 | 10 |

TABLE 7.—LARGEST DECREASES IN STATE ANNUAL HEAT INPUT OVER EIGHT YEARS

| State | 8-year period | % decrease in heat input |
|---|---|---|
| Alabama | 1974–1982 | 12 |
| Connecticut | 1986–1994 | 52 |
| Delaware | 1991–1999 | 29 |
| Georgia | 1984–1992 | 11 |
| Illinois | 1980–1988 | 28 |
| Indiana | None | None |
| Kentucky | None | None |
| Massachusetts | 1992–2000 | 41 |
| Maryland | 1974–1982 | 35 |
| Michigan | 1974–1982 | 13 |
| Missouri | 1984–1992 | 11 |
| New Jersey | 1984–1992 | 53 |
| New York | 1988–1996 | 42 |
| North Carolina | 1980–1988 | 24 |
| Ohio | 1976–1984 | 5 |
| Pennsylvania | 1991–1999 | 12 |
| Rhode Island | 1985–1993 | 88 |
| South Carolina | 1978–1986 | 2 |
| Tennessee | 1976–1984 | 13 |
| Virginia | 1977–1985 | 36 |
| West Virginia | 1985–1993 | 11 |

TABLE 8.—LARGEST DECREASES IN STATE ANNUAL HEAT INPUT OVER NINE YEARS

| State | 9-year period | % decrease in heat input |
|---|---|---|
| Alabama | 1973–1982 | 17 |
| Connecticut | 1984–1993 | 51 |
| Delaware | 1991–2000 | 33 |
| Georgia | 1984–1993 | 3 |
| Illinois | 1990–1989 | 31 |
| Indiana | None | None |
| Kentucky | None | None |
| Massachusetts | 1991–2000 | 47 |
| Maryland | 1972–1981 | 31 |
| Michigan | 1974–1983 | 13 |

TABLE 8.—LARGEST DECREASES IN STATE ANNUAL HEAT INPUT OVER NINE YEARS—Continued

| State | 9-year period | % decrease in heat input |
|---|---|---|
| Missouri | 1984–1993 | 20 |
| New Jersey | 1984–1993 | 54 |
| New York | 1987–1996 | 35 |
| North Carolina | 1981–1990 | 26 |
| Ohio | 1979–1988 | 2 |
| Pennsylvania | 1990–1999 | 14 |
| Rhode Island | 1984–1993 | 88 |
| South Carolina | None | None |
| Tennessee | 1973–1982 | 18 |
| Virginia | 1974–1983 | 35 |
| West Virginia | 1984–1993 | 9 |

TABLE 9.—LARGEST DECREASES IN STATE ANNUAL HEAT INPUT OVER TEN YEARS

| State | 10-year period | % decrease in heat input |
|---|---|---|
| Alabama | 1973–1983 | 9 |
| Connecticut | 1983–1993 | 48 |
| Delaware | 1988–1998 | 31 |
| Georgia | None | None |
| Illinois | 1979–1989 | 32 |
| Indiana | None | None |
| Kentucky | None | None |
| Massachusetts | 1990–2000 | 48 |
| Maryland | 1972–1982 | 28 |
| Michigan | 1973–1983 | 11 |
| Missouri | 1983–1993 | 16 |
| New Jersey | 1983–1993 | 55 |
| New York | 1989–1999 | 31 |
| North Carolina | 1980–1990 | 23 |
| Ohio | None | None |
| Pennsylvania | 1989–1999 | 21 |
| Rhode Island | 1983–1993 | 88 |
| South Carolina | 1973–1983 | 6 |
| Tennessee | 1973–1983 | 8 |
| Virginia | 1972–1982 | 36 |
| West Virginia | 1981–1991 | 6 |

Although the longer term EIA annual heat input data and EPA's shorter term ozone season data show the same types of multi-year period decreases, EPA conducted further analysis in order to confirm that ozone season and annual State heat input have similar fluctuations. Specifically, EPA used EIA monthly data on fuel quantity (which was available for years starting with 1970) and generic heat content factors in order to derive estimated ozone season heat input data for 1970–1998. [See Docket # A–96–56, Item # XV–C–19 (explaining how EPA derived estimated ozone season data and providing that estimated data)]. Because of the nature of the simplifying assumptions that EPA made in order to derive long-term ozone season data, EPA's analysis in this notice relies primarily on the long-term State annual heat input data, not the derived long-term State ozone season heat input data. However, EPA believes that the latter data confirm EPA's annual-data analysis because the long-term ozone season data show multi-year decreases in State heat input that are very similar in length and magnitude to those shown by the long-term State annual heat input data. *Id.*

In summary, historical data show that heat input (whether for the ozone season or the entire year) in individual States is quite variable and has decreased significantly over multi-year periods on a number of occasions. EPA respectfully submits that the data provide a basis for the Court to reconsider its concern that the fact that heat input values for some States for certain years have already exceeded EPA's 2007 heat input projections supports objections to the reasonableness of EPA's heat input growth methodology.

5. Approach of Using Recent State Heat Input To Project Future State Heat Input Is Not Statistically Sound

Commenters claimed that, because the recent heat input for seven States (Alabama, Georgia, Illinois, Michigan, Missouri, Virginia, and West Virginia) has exceeded or been close to EPA's 2007 heat input projections, EPA's projections are unreasonable. In making this claim, commenters implicitly assumed that future heat input can reasonably be projected using a relatively short period of years of actual State heat input data.

In order to test the validity of this assumption, EPA simulated that approach using historical annual heat input data for the 21 $NO_X$ SIP Call States for 1960–2000 (or in some States where less data was available, from 1970–2000). Using this data, EPA used 6 years worth of historical data (e.g., 1960–1966) to project annual heat input for the sixth year after the 6-year period (e.g, 1972). EPA did this on a rolling basis, using historical 6-year periods from 1960 to 1994 (or 1970 to 1994), to project annual heat input for the years 1972 (or 1982) to 2000. EPA tested how well the historical data predicted future annual heat input value by comparing the projected value with the actual value for the same year. Specifically, EPA performed an r-squared test on the actual annual heat input vs. the projected annual heat input for the same year. This test provides a measure of how much a change in one variable (here, actual annual heat input) is related to a change in a second variable (here, projected annual heat input). For instance, an r-squared value of 1 implies that all of the change in the first variable

is related to change in the second value. Conversely, an r-squared value of 0 implies that none of the change in the first variable is related to change in the second variable.

EPA found that, in testing the actual annual heat input data vs. the projected annual heat input data for each State, 10 States (including Illinois, Michigan and Virginia) out of the 21 $NO_X$ SIP Call States had r-squared values below 0.12. An additional six States (including Missouri and West Virginia) had r-squared values below 0.32. Because the r-squared test showed that less than one-third of the variability in projected annual heat input can be explained by the variability in actual annual heat input for 16 of the $NO_X$ SIP Call States, EPA believes that it is clear that historical heat input cannot be used as a reliable indicator of future heat input. Moreover, the r-squared values for the remaining States were: Alabama, 0.63; Georgia 0.42; Indiana, 0.80; Kentucky, 0.67; New Jersey (0.59). Except for Indiana, this indicates only a weak correlation between actual heat input data and projected heat input data because 33% to 58% of the variability of projected heat input data cannot be explained by the variability in actual heat input data. Even in Indiana where the correlation was strongest, the projections ranged from 13.4% below the actual value to 10.9% above the actual value. For Alabama, 15 of the 29 projections were more than 10% above or below the actual value, and the projections ranged from 26.7% below the actual value to 27.9% above the actual value. (See Docket # A–96–56, Item #'s XV–C–19 and XV–C–20.) For other States, disparities between the projected values and the actual values were even wider. The variability in the projections for the States where concerns have been raised are summarized below.

| State | Number of projections off by more than 10% | Range of projections |
|---|---|---|
| Alabama ..... | 15 of 29 ... | −26.7% to 27.3% |
| Georgia ..... | 14 of 29 ... | −50.9% to 37.0% |
| Illinois ..... | 21 of 29 ... | −46.4% to 40.1% |
| Michigan ..... | 25 of 29 ... | −33.4% to 54.6% |
| Missouri ..... | 23 of 29 ... | −36.4% to 31.9% |
| Virginia ..... | 25 of 29 ... | −60.2% to 71% |
| West Virginia. | 21 of 29 ... | −44.0% to 37.9% |

In short, historical State heat input for a relatively short period of years is not a reliable method for predicting future State heat input.

6. EPA's Heat Input Projections Do Not Implicitly Assume Negative Growth in Electricity Generation

In *Appalachian Power* v. *EPA,* 249 F.3d at 1053, the Court expressed concern that, for States whose actual heat input for EGUs already exceeded EPA's projections for 2007, EPA's projection ''implicitly assume a baseline of negative growth in electricity generation.'' Although the Court expressed concern about electricity generation, it should be recalled that in the $NO_X$ SIP Call and Section 126 Rule, the regulatory requirements were computed with reference to heat input, and not electricity generation. Accordingly, in expressing concern about electricity generation, the Court apparently was concerned that a decrease in heat input would necessarily mean a decrease in electricity generation and that a projection of a heat input decrease would implicitly assume decreased electricity generation.

In response, EPA respectfully submits that fossil-fuel use at the State level—which is at issue in the present case—is but one factor associated with electricity generation. Many other factors affect electricity generation as well. Accordingly, EPA respectfully submits that a decrease in State heat input (whether actual or projected) does not implicitly mean a decline in electricity generation.

Indeed, State heat input can decrease while electricity generation in the State or in the region increase. There are at least two reasons why this can happen. First, even within a State, heat input does not necessarily correlate with electricity generation because of electricity generated using non-fossil fuel sources and increased efficiency of fossil fuel generation. Second, because electricity is sold on a regionwide basis, electricity generation can decrease in one State and increase in another State, with increased electricity being sold and used in the first State.

*a. State heat input does not necessarily correlate with electricity generation in the State.* Electricity generation in a State can increase at the same time that heat input (i.e., fossil fuel use) decreases in that State. One reason for this is that significant amounts of electricity can be generated from non-fossil sources, such as nuclear units or hydro-electric facilities.

Commenters suggested that heat input will have to increase in the next several years because nuclear power plants are already operating at near capacity. This may be generally correct on a regionwide basis, and EPA projects increased regionwide heat input in 2007. However, this is not true on a State-by-State basis for all States. For example, in Illinois several nuclear power plants recently received approval by the Nuclear Regulatory Commission to increase their generation capacity. Four units (Dresden Units 2 and 3 and Quad Cities Units 1 and 2) plan to increase their capacity by 17 to 18% in 2002 and 2003.[22] Carrying out these plans will tend to reduce heat input, while increasing electricity generation. Further, two units at the Cook Nuclear Plant in Michigan underwent an extended, unexpected outage in 1998–2000. The outage of the two units tended to increase fossil fuel use, and bringing them back online tended to decrease fossil fuel use. An increase in nuclear generation can reduce heat input without reducing total electricity generation in a State.

Heat input can also decrease, without decreasing electricity generation, because the efficiency of fossil-fuel fired electricity generating units can be increased, allowing generation of the same amount of electricity with use of less fossil fuel. One way this can occur is through replacement of existing boilers, which are on average between 33% and 35% efficient at converting fossil fuel to electricity, with combined cycle turbines, which can be up to 60% efficient. For example, on February 25, 2000, Illinois approved a permit for Ameren Corporation to replace two coal-fired units at the Grand Tower Generating Station with two combined cycle gas turbines.[23]

Efficiency can also be improved through modifications at existing generation facilities. For example, improvements can be made to the boiler that allow better transfer of heat from the burning coal to the steam used to power the turbine-generators; the

[22] See http://www.nrc.gov/reading-rm/doc-collections/news/archive/01–136.html.

[23] See http://yosemite.epa.gov/r5/il_permt.nsf/50d44ae9785337bf8625666c0063caf4/b04c4b1ab67564e48625685d0068df82/$FILE/99080101fnl.PDF; and http://www.dom.com/operations/station-fossil/unit.html.

efficiency of auxiliary equipment such as fans can be improved; the efficiency of the turbine generators that convert the steam to electricity can be improved; and combustion optimization software, which can reduce $NO_X$ emissions while increasing efficiency, can also be added.[24] Greater efficiency, whether from improvements to existing facilities or from new units, can result in the same or more electricity generation in a State with less heat input. EPA notes that the incentives for companies that generate electricity for sale to improve the efficiency of electricity generation has increased with deregulation of electricity generation and increased competition in the electricity market.

*b. Electricity is generated and sold on a regional, not on a State-by-State basis.* Electricity generation may decrease in one State but, because electricity is generated and sold on a regional basis, the decrease may simply reflect the fact that customers are using electricity generated in another State. Three factors—the deregulation of electricity generation, the restructuring of the electricity industry, and the efforts of the Federal Energy Regulatory Commission to promote market-based rates of electricity and nondiscriminatory access for all electricity supplies to the transmission system—have resulted in significant amounts of electricity being generated in one State and sold in another. For example, in 1993, West Virginia generated three times the amount of electricity sold in that State, and in 1999, Alabama generated one and a half times the amount of electricity sold in that State. Historically, electricity was generated and sold by vertically integrated utilities providing for generation, transmission, and distribution for all customers in a designated franchise service area, which often was within a single State.

With electricity deregulation, restructuring, and Federal policies promoting competition and open transmission access, the industry has been changing ''from a vertically integrated and regulated monopoly to a functionally unbundled industry with a competitive market for power generation.'' *The Changing Structure of the Electric Power Industry 1999: Mergers and Other Corporate Combinations,* Energy Information Administration, December 1999 at pg. 5. Non-utilities are participating in the electricity market to an increasing extent by generating electricity for sale to utilities or to end-users. *The Changing Structure of the Electric Power Industry 2000: An Update,* Energy Information Administration, October 2000 at pp. ix, xi, and 117. Significant amounts of new generating capacity (about 82% of total capacity additions in 1998) have been built by non-utilities in order to generate electricity for sale in the regional electricity market. *Id.* at xi.

7. Even if There Were a Substantial Risk That EPA's State Heat Input Projection Would Be Less Than a State's Actual 2007 Heat Input, This Would Not Make EPA's Projection Unreasonable

For the reasons discussed above, commenters failed to show that having recent State heat input exceeding or close to EPA's 2007 heat input projection means that the actual 2007 State heat input will exceed EPA's 2007 projection. However, EPA believes that, even if they had shown that there was a substantial risk that the actual heat input would turn out to exceed the projection in 2007, this would not make EPA's projection unreasonable. Projections may not match perfectly actual, future values and are not required to do so. *See Appalachian Power* v. *EPA*, 249 F.3d at 1052 (stating that the fact that ''a model is limited or imperfect is not, in itself, a reason to remand agency decisions based upon it''). If the projections of the results of complex activities (here, State heat input resulting from the operation of the regional electricity market) were required to match actual, future results, this would, in effect, preclude the use of projections or a model to develop such projections.

In this case, where EPA developed State heat input growth rates using the IPM and applied them to a State baseline to project 2007 State heat input, there are unavoidable sources of variability between projections and actual, future heat input data. These sources of variability are: the necessity to make simplifying assumptions in a model; the necessity to model regional activities (i.e., electricity generation, transmission and distribution) but make State-by-State projections of heat input resulting from those activities; and the inherent, year-to-year variability of actual State heat input.

*a. Models, such as the IPM, necessarily contain simplifying assumptions.* The IPM simulates the complex operation of the electricity generation, transmission, and distribution sector. Like any model designed to simulate complex phenomena, the IPM must use simplifying assumptions in order to make it feasible to construct and run the model. Furthermore, the model uses inputs that are themselves projections (e.g., electricity demand and fuel costs). Because of these simplifying assumptions and projected inputs, the results from the IPM, like those from any model, may well differ from reality. For example, the IPM assumes typical electricity demand each year, which reflects typical conditions like typical weather and typical economic growth. The basis for assuming typical conditions is the assumption that periods of high or low demand or hot or cold weather tend to average out over time. In reality, of course, there are years of unusually warm weather or unusually high economic growth, resulting in unusually high electricity demand. For example, in 1998, large parts of the $NO_X$ SIP Call region experienced particularly warm weather, and the country experienced an economic boom. The model will not predict extra heat input in such years.

The IPM accounts for unplanned outages in a similar way. It assumes that, on average, plants will be available some portion of time less than 100%. The model also includes assumptions about a capacity reserve margin, thereby assuring that the costs of building plants that may be needed to meet demand are accounted for. However, the model does not assume that any specific units are out for any extended length of time. In reality, unplanned outages do not affect every unit for the same amount of time every year. Therefore, the model will not predict exactly the dispatch pattern of units in the real world. These differences could be substantial in a year or more. For example, if several large nuclear units went out of service in one geographic region for an extended period of time (as was the case, discussed below, when two units at the Cook Nuclear Plant went out of service during 1998 through 2000), fossil fuel-fired units might have a significant increase in heat input to provide the electricity that would otherwise have been generated by the nuclear units. The model would not predict this large increase in heat input.

The IPM also picks the optimum way to minimize costs given the constraints that have been included in the model. In the real world, different people and different companies may have differing viewpoints about what future constraints may be. This may lead them to act differently than the model projected. For instance, the model is given specific constraints regarding the projected future demand for electricity. It assumes that there are just enough units to meet that demand plus a reserve

[24] See http://www.sargentlundy.com/fossil/plant.asp; and http://www.pegasustec.com/docs/NICE3.pdf.

margin. In the real world, future demand is less certain, and this can lead to construction of fewer or more units than projected by the IPM.

For any particular State, a series of events may occur that differ from the model's assumptions, such as a period of higher electricity demand first caused by warmer weather than assumed in the model, followed by a period of higher economic activity than assumed in the model. This series of events may lead, over a year or more, to actual heat input that is higher than modeled for that State. In subsequent periods, the different-than-modeled factors may return to levels closer to those modeled, so that heat input returns to levels closer to those modeled.

In short, in designing the IPM, EPA necessarily made many assumptions. These assumptions may well result in differences between projected and actual State heat input for a specific year or specific years. However, this would not make the heat input projection methodology or the resulting heat input projection unreasonable.

*b. While the electricity industry functions on a region-wide basis, budgets must be established on a State-by-State basis.* Another source of differences between projected and actual State heat input is that, while $NO_X$ emission budgets must be projected on a State-by-State basis, electricity is generated and sold on a regionwide, not State-by-State, basis. As discussed above in section V.D.6 of this notice, deregulation of electricity generation, restructuring of the electric industry, and Federal policies promoting market-based electricity prices and open access to transmission have resulted in development of a regional electricity market. The IPM necessarily models electricity generation and sales on a regional basis in order to reflect the regional nature of the electricity sector. For instance, as explained above, the model divides the U.S. into subregions based on the NERC regions and on transmission constraints, not based on State boundaries. (See section V.C.5 of this notice discussing subregions in the IPM.)

However, EPA had to develop State-by-State $NO_X$ emission budgets under the $NO_X$ SIP Call. EPA used those same budgets under the Section 126 Rule in order to allow a single cap-and-trade program to be developed and implemented under both the $NO_X$ SIP Call and the Section 126 Rule. EPA had to disaggregate regionally-developed heat input projections down to the State level in order to establish State $NO_X$ emission budgets, and this disaggregation may well create additional differences between projected and actual State heat input. These differences should not be taken to indicate that the heat input growth methodology or the resulting projections are unreasonable.

*c. Actual State heat input is inherently variable.* State heat input is quite variable, as discussed in section V.D.4 of this notice. This is because heat input results from the activities of the complex, regional electricity market. The variability of State heat input from year to year may well result in additional differences between projected and actual State heat input for any particular year. Again, these differences should not be taken as an indication of unreasonableness of the heat input growth methodology or the projections.

8. Commenters Overstated the Impacts of Actual State Heat Input Exceeding Projected State Heat Input

Even if EPA's heat input projections turn out to be lower for some States than actual 2007 heat input, the impacts of any such differences will not be as significant as commenters suggest. This is because the impacts will be mitigated by: (i) The fact that much of heat input growth will come from new, very low $NO_X$ emission units; and (ii) the flexibility provided by the $NO_X$ cap-and-trade program.

*a. Higher than projected State heat input will not mean proportionately higher $NO_X$ emissions.* Commenters claimed that EPA's projections underestimate heat input for certain States and would result in sources in those States facing underestimated, and so overly stringent, $NO_X$ emissions budgets. Commenters also stated that underestimated State heat input would cause electric supply interruptions. In addition, commenters suggested that underestimated State heat input would jeopardize or prohibit economic growth in those States by increasing EGU operating costs and jeopardizing access to adequate electricity by preventing new EGUs from locating in the State.[25]

The $NO_X$ SIP Call and the Section 126 Rule limit units' $NO_X$ emissions, not their heat input. EPA anticipates that, as State heat input grows from 1996 to 2007, a State's total EGU $NO_X$ emissions will grow at a much slower rate than heat input because of the addition of new, very low $NO_X$ emission units accounting for much of the increased heat input. The vast majority of new units added since 1996 are or will be gas-fired combustion turbines and combined cycle units that include gas-fired combustion turbines and duct burners. Because $NO_X$ emissions from these units will be very low and significantly below the 0.15 lbs/mmBtu level used to set the State $NO_X$ emission budgets for EGUs, the rate of increase in $NO_X$ emissions in any State will be significantly less than the actual 1996–2007 growth rate in State heat input.

Specifically, EPA projects that gas-fired generation will increase at a greater rate than coal-fired generation. (See Analyzing Electric Power at pg. 7, Table 1, Winter 1998 Base Case Forecast for the U.S. of Electric Power Generation by Fuel Type (billion KWh), which indicates that coal generation will increase by 85 billion KWh between 2001 and 2005 and by 95 billion KWh between 2001 and 2007, while oil/gas generation[26] will increase by 95 billion KWh between 2001 and 2005 and 158 billion KWh between 2001 and 2007.)[27] In other words, EPA projects that gas-fired generation will increase at a rate 1.66 times faster than coal-fired generation (for every 3 Mwh increase in coal-fired generation, there would be a 5 Mwh increase in gas-fired generation.) Because gas-fired combined cycle units are more efficient than coal units, heat input from both categories of units will increase at a similar rate, even though generation from the gas-fired units will increase at a faster rate. This projected trend of increasing use of gas-fired combined-cycle use is consistent with observed results. For example, for the years 2000–2004, electric utilities reported plans to add 38,051 MW of generating capacity in new units. Ninety-three percent of this total is gas-fired capacity (*Inventory of Electric Utility Power Plants in the U.S. 1999,* Energy Information Administration, September 2000, at pg. 1). This is a continuation of the trend in 1997–1999, when most new capacity for utilities (81% in 1997 and 88% in 1998 and 1999) has been gas-fired combustion turbines and combined cycle units.[28]

[25] One commenter claimed EPA's heat input growth methodology thereby results in ''draconian economic sanctions'' and a ''no-growth policy'' for Michigan. As discussed below in section V.D.9 of this notice, there is no basis for claiming that EPA's heat input growth rate underestimates Michigan's future heat input. In fact, Michigan's actual heat input has never exceeded EPA's 2007 projection and, since 1998, has declined to where for 2001 it is 8.7% below that projection.

[26] Oil/gas units are included in the same category because many units that burn one fuel can also burn the other. However, as the analysis points out, more inefficient oil/gas boilers are being retired and most of the increase in generation comes from highly efficient, highly controlled natural gas combined cycle units. Analyzing Electric Power at 8.

[27] EPA notes that oil generation will account for a trivial amount of oil/gas generation.

[28] *Inventory of Power Plants in the U.S. as of January 1, 1998,* EIA, December 1998, at pg. 3; *Inventory of Electric Utility Power Plants in the U.S.*

New EGUs are subject to new source review requirements and, therefore, are well controlled. New combined cycle turbines generally are permitted at 9 ppm or less (i.e., less than 0.035 lb/mmBtu).[29] This means these new units will emit about one-fifth of the average 0.15 lb/mmBtu $NO_X$ emission rate assumed for EGUs in the $NO_X$ SIP Call and Section 126 Rules. Most existing combined-cycle units are controlled to levels similarly below 0.15 lb/mmBtu. Consequently, $NO_X$ emissions will grow at a much lower rate than heat input as these units come online.

For example, consider the hypothetical case where 1996–2007 heat input growth would be 10% and about equally divided between generation from new gas-fired units and increased capacity utilization at existing coal-fired units. Because emissions from the gas-fired units are only one-fifth of the 0.15 lb/mmBtu $NO_X$ emission rate assumed in the $NO_X$ SIP Call and the Section 126 Rule, $NO_X$ emissions would grow only 1% while heat input would grow 5% at new gas-fired units. A 5% growth in heat input at existing coal-fired plants emitting at the 0.15 lb/mmBtu $NO_X$ emission rate would result in a 5% growth in $NO_X$ emissions from the coal-fired units in this example. Thus, the total $NO_X$ emissions growth would be about 6% when total heat input growth was 10%.

In summary, even if State heat input grows at a rate faster than projected by EPA, $NO_X$ emissions will grow at a much slower rate than State heat input and the impact on the State's EGU $NO_X$ emission budget from the difference between actual and projected heat input growth will be significantly reduced. This is reflected in EPA's modeling showing that increased heat input growth would not significantly increase the cost of meeting the State $NO_X$ EGU budget. Even when electricity demand growth is assumed to be higher than EPA projected (e.g., with no electricity demand reductions under CCAP), the average cost of meeting the $NO_X$ EGU budgets only increased $40/ton.

Since higher than projected State heat input growth results in much less than proportionately higher State $NO_X$ emissions, the commenters greatly overstated the impacts of higher-than-projected State heat input on the stringency of the $NO_X$ emission rate reflected in the State $NO_X$ emission budget. Similarly, commenters greatly overstated the impacts of higher-than-projected State heat input on the State economy. Since new units tend to have very low $NO_X$ emissions, higher-than-projected State heat input will not prevent the location of new units in the State to the extent suggested by commenters. Moreover, the amount of electricity available in a State is not tied to the amount of electricity generated in that State since electricity is generated and sold on a regionwide, not State-by-State, basis. Therefore, higher than projected State heat input will not limit the amount of electricity available for industrial, commercial and residential customers in that State. (See section V.D.6 discussing that State heat input is not necessarily correlated with availability of electricity and economic growth in the State.) Since the commenters ignore the fact that a State's electricity supply is not limited to the generation capacity in that State and since, as discussed above, EPA's regional heat input projections are consistent with actual regional heat input, the commenters failed to show that underestimated State heat input will prevent access to adequate electricity supply.

Finally, some commenters claiming that low heat input growth rates would prevent new units from locating in certain States also claimed that large numbers of new units are being located in those States and that this shows that EPA's heat input growth rates are too low. However, the fact that new units are continuing to be located in these States indicates that the selected locations in these States continue to be economically desirable for new units, despite the $NO_X$ emission budgets that EPA established under the $NO_X$ SIP Call in 1998 and modified in the Technical Amendments in 1999. One reason for this, of course, is that most of these new units are gas-fired units with very low $NO_X$ emission rates.

b. *The cap-and-trade program will further limit the impact of higher than projected State heat input.* The $NO_X$ SIP Call and the Section 126 Rule are being implemented through a cap-and-trade program that will reduce the cost of meeting the State $NO_X$ emission budgets and thus will limit the cost impact of higher than projected State heat input. Under the $NO_X$ SIP Call, each State is required to revise its SIP to meet the $NO_X$ emission budget for 2007, which was developed using, among other things, the State's heat input growth rate projected by EPA. Each State has the option of meeting its $NO_X$ emission budget by submitting a revised SIP that adopts EPA's recommended cap-and-trade program covering $NO_X$ emissions from EGUs. Most States have already taken this option by submitting a SIP and final regulations adopting such a program, and EPA has approved a number of State rules, including Alabama's (66 FR 36919, July 16, 2001) and Illinois' (66 FR 56434, Nov. 8, 2001). West Virginia has developed final regulations adopting EPA's recommended cap-and-trade program, as have North Carolina, South Carolina, and Tennessee. Michigan, Virginia, and Ohio have draft regulations adopting such a program. Only Georgia and Missouri do not have draft or final regulations since EPA has not yet finalized a rule responding to the Court's remand of the $NO_X$ SIP Call for those two States. (See Docket A–96–56, Item # XII–K–84).

Under the Section 126 Rule, EPA required affected units to participate in a cap-and-trade program, which is virtually identical to the cap-and-trade programs that have been (or are likely to be) adopted by States under the $NO_X$ SIP Call. In fact, EPA has stated that it intends to integrate the approved SIP trading program with the Section 126 trading program into a single cap-and-trade program.

Under the cap-and-trade program, the State EGU $NO_X$ budget is allocated among the affected units in the form of $NO_X$ allowances, each allowance providing an authorization to emit one ton of $NO_X$ during the ozone season for which the allowance is allocated or for any subsequent ozone season. After the end of each ozone season, the owner or operator of each affected unit is required to surrender a number of $NO_X$ allowances equal to the number of tons that the unit emitted during that period. Owners or operators (or any other person) may buy or sell allowances or bank allowances for use in future years. The ability to trade and bank allowances provides units in a State flexibility in complying with the $NO_X$ emission limit under the $NO_X$ SIP Call and the Section 126 Rule and thereby limits the impact that higher than projected heat input would have on the cost of compliance.

Specifically, the owner or operator of a unit with an allowance allocation lower than the unit's tonnage of $NO_X$ emissions for an ozone season has several compliance options, including the options of installing and operating additional $NO_X$ emission controls at the unit or of purchasing allowances allocated to other units in the same State or in other States under the trading program. The owners or operators will presumably choose the most economically efficient option. If the cost of allowances in the regionwide market

*1999 With Data as of January 1, 1999, EIA,* November 1999, at pg. 1; *Inventory of Electric Utility Power Plants in the U.S. 1999,* EIA, September 2000 at pg. 1.

[29] See EPA Region 4 National Combustion Spreadsheet maintained at http://www.epa.gov/region4/air/permits/national_ct_list.xls.

for allowances under the trading program is less than the cost of installing and operating additional controls at the unit, then the owner or operator will purchase allowances. Assuming, for the sake of argument, the unit is in a State where actual heat input for the year exceeds EPA's projected 2007 heat input and actual $NO_X$ emissions exceed the $NO_X$ emission budget, the cost impact of the difference between actual and projected heat input is limited by the owner's or operator's option to buy allowances, rather than installing emission controls.[30]

Moreover, as discussed above in section V.D.4 of this notice, State heat input is quite variable. Even if actual State heat input exceeds EPA's projected 2007 heat input in one or more years, it is quite possible that actual State heat input will be less than EPA's projected 2007 heat input in a later year. Under the $NO_X$ cap-and-trade program, the owner or operator in the example above who has to buy allowances in one year may have excess allowances during the subsequent year of reduced State heat input. That owner or operator may sell allowances and thereby offset, at least in part, the cost of buying allowances in the previous year. EPA is not suggesting that such an offset of costs will always be available. Rather, EPA notes that the cap-and-trade program will tend to create the potential to offset in one year a unit's shortfalls in allocations (whether or not attributable to higher than projected State heat input) in another year.

9. Discussion of Individual States for Which EPA's Heat Input Growth Rates Are Disputed by Commenters

Out of the 21 States and the District of Columbia for which EPA developed heat input growth rates and heat input projections for EGUs for 2007, commenters specifically disputed the heat input growth rates and projections for 7 States, i.e., Alabama, Georgia, Illinois, Michigan, Missouri, Virginia, and West Virginia. In six States, the commenters claimed that EPA's heat input growth rates and heat input projections are unreasonable because these States recently had actual heat input that exceeded EPA's projected heat input for 2007.[31] In the seventh State, Virginia, commenters claimed that the State's heat input had almostexceeded EPA's projections and would soon do so. With regard to some States, commenters also suggested that actual data and projections concerning electricity demand, economic output, population, and new generating capacity for these individual States support higher heat input growth rates than the rates adopted for those States by EPA.

EPA believes that, in general, these comments have common flaws that prevent them from providing a basis for concluding that EPA's heat input growth rates are unreasonable for the particular States at issue. First, several commenters flatly stated or implicitly assumed that significant negative growth in heat input was not plausible for their respective States between now and 2007. As noted above, historical heat input data show that individual State's heat input can decrease significantly in the last year, as compared to the first year, of multi-year periods and is quite variable from year-to-year. (See section V.D.4 of this notice.)

Indeed, the State heat inputs for four of the States that, as commenters have emphasized, rose to over or nearly over EPA's 2007 projections, have recently decreased to below or nearly below the 2007 projections. Specifically, the heat input of Michigan—which in 1998 was close to EPA's 2007 projection and, along with West Virginia, was the focus of the Court's concerns about EPA's growth rates—has declined since 1998 and remained well below EPA's 2007 projection. The heat input of West Virginia was higher in 1998, and still is slightly higher, than EPA's 2007 projection but has declined over 8% since 1998. Georgia's heat input recently increased above EPA's 2007 projections but decreased in 2001 below that projection. EPA maintains that the recent heat input decreases and the variability in State heat input show why the fact that current heat input for a State exceeds, or is close to, EPA's 2007 heat input projection for the State does not show that EPA's heat input growth rate and 2007 projection for the State are unreasonable.

Second, several commenters compared EPA's heat input growth rate for an individual State with the heat input growth that the State had during 1996–2000 and either asserted or implied that EPA should project the State heat input for 2007 using the actual 1996–2000 growth rate. However, EPA believes that it is inappropriate to project long-term heat input growth to 2007 based on a short-term historic trend (here, 1996–2000 heat input growth) for several reasons. Because heat input can vary greatly from year to year because of factors such as the weather and the economy, short-term trend data can be greatly skewed.

Moreover, as discussed above, in order to test the validity of using a relatively short period of years of actual State heat input data to project future State heat input, EPA simulated that approach using historical annual heat input data for the 21 $NO_X$ SIP Call States for 1960–2000 (or in some States where less data was available, from 1970–2000). See section V.D.4 of this notice. Based on this data, EPA used 6 years' worth of historical data (e.g., 1960–1966) to project annual heat input for the sixth year after the 6-year period (e.g, 1972). EPA did this on a rolling basis. For 16 States, EPA found that there was a very little correlation between the predicted value based on the historical 6-year periods and the actual value for the sixth year after that period. For four of the remaining five States, the correlation was weak. In short, the commenters' approach of using historical State fossil fuel use for a relatively short period of years is not a reliable method for predicting future State heat input.

Third, in pointing to certain factors concerning each individual State to support the claim that the State's heat input could not reasonably be projected to decline, commenters implicitly assumed that the State's heat input is determined solely by those State-specific factors, rather than by the operation of the regional electricity market as a whole. EPA believes that heat input for an individual State cannot reasonably be projected by considering only the State's projected electricity demand and other State-specific factors. Because electricity is generated and sold in a regional electricity market, an individual State's heat input is not determined, and cannot reasonably be projected, based solely on factors relating only to that State. Rather, a State's heat input must be projected using a comprehensive approach that considers the regional market. Largely for this reason, EPA used the IPM—which models electricity markets in the continental U.S. and the regional electricity market for the $NO_X$ SIP Call area—in its analysis for the $NO_X$ SIP Call and the Section 126 Rule, including the analysis for making heat

[30] Commenters have characterized EPA's preliminary views in the August 3, 2000 NODA as attempting, in essence, to argue that the only thing that matters is the regionwide heat input growth rate, not the individual State growth rates. This is a mischaracterization. EPA believes that as long as the regionwide projection is reasonably close to the actual regionwide heat input, then, as a matter of simple arithmetic, trading opportunities will likely be present for any State whose actual $NO_X$ emissions exceed its $NO_X$ emission budget. As discussed above, the availability of trading, in turn, limits the impact of higher than expected heat input.

[31] In one of those States, Michigan, EPA's heat input projections have not actually been exceeded.

input growth projections.[32] *See Appalachian Power* v. *EPA*, 249 F.3d at 1053 (upholding EPA's determination that ''the IPM offered a more comprehensive and consistent means of allocating emission allowances than sorting through the various state-specific projections'').

Contrary to this comprehensive approach to projecting individual State's heat input, commenters presented projections of significant economic and population growth for individual States. While these economic and population projections for a State may suggest that there will be significant growth in electricity demand in that State, these State-specific factors suggest little about whether the State's increased electricity demand will be met from in-State EGUs. It may be met through increased generation from units within the State, which may increase that State's heat input, or it may be met through increased generation from units outside the State from which the State imports electricity, which may increase the heat input for another State. Even if the electricity demand is met by units in the State that has the increased demand, the State's heat input may be affected by the amount of electricity that the State exports to other States, as well as by the amount of electricity used within the State. The State's heat input may still decline under these circumstances if such exports decline. In short, because electricity is generated and sold on a regional basis, a State's heat input can decrease even as the State's electricity demand increases. Because the comments on individual States failed to address these regional factors, the commenters' claims that the respective State's heat input could not be expected to decline to the level of EPA's 2007 projection are unpersuasive.

Another State-specific factor on which some commenters relied in challenging EPA's heat input growth rate for an individual State is the amount of new capacity that has been permitted or that is under construction in that State. The commenters assumed that a significant amount of new, permitted capacity or capacity under construction necessarily means that the State's heat input will increase significantly. However, owners and operators may seek permits for units that, as it turns out, are not actually built. Further, new units that are built and operated may displace existing units and, since the new units are likely to be more efficient in converting heat input to electricity, the State's heat input may actually decline. (See sections V.D.6 and 8 of this notice discussing that most new units are gas-fired units and are likely to be more efficient than existing units.) Moreover, the amount of electricity that the new units produce will depend on the supply and demand factors in the regional electricity market, not simply on supply and demand in the State where the units are located. Thus, projected increased new capacity may potentially be a factor pointing to increased heat input in the State where the new capacity is to be located, but, because so many other factors are involved, that does not necessarily mean heat input will increase in that State.

In light of the above discussion, EPA does not believe that commenters have demonstrated that it is unreasonable to project that the heat input for those States with recent heat input exceeding EPA's 2007 projections will decline by 2007 to the levels projected by EPA. EPA addresses below the specific comments made about each State whose heat input growth rate and heat input projection are in dispute.

*a. Alabama*

(i) Comments

A commenter stated that Alabama's gross State product is projected to grow at 2.5% per year during 2001–2010. The commenter also noted that the ''average annual economic growth rate for the region'' was 3.9% per year during 1995–2000, Alabama has recently had ''economic annual growth'' well over 3%, and seasonal heat input growth for Alabama has averaged 3.37% per year in 1996–2000. Noting that Alabama's heat input in 1999 and 2000 exceeded EPA's 2007 heat input projection, the commenter claimed that ''[n]egative growth between now and 2007 for Alabama is simply not a plausible scenario.'' The commenter compared EPA's heat input growth rate to the State's historical heat input growth rate for 1995–2000. Claiming that nuclear generation increased during 1995–2000 but is not expected to increase significantly during 2001–2007, the commenter suggested that Alabama's heat input will grow even more than the historical heat input growth rate. Finally, the commenter stated that the $NO_X$ SIP Call currently applies only to the northern two-thirds of the State, where most of the State's population centers are located and most economic growth will be concentrated. This is cited as another reason why EPA's heat input growth rate is inadequate and unrealistic.

(ii) Response

EPA notes that in 1999 and 2000, Alabama's ozone season heat input (389,364,461 mmBtu and 400,689,850 mmBtu) exceeded EPA's 2007 heat input projection (385,998,780 mmBtu) by 0.9% and 3.8% respecteviely. However, in 2001 Alabama's heat input (391,665,691 mmBtu) fell 2.5% and was only 1.4% above EPA's 2007 projection. Further, as discussed above, EPA intends to include only the northern portion of Alabama in the $NO_X$ SIP Call. When actual heat input for 2001 for northern Alabama is compared with EPA's recently proposed 2007 projection for northern Alabama, the actual heat input in northern Alabama (284,528,783 mmBtu) is 7.9% below EPA's 2007 projection (308,912,352 mmBtu).[33]

Moreover, as discussed above, individual State heat input is quite variable and can decrease significantly over multi-year periods. In fact, historical data for 1960–2000 shows that there have been periods in the past when Alabama's annual heat input decreased significantly for the last year, as compared to the first year, of a multi-year period. For example, for the 8-year period 1974–1982 (comparable in length to the period 1999–2007), Alabama's annual heat input decreased by 12%.[34] Ozone season heat input decreased 17% over the same period, 1974–1982. Thus, the fact that Alabama's most recent heat input exceeded EPA's 2007 projection

[32] EPA also used the IPM in order to make sure that consistent assumptions were used for projecting each State's heat input growth.

[33] EPA calculated the partial State heat input budgets for large EGUs for Alabama, Georgia, and Missouri by summing the heat input for 1996, 1995, and 1995 respectively for all such units in the fine grid counties of the particular State and applying the appropriate growth rate. This information is in Docket Item XV-C–29 and is consistent with the partial State $NO_X$ emission budgets proposed in 67 Fed. Reg. 8395, 8416, Feb. 22, 2002.

[34] EPA's review indicates that one out of the 33 eight-year periods from 1960–2000 had a decrease in annual heat input of well over 3.8% (Docket # A–96–56, Item # XV–C–18, at 1), while three out of the 20 eight-year periods from 1970–1998 had a decrease in ozone season heat input, with a decrease of well over 3.8% for two periods (Docket # A–96–56, Item # XV–C–19, at 1). Since these periods—although a minority—indicate that such decreases can occur, EPA believes that its methodology should not be considered unreasonable based on the recent State heat input. Moreover, while these long-term historical data certainly show the potential for such decreases, the data are otherwise of limited use in projecting future heat input. As explained in Section V.D.6. of this notice, the electricity industry has been undergoing deregulation of generation and restructuring. As a result, trends in the past, as reflected in the data, may not continue in the future. The IPM reflects these changes, and by using the IPM in developing heat input growth rates, EPA has taken these changes into account.

does not mean that the projection is unreasonable.

Further, while the commenter did not provide the data to support its claims about Alabama's economic growth or growth in gross State product, EPA used data from the Bureau of Economic Analysis to evaluate the commenter's claims. The commenters assumed, but did not demonstrate, that growth in gross State product necessarily results in growth in heat input. In fact, data for 1996–1999 for Alabama, as reflected in Table 10 below, shows that growth in gross State product does not necessarily result in growth in heat input. For example, in 1997, State heat input declined 0.2% while gross State product grew 3.4%. In 1996, while Gross State Product grew at 2.8%, heat input grew at a much slower rate of 0.2%. EPA tested the correlation of heat input growth rate to gross State product growth rate using the r-squared test, which is described above in section V.D.5 of this notice. EPA found that the two sets of growth rate data have a r-squared value of 0.12, showing very little correlation between growth in heat input and growth in gross State product.

TABLE 10.—GROSS ALABAMA STATE PRODUCT GROWTH RATE VS. HEAT INPUT GROWTH RATE FOR 1996–1999

| Year | BEA Gross State product growth rate (percent) | Heat input growth rate (percent) |
|---|---|---|
| 1996 | 2.8 | 0.2 |
| 1997 | 3.4 | −0.2 |
| 1998 | 2.9 | 5.6 |
| 1999 | 4.2 | 5.2 |

There are several reasons that EPA believes that heat input growth on a State level does not correlate with economic growth. First, electricity demand is affected by many variables. This includes not only economic growth, but also other factors such as weather and changes in efficiency in the use of electricity.

Second, as discussed above, a State's heat input does not necessarily correlate with the State's electricity demand. (See section V.D.6 of this notice discussing that State heat input can decline when State electricity use increases.) For instance, in the case of Alabama, the State is generally a net exporter of electricity. In 1999, Alabama EGUs generated 120,865,327 Mwh of electricity. In that same year, only 80,401,000 Mwh of electricity were sold in Alabama. Therefore, in order to assess whether electricity generation or heat input in Alabama will grow, it is necessary to consider not only electricity demand in Alabama, but also electricity demand and supply in the regional market for electricity outside of Alabama. The commenter did not provide any information on future electricity demand and supply outside of Alabama and how they might affect future generation and heat input in Alabama.

The lack of strong correlation between economic growth and heat input is confirmed by historical data on electricity demand and heat input in northern Alabama. Noting that the $NO_X$ SIP Call now covers only the northern part of Alabama (the fine grid counties), the commenter presented evidence suggesting that the economy and population are growing faster in the northern part than in the southern part of the State. The commenter suggested that heat input will therefore grow faster in northern Alabama than in the State as a whole. EPA reviewed heat input data for Alabama and found that, despite higher growth in the economy and population in northern Alabama, heat input has actually grown faster in the southern part of the State. The data are summarized in Table 11 below.

TABLE 11.—HEAT INPUT (MMBTU) IN ALABAMA FOR 1996–2001

| | Fine grid counties | Outside fine grid counties | All counties |
|---|---|---|---|
| 1995 | 279,392,756 | 70,666,448 | 350,059,204 |
| 1996 | 280,829,411 | 70,078,571 | 350,907,982 |
| 1997 | 277,733,999 | 72,594,373 | 350,328,372 |
| 1998 | 298,464,504 | 71,513,696 | 369,978,200 |
| 1999 | 318,056,030 | 71,308,431 | 389,364,461 |
| 2000 | 314,726,690 | 85,693,161 | 400,689,850 |
| 2001 | 284,528,783 | 107,136,907 | 391,665,690 |
| Avg Annual Growth Rate 1996 to 2001 | 0.4 | 8.7 | 2.3 |

Finally, EPA notes that the commenters' claim concerning the effect of Alabama's nuclear generation on the State's heat input growth rate appears to be overstated. The commenters stated that nuclear generation in Alabama increased during 1995–2000 and is not expected to continue to increase and that therefore the State's heat input will increase at a greater rate starting in 2001. However, while Alabama's ozone season nuclear generation increased significantly from 1995 to 1996 (8,371,445 Mwh to 13,161,369 Mwh during the ozone season), EPA used 1996 as the baseline year for determining Alabama's $NO_X$ emission budget. During 1996–2000, nuclear generation in Alabama grew much less than during 1995–2000. Nuclear generation was 13,321,089 Mwh in the 1999 ozone season and 13,578,728 Mwh in the 2000 ozone season. Because there was only limited growth in nuclear generation from 1996 to 2000, there is no basis for commenters' claim of increased heat input growth in the future to offset limited growth from nuclear units. Furthermore, the Nuclear Regulatory Commission is anticipating that applications will be submitted to increase the generating capacity of two nuclear powered units at the Brown's Ferry Plant by 14%. (Docket # A–96–56, Item # XV-C–27.) While these applications do not necessarily mean that nuclear generation will increase, they cast doubt on the commenters' assertion that nuclear generation will not grow.

For the above reasons, EPA rejects the commenters' claims that EPA's heat input growth rate and 2007 heat input projection of Alabama are unreasonable.

*b. Georgia*

(i) Comments

Commenters pointed to EPA's data as showing that Georgia's ozone season heat input increased more than 3.3% per year from 1995 to 2000, as compared with EPA's projected increase of 1.01% per year through 2007. Further, commenters noted that Georgia's current

heat input exceeds EPA's 2007 heat input projections and so the State's heat input will have to decrease by 2007 in order for the projection to be correct. Commenters cited several factors—i.e., rapid population growth, projected growth in peak demand for electricity, and rapid growth in gross State product—to show that Georgia's heat input will continue to grow faster than EPA projected. Commenters also stated that the $NO_X$ SIP Call will cover only the northern part of Georgia (the fine grid counties), whose population is growing faster than in the southern portion of the State. The commenters suggested that the heat input will therefore grow even faster for the northern part of Georgia.

(ii) Response

EPA notes that Georgia's heat input in 1998 (403,716,898 mmBtu) and 2000 (420,260,694 mmBtu) exceeded EPA's 2007 heat input projection (403,368,582 mmBtu). However, in both cases, heat input fell significantly the next year and was below EPA's 2007 projection. Georgia's heat input fell 3.9% between 1998 and 1999 and 10.9% between 2000 and 2001. In 2001, the State's heat input (374,355,956 mmBtu) was 7.2% below EPA's 2007 projection. Further, as discussed above, EPA intends to include only the northern portion of Georgia in the $NO_X$ SIP Call. When actual heat input for northern Georgia for 2001 is compared with EPA's recently proposed 2007 projection for northern Georgia, actual 2001 heat input (360,162,148 mmBtu) is 8.2% below projected heat input (392,215,442 mmBtu).

Moreover, as discussed above, individual State heat input is quite variable and can decrease significantly over multi-year periods. In the past, Georgia's annual heat input has decreased significantly for the last year, as compared to the first year, of multi-year periods and, for example, decreased by 17% over the seven-year period 1985–1992 (comparable in length to the period 2000–2007).[35] Ozone season heat input decreased 9.9% over the same period, 1985–1992.

Furthermore, as discussed above, EPA does not believe that commenters have shown that increases in parameters such as population, economic output, or peak electricity demand in a particular State necessarily mean that heat input will increase in that State. In fact, EPA's analysis of the heat input data for the northern and southern portions of Georgia shows that recently heat input has increased more in the southern part of the State, where, according to commenters there has been less growth in population, than in the northern part of the State. The data are summarized in Table 12 below.

TABLE 12.—HEAT INPUT (MMBTU) IN GEORGIA FOR 1995–2001

| | Fine grid counties | Outside fine grid counties | All counties |
|---|---|---|---|
| 1995 | 347,093,311 | 9,870,035 | 356,963,346 |
| 1996 | 326,944,480 | 9,032,533 | 335,977,013 |
| 1997 | 342,870,775 | 8,336,975 | 351,207,750 |
| 1998 | 390,888,493 | 12,828,405 | 403,716,898 |
| 1999 | 370,011,938 | 17,769,163 | 387,781,101 |
| 2000 | 399,110,359 | 21,150,335 | 420,260,694 |
| 2001 | 360,162,148 | 14,193,808 | 374,355,956 |
| Avg Annual Growth Rate 1995 to 2001 | 0.6 | 6.2 | 0.8 |

For the above reasons, EPA rejects the commenters' claims that EPA's heat input growth rate and 2007 heat input projection of Georgia are unreasonable.

*c. Illinois*

(i) Comments

Commenters were concerned that EPA initially proposed to establish the Illinois heat input growth rate at 34%, but then adopted a final growth rate of 8%. Commenters contended that the 8% growth rate does not reflect a realistic growth projection for the State, in light of the actual heat input growth in Illinois during 1995–2000. According to the commenters, the actual heat input growth for 1995–2000 exceeded EPA's projected growth rate, and by 1998 Illinois' heat input exceeded EPA's heat input projection for 2007. Commenters pointed to the 2000 ozone season (described as a relatively mild summer) when heat input was 15% higher than the 1996 baseline. Commenters suggested that total growth from 1996 to 2007 could exceed 30%, far above EPA's 8% estimate, and that the data support a growth of 34% and certainly no lower than 22%. Commenters asserted that it is also not likely that heat input in the State will decline below 2000 levels because Illinois has approved an additional 436.6 million mmBtu/ozone season in generating capacity since 1999 for which construction has been initiated, with an additional 25.2 million mmBtu pending.

(ii) Response

With regard to EPA's revision of Illinois' annual heat input growth rate from 34% to 8%, EPA explained in the $NO_X$ SIP Call that the Agency took comment on using two alternative electricity demand forecasts to develop the State $NO_X$ emission budgets and to perform the cost-effectiveness analysis. One alternative was a 1995 electricity demand forecast, modified by demand reductions under CCAP, that was used in an IPM run (''1996 IPM Base Case forecast'') and would have resulted in certain heat input growth rates (''corrected'' growth rates), including a growth rate of 34% for Illinois. The second alternative was a 1997 electricity demand forecast, modified by demand reductions under CCAP, that was used in a later IPM run (''1998 IPM Base Case forecast'') and resulted in another set of heat input growth rates (''revised'' growth rates), including a growth rate of

[35] EPA's review indicates that four out of the 34 seven-year periods from 1960–2000 had a decrease in annual heat input, with a decrease of over 4% for three periods (Docket # A–96–56, Item # XV–C–18, at 10), while two out of the 21 seven-year periods from 1970–1998 had a decrease in ozone season heat input, with one of those decreases greatly exceeding 4% (Docket # A–96–56, Item # XV–C–19, at 10). Since these periods—although a minority—indicate that such decreases can occur, EPA believes that its methodology should not be considered unreasonable based on the recent State heat input. Moreover, while these long-term historical data certainly show the potential for such decreases, the data are otherwise of limited use in projecting future heat input. As explained in Section V.D.6. of this notice, the electricity industry has been undergoing deregulation of generation and restructuring. As a result, trends in the past, as reflected in the data, may not continue in the future. The IPM reflects these changes, and by using the IPM in developing heat input growth rates, EPA has taken these changes into account.

8% for Illinois. As explained in the $NO_X$ SIP Call (63 FR 57409), EPA used the 1998 IPM Base Case forecast (as the base case run described in section V.B.1 of this notice) and resulting heat input growth rates because that forecast reflected assumptions that had been revised based on public comment and that ''lead to a better projection of electricity generation nationally, by region and by State.'' [36]

EPA notes that Illinois' heat input in 1998 (450,929,580 mmBtu) exceeded EPA's 2007 heat input projections (409,351,519 mmBtu), by 10.2% and has continued to exceed that projection. However, the State's heat input peaked in 1998 and has remained below the 1998 level since then. By 2001, Illinois' heat input (434,282,881 mmBtu) declined by 3.7% from the 1998 level and was 6.1% higher than EPA's 2007 projection. As discussed above, individual State heat input is quite variable and can decrease significantly over multi-year periods. In the past, Illinois' annual heat input has decreased significantly for the last year, as compared to the first year, of multi-year periods and, for example, decreased 31% over the 9-year period 1981–1990 (comparable in length to the 1998–2007 period).[37] Ozone season heat input decreased 25.8% over the same period, 1981–1990. Thus, the fact that Illinois' recent heat input exceeded EPA's 2007 projection does not mean that the projection is unreasonable.

Illinois' decreases in heat input over the last few years may be partly attributed to an increase in nuclear generation in Illinois since 1998, as shown in Table 13. In both 1997 and 1998, five nuclear units representing over 5000 MW of capacity (nearly 14% of the total installed capacity in Illinois) were offline. This resulted in significantly less generation from nuclear units. It appears that at least some of the generation was made up by additional fossil-fired generation. In 1999, when three of the nuclear units returned online, heat input declined. During this period, electricity demand in Illinois increased.

TABLE 13.—HEAT INPUT, NUCLEAR GENERATION, AND ELECTRICITY SALES IN ILLINOIS FOR 1995–2001

| Year | Heat Input (mmBtu) | Nuclear generation (Mwh) | Electricity sales (Mwh) |
|---|---|---|---|
| 1995 | 347,985,300 | 35,410,101 | 55,960,000 |
| 1996 | 379,029,184 | 29,038,573 | 53,348,000 |
| 1997 | 406,127,886 | 23,038,672 | 53,357,000 |
| 1998 | 450,929,580 | 25,331,514 | 58,665,000 |
| 1999 | 418,420,171 | 37,004,253 | 60,470,000 |
| 2000 | 436,052,570 | 38,287,858 | 59,834,000 |
| 2001 | 434,282,881 | 38,590,400 | 60,310,000 |

The commenters did not provide any information on future nuclear generation in Illinois and how that might affect future generation and heat input in the State. However, the Nuclear Regulatory Commission recently approved significant expansions in generating capacity for several nuclear units in Illinois (i.e., a 17% expansion to about 912 MW each for Dresden 2 and 3 and a 17.8% expansion to about 912 MW each for Quad Cities 1 and 2). The upgrades are scheduled for completion during outages in 2002 and 2003. (Docket A–96–56, Item # XV–C–07, ''NRC Approves Power Uprates for Dresden 2, 3 and Quad Cities 1, 2,'' Nuclear Regulatory Commission Press Release, December 26, 2001.) Once the capital investment is made in expanding nuclear capacity, nuclear generation has relatively low operating costs.[38] As a result, nuclear generation in Illinois may well increase in the next 2 years and therefore may be one factor tending to reduce heat input for the State.

Another factor that may have been a partial cause of increased heat input in Illinois and that may change in the future is Illinois' recently increased exports of electricity to other States. In 1994, Illinois was exporting 14% of its electricity; by 1999 that number had reached 19%. Heat input increased along with this increase in export of electricity. Whether this level of exports will continue will depend on electricity supply and demand in the regional electricity market. For example, increases in generation in neighboring States may lead to less of an export market and therefore a decrease in heat input. The commenters did not provide any information on future electricity demand and supply outside of Illinois or how they might affect future generation and heat input in Illinois.

Finally, the commenters pointed to approval or construction of new units in Illinois as showing that Illinois heat input will continue to grow through 2007. However, as discussed above, approval or construction of new units is not a definitive indicator of increased heat input in the future.

For the reasons above, EPA rejects the commenters' claims that EPA's heat input growth rate and 2007 heat input projection for Illinois are unreasonable.

[36] EPA stated that the improvements in the 1998 IPM Base Case forecast included ''using the most recent NERC estimate for regional electricity demand; the latest available EIA and NERC generation unit data; updated fuel forecasts; updated assumptions on nuclear, hydro-electric and import assumptions (with special attention to differences in summer use); and an increase in the level of detail in the model to more accurately capture the transmission constraints that exist for moving power between various regions of the country.'' *Id.* In addition, the forecast included updated assumptions ''on the size and operation of all electricity generation units of utilities and independent power producers (with special attention to cogenerators)'' and ''planning reserve margins and the costs of building new generation capacity.'' *Id.*

[37] EPA's review indicates that 13 out of the 32 nine-year periods from 1960–2000 had a decrease in annual heat input, with a decrease of more than 10.2% in eight of those periods (Docket #A–96–56, Item #XV–C–18, at 13), while 11 of the 19 nine-year periods from 1970–1998 had a decrease in ozone season heat input, with a decrease of more than 10.2% in eight of those periods. (Docket #A–96–56, Item #XV–C–19, at 13). Since these periods—although a minority—indicate that such decreases can occur, EPA believes that its methodology should not be considered unreasonable based on the recent State heat input. Moreover, while these long-term historical data certainly show the potential for such decreases, the data are otherwise of limited use in projecting future heat input. As explained in Section V.D.6. of this notice, the electricity industry has been undergoing deregulation of generation and restructuring. As a result, trends in the past, as reflected in the data, may not continue in the future. The IPM reflects these changes, and by using the IPM in developing heat input growth rates, EPA has taken these changes into account.

[38] This contrasts with fossil fuel-fired units, whose operating costs are higher because of the cost of fossil fuel.

*d. Michigan*

(i) Comments

Commenters stated that Michigan's heat input in 1998 exceeded EPA's 2007 heat input projection. Commenters also stated that the Michigan Public Service Commission estimates Michigan's growth in electricity demand to be twice the amount that EPA ''presumed in its calculations'' for the $NO_X$ SIP Call and Section 126 Rule and that there is no basis for the ''presumed'' negative growth in energy demand for Michigan. Further, commenters pointed to weather as the major reason for year-to-year variability in Michigan's heat input. Noting the hot temperatures in 1995, 1998, and 1999 and the cool temperatures in 1996, 1997, and 2000, they stated that weather was the primary cause of the dramatic increase in heat input in 1998 and the decline in 2000. The commenters compared the years with similar summer weather patterns to find an ozone season growth rate of 2.0% or 2.1% per year, which is much higher than EPA's 1.1% projected annual growth rate. Commenters also pointed to operational problems at the fossil-fuel fired Monroe Plant as contributing to the lower State heat input in 2000. Finally, commenters suggested that the modeling of unit dispatch in the IPM does not accurately reflect unit dispatching in Michigan because the IPM dispatches on a national basis.

(ii) Response

EPA notes that Michigan's heat input has never actually exceeded EPA's 2007 heat input projection. In 1998, Michigan's heat input (408,239,157 mmBtu) came close to (i.e., 0.4% below) EPA's 2007 projection (410,058,589 mmBtu). Since 1998, Michigan's heat input has declined each year. Michigan's 2001 heat input (374,318,406 mmBtu) was 8.7% below EPA's 2007 projection. Moreover, as discussed above, individual State heat input is quite variable and can decrease significantly over multi-year periods. In the past, Michigan's annual heat input has decreased significantly for the last year, as compared to the first year, of multi-year periods and, for example, decreased by 10.9% over the 9-year period 1973–1982 (comparable in length to the 1998–2007 period).[39] Ozone season heat input decreased 13.4% over the same period, 1973–1982.

EPA believes that Michigan's decline in heat input in the last few years may be at least partly attributable to resolution of operational problems at the Cook Nuclear facility, as reflected in Table 14 below.[40] The spike in Michigan's heat input in 1998 coincides with the outage of two nuclear units at the Cook Nuclear Plant in Michigan. These two units are capable of generating a total of 2285 MW, which represents over 9% of the capacity in Michigan. Cook Unit 2 did not return to service until the middle of the 2000 ozone season, and Cook Unit 1 did not return to service until after the 2000 ozone season. These outages resulted in significantly less generation from nuclear plants and coincided with significantly more fossil fuel generation and heat input in 1998 and 1999. As the nuclear units came back into service and increased their generation, fossil fuel generation and heat input in Michigan declined. Under these circumstances, the fact that Michigan's 1998 heat input came close to EPA's 2007 projection does not demonstrate that EPA's projection is unreasonable.

TABLE 14.—NUCLEAR GENERATION VS. TOTAL UTILITY GENERATION FOR MICHIGAN IN 1995–2001

| Year | Ozone Season nuclear generation (Mwh) | Total Utility Ozone Season Generation[41] (Mwh) |
|---|---|---|
| 1995 ..... | 8,779,412 | 38,175,367 |
| 1996 ..... | 12,708,112 | 41,024,588 |
| 1997 ..... | 12,804,255 | 40,660,688 |
| 1998 ..... | 4,923,916 | 36,618,364 |
| 1999 ..... | 6,472,871 | 38,679,849 |
| 2000 ..... | 8,195,891 | 39,550,421 |
| 2001 ..... | 10,456,684 | 40,844,263 |

[41] EIA provided generation data for this entire period only for large utility units. In the State of Michigan, non-utility units make up about 12% of the generation capacity.

With regard to the comment that EPA's heat input projections are not consistent with the Michigan Public Utility Commission's electricity demand projections, EPA notes that electricity demand and heat input are not necessarily correlated. (See section V.D.6 of this notice.) For example, from 1988 to 1993, Michigan's electricity sales grew 6.1% at the same time that the State's heat input dropped 8%.

Several comments suggest that Michigan's 2000 heat input was not representative because 2000 was a cool summer and that the State's heat input therefore should be disregarded in considering the reasonableness of EPA's 2007 heat input projection. The commenters seem to suggest that the fact that the summer was relatively cool meant that electricity demand, and so heat input, were lower in Michigan in 2000. However, EPA notes that Michigan's electricity demand in 1998 was 44,451,681 Mwh and has been higher every year since 1998. In other words, even though electricity demand has grown since 1998, heat input has not. As for the comment that operational problems at the Monroe Power Plant reduced Michigan's heat input in 2000, EPA notes that Michigan's heat input in 2001 continued to decrease from 2000, even though there was much less of a decrease in heat input from the Monroe Power Plant from 2000 to 2001. Furthermore, EPA believes that heat input should not be evaluated on a plant-by-plant basis, because declines in heat input for one plant may well be accompanied by increases in heat input for another plant. For instance, while the Monroe Power Plant had lower heat input in 2000 than it had in previous years, heat input from the David E. Karn Plant in Michigan was significantly higher in 2000 than in previous years, and the amounts of the decrease in

[39] EPA's review indicates that eight out of the 32 nine-year periods from 1960–2000 had a decrease, or an increase of no more than 0.4%, in annual heat input (Docket # A–96–56, Item # XV–C–18, at 28), while 2 of the 19 nine-year periods from 1970–1998 had a decrease, or an increase of no more than 0.4%, in ozone season heat input. (Docket # A–96–56, Item # XV–C–19, at 28). Since these periods—although a minority—indicate that such decreases and small increases can occur, EPA believes that its methodology should not be considered unreasonable based on the recent State heat input. Moreover, while these long-term historical data certainly show the potential for such decreases and small decreases, the data are otherwise of limited use in projecting future heat input. As explained in Section V.D.6. of this notice, the electricity industry has been undergoing deregulation of generation and restructuring. As a result, trends in the past, as reflected in the data, may not continue in the future. The IPM reflects these changes, and by using the IPM in developing heat input growth rates, EPA has taken these changes into account.

[40] It has been suggested that Cook nuclear generation has been taken up by out-of-state affiliates of Cook and therefore that Cook's operational problems have not affected fossil-fired generation in Michigan. However, EPA has not received specific information purporting to demonstrate this pattern. Indeed, the Michigan Public Utility Commission has highlighted that the resumption of normal operations by the Cook Nuclear facility increases both available generation and the ability to import power, which suggests that Cook and fossil-fired Michigan generators are interrelated. Summer 2001, Energy Appraisal, Michigan Public Utility Commission, http://www.cis.state.mi.us/mpsc/reports/energy/01summer/electric.htm.

Monroe heat input and the increase in Karn heat input were about the same.

Finally, EPA disagrees with the comment that the modeling of unit dispatch in the IPM is inaccurate for Michigan because the IPM models the entire U.S. The IPM divided the U.S. into multiple subregions (including a subregion comprising most of Michigan). This allows the model to reflect both local dispatch patterns and the interstate nature of the electric grid.

For the reasons above, EPA rejects the commenters' claims that EPA's heat input growth rate and 2007 heat input projection of Michigan are unreasonable.

*e. Missouri*

(i) Comments

A commenter noted that Missouri's average actual heat input growth rate for 1995–2000 exceeded EPA's heat input growth rate by about three times. The commenter also noted that Missouri's heat input in 1998 exceeded EPA's 2007 heat input projection for the State.

(ii) Response

EPA notes that Missouri's 1999 heat input (335,273,139 mmBtu) exceeded EPA's 2007 heat input projection (309,316,824 mmBtu)by 8.4%. Since 1999, Missouri's heat input declined to 332,332,587 mmBtu in 2000 and 329,668,165 mmBtu in 2001, but continued to exceed EPA's projection. Missouri's 2001 heat input exceeded EPA's 2007 projection by 6.2%. The heat input decline occurred even though, during this time, electricity demand in Missouri increased from 31,704,000 Mwh in 1999 to 33,519,000 Mwh in 2000 and 32,539,000 Mwh in 2001. Further, as discussed above, EPA intends to include only the eastern portion (the fine grid counties) of Missouri in the $NO_X$ SIP Call. When actual heat input for eastern Missouri for 2001 is compared with EPA's recently proposed 2007 projection for eastern Missouri, the difference between the actual 2001 heat input (184,541,335 mmBtu) and the projected 2007 heat input (178,431,621 mmBtu) narrows to 3.4%.

TABLE 15.—HEAT INPUT (MMBTU) IN MISSOURI FOR 1995–2001

| | Fine grid counties | Outside fine grid counties | All counties |
|---|---|---|---|
| 1995 | 163,698,735 | 120,078,167 | 283,776,902 |
| 1996 | 159,770,676 | 116,268,060 | 276,038,736 |
| 1997 | 176,843,306 | 121,262,736 | 298,106,042 |
| 1998 | 190,237,705 | 124,494,173 | 314,731,878 |
| 1999 | 200,802,706 | 134,470,433 | 335,273,139 |
| 2000 | 196,392,883 | 135,939,703 | 332,332,587 |
| 2001 | 184,541,335 | 145,126,830 | 329,668,165 |
| Avg Annual Growth Rate 1995 to 2001 | 2.0 | 3.2 | 2.5 |

Moreover, as discussed above, individual State heat input is quite variable, is not necessarily correlated with electricity demand in the State, and can decrease significantly over multi-year periods. In the past, Missouri's annual heat input has decreased significantly for the last year, as compared to the first year, of multi-year periods and, for example, decreased 11% over the 8-year period 1984–1992 (comparable in length to the 2000–2007 period).[42] Ozone season heat input decreased 9.1% over the same period, 1984–1992. Thus, the fact that Missouri's most recent heat input exceeded EPA's 2007 projection does not mean that the projection is unreasonable.

For the reasons above, EPA rejects the commenter's claims that EPA's heat input growth rate and 2007 heat input projection of Missouri are unreasonable.

*f. Virginia*

(i) Comments

Commenters asserted that there are various data omissions and errors in the heat input data for baseline year (1995) and for subsequent years through 1999 for Virginia, particularly as applied to independent power producers. According to commenters, the lack of heat input data for several of these facilities resulted in understated baseline heat input and, in the Section 126 Rule, in understated allowance allocations for certain units, whose allocations were based on 1995–1998 heat input. Commenters requested that EPA correct the allowance allocations in the Section 126 Rule. Commenters also stated that there has been a substantial increase in Virginia's heat input between 1995 and 2000 and that the State's heat input in 1997 and 1998 was within 7% of EPA's 2007 heat input projections and within 1.3% in 1999. Commenters predicted that the State's 2007 heat input level will be 319,087,054 mmBtu, for existing units based on the ''historical trend'' of heat input, and 395,216,765 mmBtu, based on ''power generation output,'' as compared to EPA's projection of 228,699,872 mmBtu. Commenters also were concerned that EPA underestimated Virginia's new generation capacity. Virginia has 12,000 MW of potential new capacity at various stages of the permitting process. According to the commenters, EPA's estimate of new generation capacity is underestimated by over 3,000 MW, and the 5% set aside in the State's EGU $NO_X$ emission budget under the Section 126 Rule is inadequate to accommodate projected new capacity.

(ii) Response

EPA notes that its 2007 heat input projection for Virginia (227,875,597 mmBtu) has not been exceeded, though Virginia's 1999 heat input (225,665,092 mmBtu) was close to (i.e., 1% below) the 2007 projection. Since 1999, Virginia's heat input has declined, and in 2001 the State's heat input (213,583,835 mmBtu) fell to 6.3% below

[42] EPA's review indicates that six out of the 33 eight-year periods from 1960–2000 had a decrease in annual heat input, with a decrease of 8.4% or more in one of these periods (Docket # A–96–56, Item # XV–C–18, at 31), while two out of the 20 eight-year periods from 1970–1998 had a decrease in ozone season heat input, with a decrease of 8.4% or more in one of these periods (Docket # A–96–56, Item # XV–C–19, at 31). Since these periods—although a minority—indicate that such decreases can occur, EPA believes that its methodology should not be considered unreasonable based on the recent State heat input. Moreover, while these long-term historical data certainly show the potential for such decreases, the data are otherwise of limited use in projecting future heat input. As explained in Section V.D.6. of this notice, the electricity industry has been undergoing deregulation of generation and restructuring. As a result, trends in the past, as reflected in the data, may not continue in the future. The IPM reflects these changes, and by using the IPM in developing heat input growth rates, EPA has taken these changes into account.

EPA's 2007 projection. Moreover, as discussed above, individual State heat input is quite variable and can decrease significantly over multi-year periods. In the past, Virginia's annual heat input has decreased significantly for the last year, as compared to the first year, of multi-year periods and, for example, decreased 38% over the 6-year period 1977–1983 (comparable in length to the 2001–2007 period).[43] Ozone season heat input decreased by 23.9% over 1978 and 1984.[44]

Further, as discussed above, because heat input is quite variable, EPA believes that it is inappropriate to project long-term heat input growth to 2007 based on a short-term trend like Virginia's heat input growth for 1995–2000. With regard to comments concerning the new generation capacity that is at various stages of permitting in Virginia, projected new units do not necessarily result, as discussed above, in increased State heat input.

For the reasons above, EPA rejects the commenters' claims that EPA's heat input growth rate and 2007 heat input projection of Virginia are unreasonable.

EPA notes that the comments on Virginia's 1996 baseline heat input and on unit-specific allowances allocations and the size of the set-aside for new units under the Section 126 Rule are outside the scope of the remand and today's notice. The Court remanded EPA's heat input growth rates and 2007 heat input projections and did not address or remand any issues concerning the data used to calculate State's 1995 or 1996 baseline heat input. In addition, the Court did not remand any issues concerning the determination of individual units' allowance allocations or the size of the set-aside for new units. Consistent with the Court's remand, EPA explained in the August 3, 2001 NODA that EPA was not seeking comments on the data used to calculate 1995 or 1996 baseline heat input or on allowance allocations, (66 FR. 40616). EPA is therefore not addressing today the comments on Virginia's 1996 baseline heat input, unit-specific allowance allocations, and the set-aside for new units.[45] However, data for subsequent years were not used in calculating Virginia's 1996 baseline heat input. EPA has incorporated the commenters' data corrections for 1997–1999 for purposes of the Agency's review of Virginia's heat input growth rates.[46]

*g. West Virginia*

(i) Comments

Commenters argued that EPA's growth factor for West Virginia is inaccurate, technically unjustifiable, and significantly lower than the growth rates assigned to neighboring States. Commenters pointed to the discrepancy between actual heat input growth during 1995–2000 in West Virginia (1.84% a year) to EPA's heat input growth rate of 0.25% a year. According to commenters, extrapolating the 1.84% growth rate to 2007 would result in a 32.3% increase in heat input compared to EPA's projected 3% increase. Commenters also noted that West Virginia's actual average heat input for 1998–2000 exceeds EPA's 2007 heat input projection by 8%. Commenters asserted that in order for EPA's projections to be reasonably accurate, West Virginia's heat input will have to decrease as much as 6% over the next 6 years.

Further, commenters described West Virginia as an electricity exporter and argued that the State can be expected to have heat input increases commensurate with rising national electricity demand. Commenters pointed to the actual 1.84% increase in ozone season heat input from 1995–2000, which they argued is comparable to the projected 1.8% increase in electricity demand over the next 20 years in the National Energy Policy.

The commenters claimed that the unreasonableness of EPA's methodology is further demonstrated by comparing West Virginia's heat input relative to the total heat input for the $NO_X$ SIP Call region. With EPA's heat input growth rates and 2007 heat input projections, the State was allotted only 5% of the regional heat input, but use of the 2001 and 2010 IPM heat input projections show West Virginia with 6.9% and 6.4% respectively of regional heat input. In addition, commenters noted that the IPM run for 2007 projects heat input for West Virginia that exceeds EPA's 2007 heat input projection for the State.

Commenters stated that year-to-year variation in heat input did not explain the difference between West Virginia's current heat input and EPA's 2007 heat input projection, which is lower. Commenters asserted that West Virginia has lower year-to-year variability in heat input than surrounding States.

Finally, commenters contended that EPA's heat input growth rates fail to account sufficiently for new EGU units in the State. According to the commenters, while eight new EGUs with a combined generating capacity of 5,833 MW have been planned and committed for construction, EPA projected 1,049 MW of new natural gas fired units to West Virginia through 2010.

(ii) Response

EPA notes that West Virginia's heat input exceeded EPA's 2007 heat input projection (358,117,926 mmBtu) beginning in 1997 when it exceeded EPA's 2007 projection by 1.9%. The State's heat input peaked in 1999 (391,592,231 mmBtu), exceeding EPA's 2007 projection by 9.3%. Since 1999, West Virginia's heat input declined by 8% over the next 2 years, and the 2001 heat input (360,185,154 mmBtu) exceeded EPA's 2007 projection by only 0.6%. Moreover, as discussed above, individual State heat input is quite variable and can decrease significantly over multi-year periods. In the past, West Virginia's annual heat input has decreased significantly for the last year, as compared to the first year, of multi-year periods and, for example, decreased 5.5% over the 10-year period 1981–1991 (comparable in length to the 1997–2007 period) and decreased 10.9% over the 8-year period 1983–1991 (comparable in length to the 1999–2001 period) [47] and 13% over 1984–1992.

[43] EPA's review indicates that ten out of the 32 nine-year periods from 1960–2000 had a decrease, or an increase of no more than 1%, in annual heat input (Docket # A–96–56, Item # XV–C–18, at 58), while 7 of the 19 nine-year periods from 1970–1998 had a decrease, or an increase of no more than 1%, in ozone season heat input (Docket # A–96–56, Item # XV–C–19, at 58). Since these periods—although a minority—indicate that such decreases and small increases can occur, EPA believes that its methodology should not be considered unreasonable based on the recent State heat input. Moreover, while these long-term historical data certainly show the potential for such decreases and small increases, the data are otherwise of limited use in projecting future heat input. As explained in Section V.D.6. of this notice, the electricity industry has been undergoing deregulation of generation and restructuring. As a result, trends in the past, as reflected in the data, may not continue in the future. The IPM reflects these changes, and by using the IPM in developing heat input growth rates, EPA has taken these changes into account.

[44] Monthly data was not available for the year 1983, so a comparison of the period between 1977 and 1983 cannot be made.

[45] EPA notes that it previously solicited corrections to baseline heat input data and responded to requested corrections through the Technical Amendments in 1999 and 2000. EPA also notes that, based on the data provided by commenters, the requested changes to 1996 heat input would have very little impact on Virginia's EGU $NO_X$ emission budget. Virginia's 1996 baseline heat input (which was used to develop the budget) would increase by 131 tons, and, with the application of EPA's growth factor of 1.32 for Virginia, the State's EGU $NO_X$ emission budget would increase by 173 tons or 1%.

[46] EPA similarly incorporated other specific data corrections requested by commenters for other States for 1997 or later.

[47] EPA's review indicates that two out of the 31 ten-year periods from 1960–2000 had a decrease in annual heat input, with the largest decrease being 5.5% (Docket # A–96–56, Item # XV–C–18, at 61), while four out of the 18 ten-years periods from

Continued

Ozone season heat input decreased 9.1% over 1982–1992.[48] Thus, the fact that West Virginia's heat input has recently exceeded EPA's 2007 heat input projection does not mean that EPA's projection is unreasonable.

Further, while EPA agrees that West Virginia is a significant exporter of electricity, EPA does not believe that it necessarily follows that West Virginia's heat input will continue to grow. Since less than a third of the electricity generated in West Virginia is sold in West Virginia, the ability to export electricity plays an important part in the amounts of both electricity generation and heat input in West Virginia. The level of West Virginia's exports in the future will depend on electricity supply and demand in the regional electricity market. The commenters did not provide any information on future electricity demand and supply outside of West Virginia and how they might affect future generation and heat input in West Virginia. West Virginia's heat input declined over 8% during 1999–2001 despite the fact that electricity sales increased 1.2% in the $NO_X$ SIP Call region.

While commenters provided a graph to demonstrate that West Virginia's heat input has been less variable than other States' heat input, that graph covers only 1995–2000 and so fails to show the variability reflected by the heat input decrease between 2000 and 2001. Further, since the range of movement, up and down, of lines on a graph can vary depending on the range of the vertical and horizontal scales presented in the graph, the variability of the graphed parameter (here, State heat input) cannot be determined simply by looking at the graph. Commenters provided no other support for the claim of less variable heat input. Moreover, the 1995–2001 ozone season data and the 1960–2000 annual heat input data for West Virginia show, contrary to the commenters, that the State's heat input is quite variable, as reflected in significant decreases over multi-year periods. (See Tables 2 through 9 above.)

Finally, as discussed above, because heat input is quite variable, EPA believes that it is inappropriate to project long-term heat input growth to 2007 based on a short-term trend like West Virginia's heat input growth for 1995–2000. With regard to comments concerning the heat input, or percentage share of heat input, projected for West Virginia by the IPM, EPA maintains that the IPM is more accurate in predicting the change in State heat input between modeled years than in pinpointing State heat input for a particular year. (See section V.C.2 of this notice.) With regard to comments concerning the new gas-fired generation capacity that is planned in West Virginia, projected new units do not necessarily result, as discussed above, in increased State heat input.

For the reasons above, EPA rejects the commenters' claims that EPA's heat input growth rate and 2007 heat input projection of West Virginia are unreasonable.

10. No Heat Input Growth Rate Methodology Has Been Presented That Would Have Results That Better Comport With Actual Heat Input

As discussed in detail above, EPA believes that the fact that a State's recent heat input exceeds a heat input projection for the State for 2007 does not make the projection unreasonable. However, in light of the Court's and commenters' concerns over cases where recent actual State heat input exceeded the 2007 projection, EPA decided to compare the heat input growth rates and 2007 heat input projections under the Agency's methodology to those under the alternative heat input growth methodologies considered previously by EPA or discussed by commenters. In making this comparison, EPA focused on how the 2007 projections compared with actual heat input data to date for most of the $NO_X$ SIP Call States. EPA excluded Connecticut, Massachusetts, and Rhode Island from the comparison of the growth rate methodologies because they entered into a February 1999 Memorandum of Understanding in which they reallocated their $NO_X$ emission budgets for EGUs, and effectively reallocated their projected heat input, among the three States. This agreement, which was implemented in their SIPs approved on December 27, 2000, rendered moot any potential issues concerning the 2007 heat input projections used to calculate their original $NO_X$ emission budgets. As discussed below, EPA found that, while the alternative methodologies resulted in higher 2007 projected heat input for some individual States, overall the alternative 2007 projections would not comport better than EPA's 2007 projections with the actual heat input data for the $NO_X$ SIP Call States.

The first alternative methodology would involve using heat input growth rates from OTAG. During the $NO_X$ SIP Call rulemaking, EPA reviewed $NO_X$ emission projections by OTAG and converted them into heat input projections and growth rates. The EPA and OTAG heat input growth rates are compared in Table 16 below.

TABLE 16.—COMPARISON OF OTAG AND EPA STATE HEAT INPUT GROWTH FACTORS[49]

| State | OTAG growth rate | EPA growth rate |
|---|---|---|
| AL | 1.21 | 1.10 |
| DC | 1.00 | 1.36 |
| DE | 1.15 | 1.27 |
| GA | 1.03 | 1.13 |
| IL | 1.08 | 1.08 |
| IN | 1.12 | 1.17 |
| KY | 1.08 | 1.16 |
| MD | 1.05 | 1.35 |
| MI | 0.94 | 1.13 |
| MO | 1.05 | 1.09 |
| NC | 1.10 | 1.21 |
| NJ | 1.10 | 1.21 |
| NY | 1.08 | 1.05 |
| OH | 1.04 | 1.07 |
| PA | 1.06 | 1.15 |
| SC | 1.03 | 1.43 |
| TN | 1.13 | 1.21 |
| VA | 1.07 | 1.32 |
| WV | 1.05 | 1.03 |
| Region | 1.04 | 1.1 |

[49] Throughout this notice the term growth rate (expressed in percent) has been used. In the original rulemaking EPA actually used growth factors (a factor used to multiply the baseline heat input). Growth factors can be converted to growth rates by subtracting 1 and expressing the value in terms of a percent (e.g. a growth factor of 1.08 is equivalent to a growth rate of 8%). In other words, increasing a baseline heat input by 8% growth rate is equivalent to multiplying the baseline heat input by a 1.08 growth factor.

Focusing first on the States for which EPA's heat input growth rates have been disputed by commenters, EPA notes that EPA's State heat input growth rate is higher than OTAG's for three States (Georgia, Michigan, and Virginia), lower for three States (Alabama, Missouri, and West Virginia) and the same for one State (Illinois). Further, as shown in Table 19 below, the 2007 heat input projection based on OTAG's growth rates would be exceeded by actual State heat input in a recent year for ten jurisdictions, as compared to seven jurisdictions when 2007 projections are

1970–1998 had a decrease in ozone season heat input, with the largest decrease being 9.1% (Docket # A–96–56, Item # XV–C–19, at 61). Since these periods—although a minority—indicate that such decreases can occur, EPA believes that its methodology should not be considered unreasonable based on the recent State heat input. Moreover, while these long-term historical data certainly show the potential for such decreases, the data are otherwise of limited use in projecting future heat input. As explained in Section V.D.6. of this notice, the electricity industry has been undergoing deregulation of generation and restructuring. As a result, trends in the past, as reflected in the data, may not continue in the future. The IPM reflects these changes, and by using the IPM in developing heat input growth rates, EPA has taken these changes into account.

[48] The periods for decreasing ozone season heat input obviously differ slightly from the periods for decreasing annual heat input.

based on EPA's growth rates.[50] In addition, using OTAG's heat input growth rates, the overall heat input growth rate for the entire $NO_X$ SIP Call region would be less than the overall growth rate using EPA's growth rates, and the heat input projections for 2007 for the region would be lower. In summary, using OTAG's growth rates, rather than EPA's heat input growth rates would result in more States recently exceeding their 2007 heat input projections and lower heat input for the region as a whole.[51]

A second alternative methodology that EPA considered in the $NO_X$ SIP Call rulemaking and that a commenter proposed is use of a single, regionwide heat input growth factor based on the 2001–2010 heat input growth rate under the IPM (i.e., 1.15%). This would result in the same projected heat input for the $NO_X$ SIP Call region as a whole, but in a different apportioning of that heat input among the States in the region. With regard to the States whose heat input is disputed by commenters, EPA's State heat input growth rate is higher than under this second alternative for four States (Georgia, Illinois, Michigan, and Virginia) and lower in three States (Alabama, Missouri, and West Virginia). Further, as shown in Table 18 below, the 2007 heat input projection based on the single, regionwide growth rate would be exceeded in a recent year by actual State heat input for nine jurisdictions, as compared to seven jurisdictions when 2007 projections are based on EPA's growth rates. Thus, using this second alternative methodology, rather than EPA's methodology, would result in additional States exceeding their 2007 heat input projections.[52]

During the $NO_X$ SIP Call rulemaking, EPA received comment on a third alternative methodology to project heat input. The commenter suggested using growth factors based on actual 1996 data and 2007 IPM projections. These growth rates, which would be applied to 1996 heat input, are set forth in Table 17 below.

A second alternative methodology that EPA considered in the $NO_X$ SIP Call rulemaking and that a commenter proposed is use of a single, regionwide heat input growth factor based on the 2001–2010 heat input growth rate under the IPM (i.e., 1.15%). This would result in the same projected heat input for the $NO_X$ SIP Call region as a whole, but in a different apportioning of that heat input among the States in the region. With regard to the States whose heat input is disputed by commenters, EPA's State heat input growth rate is higher than under this second alternative for four States (Georgia, Illinois, Michigan, and Virginia) and lower in three States (Alabama, Missouri, and West Virginia). Further, as shown in Table 18 below, the 2007 heat input projection based on the single, regionwide growth rate would be exceeded in a recent year by actual State heat input for nine jurisdictions, as compared to seven jurisdictions when 2007 projections are based on EPA's growth rates. Thus, using this second alternative methodology, rather than EPA's methodology, would result in additional States exceeding their 2007 heat input projections.[52]

During the $NO_X$ SIP Call rulemaking, EPA received comment on a third alternative methodology to project heat input. The commenter suggested using growth factors based on actual 1996 data and 2007 IPM projections. These growth rates, which would be applied to 1996 heat input, are set forth in Table 17 below.

TABLE 17.—COMPARISON OF 1996–2007 STATE GROWTH RATES AND EPA HEAT INPUT GROWTH RATES

| State | Commenter growth rate | EPA growth rate |
|---|---|---|
| AL | 1.07 | 1.10 |
| DE | 1.53 | 1.36 |
| DC | 0.40 | 1.27 |
| GA | 1.11 | 1.13 |
| IL | 1.25 | 1.08 |
| IN | 1.09 | 1.17 |
| KT | 1.13 | 1.16 |
| MD | 1.08 | 1.35 |
| MI | 1.24 | 1.13 |
| MO | 1.33 | 1.09 |
| NJ | 2.3 | 1.21 |
| NY | 1.07 | 1.21 |
| NC | 1.33 | 1.05 |
| OH | 1.02 | 1.07 |
| PA | 1.10 | 1.15 |
| SC | 1.45 | 1.43 |
| TN | 1.11 | 1.21 |
| VA | 1.47 | 1.32 |
| WV | 1.35 | 1.03 |

With regard to the States whose heat input is disputed by commenters, EPA's State heat input growth rate is higher than under this third alternative for two States (Alabama and Georgia) and lower in five States (Illinois, Michigan, Missouri, Virginia, and West Virginia). Further, as shown in Table 18 below, the 2007 heat input projection based on the third alternative methodology would be exceeded by actual State heat input in a recent year for seven jurisdictions. Thus, using this third alternative methodology would result in the same number of jurisdictions exceeding their 2007 heat input projections in a recent year as under EPA's methodology.[53]

TABLE 18—STATES THAT IN A RECENT YEAR HAVE EXCEEDED 2007 HEAT INPUT UNDER DIFFERENT PROJECTION METHODS

| State | EPA method | OTAG growth rate | Uniform growth rate | 1996–2007 growth rate |
|---|---|---|---|---|
| AL | Exceeded | Exceeded | Exceeded | Exceeded |
| DC[54] | Exceeded | Exceeded | Exceeded | Exceeded |
| DE | | | | Exceeded |

[50] While EPA's 2007 heat input projection was exceeded by New York's 1999 heat input, no commenter disputed the heat input growth rate for that State. Moreover, the State's heat input has decreased since 1999 and is now well below EPA's projection. In fact, heat input in every year other than 1999 has been lower than the actual heat input in 1995.

[51] As discussed in section V.C.3 of this notice, OTAG's projections also are fundamentally flawed in that they are not based on consistent assumptions.

[52] Further, as a conceptual matter, EPA considers this alternative less reasonable than EPA's methodology because this alternative assumes the same amount of heat input growth for each State, a phenomenon that is demonstrably unrealistic, based on both historical experience and model projections.

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[53] As a conceptual matter, EPA considers this alternative less reasonable than EPA's methodology because it calculates growth between an actual year of heat input (1996) and a modeled year of heat input. *See* section V.C.2 of this notice.

TABLE 18—STATES THAT IN A RECENT YEAR HAVE EXCEEDED 2007 HEAT INPUT UNDER DIFFERENT PROJECTION METHODS—Continued

| State | EPA method | OTAG growth rate | Uniform growth rate | 1996–2007 growth rate |
|---|---|---|---|---|
| GA | Exceeded | Exceeded | Exceeded | Exceeded |
| IL | Exceeded | Exceeded | Exceeded | |
| IN | | | | Exceeded |
| KY | | Exceeded | | |
| MD | | Exceeded | Exceeded | |
| MI | | Exceeded | | |
| MO | Exceeded | Exceeded | Exceeded | |
| NC | | | | |
| NJ | | | Exceeded | |
| NY | Exceeded | Exceeded | | Exceeded |
| OH | | | | Exceeded |
| PA | | | | |
| SC | | | Exceeded | |
| TN | | | | |
| VA | | | Exceeded | |
| WV | Exceeded | Exceeded | | |

[54] EPA notes that the District of Columbia is unique in that it has only six units and so its heat input is particularly variable.

Finally, some commenters suggested using more recent data to develop 2007 heat input projections. One such approach continues to use EPA's heat input growth rates, but applies them to the 2000 actual State heat input data, instead of actual data representing the higher of a State's 1995 or 1996 heat input. While EPA believes that it was appropriate to use, to the extent feasible, the most up-to-date heat input data available during the $NO_X$ SIP Call and Section 126 rulemakings in order to project 2007 heat input, the 2000 heat input data that the commenter suggests using became available in 2001 and was, obviously, not available when EPA issued the $NO_X$ SIP Call (1998), the Section 126 Rule (1999), and the Technical Amendments (2000). EPA believes that the Agency cannot reasonably be required to modify the heat input growth rate projections or other aspects of the $NO_X$ SIP Call and Section 126 Rule simply to use future data that inevitably becomes available with the passage of time. Requiring EPA to do so would be a prescription for endless rulemaking.

Moreover, in this case, the data involved, i.e., State heat input, are quite variable from year to year. It therefore seems likely that, as subsequent years of actual State heat input data become available, some of the States' heat input may increase in one particular year more rapidly than reflected in the heat input growth rates and result in heat input for that year exceeding the new 2007 heat input projections under this fourth alternative methodology. The fact is that, as the latest year of actual State heat input data advances, the set of States with current, actual heat input exceeding 2007 projected heat input may well change. As discussed above, this already occurred during 1998–2001, when the set of States with current, actual heat input exceeding or close to 2007 projected heat input changed somewhat almost every year. EPA believes that this demonstrates both that the exceedance in a particular year of a State's 2007 heat input projection does not make the projection unreasonable and that commenters failed to demonstrate that EPA's heat input growth methodology is unreasonable.

*E. Procedural Issues*

As a procedural matter, EPA is responding in today's notice to the Court's remand in the Section 126 and the Technical Amendments cases of the heat input growth rate issue by providing a clearer explanation of the Agency's methodology. Before issuing today's notice, EPA outlined its proposed response in a notice in the **Federal Register**, i.e., the August 3, 2001 NODA (66 FR 40609–16). In that NODA, EPA relied largely on the existing record, but also pointed to new information that EPA placed in the docket at that time. EPA received some 30 comments on the NODA. EPA then developed additional new information and placed that in the docket through a second NODA dated March 11, 2002 (67 FR 10844–45). In the March 11, 2002 NODA, EPA also noted that some additional information might be put in the docket later. EPA did so at various times after March 11, 2002.

Commenters raised several procedural issues concerning EPA's response to the Court's remand of the heat input growth rate issue.

1. Notice-and-Comment Rulemaking

Commenters stated that EPA was required to have completed today's response to the Court's remand through notice-and-comment rulemaking.

EPA believes that its procedure is appropriate for today's response to the Court's remand. The response to remand does not entail promulgation of a new or revised rule reflecting new or revised heat input growth rates. Rather, it involves a clearer explanation, based on the existing record and confirmed by supplemental information, of the same heat input growth rates that EPA previously used in the $NO_X$ SIP Call, the Section 126 Rule, and the Technical Amendments. Under these circumstances, notice-and-comment rulemaking is not required. *See generally National Grain & Feed Ass'n, Inc.* v. *OSHA*, 903 F.2d 308 (5th Cir., 1990).

A notice-and-comment rulemaking would have been appropriate had the Court vacated the rulemaking with respect to the heat input growth rate issue, but the Court did not do so in either the Section 126 Decision or the Technical Amendments Decision. Indeed, in the Section 126 case, the Court denied a post-decision procedural motion specifically requesting such a vacatur.

In any event, as a practical matter, an opportunity to comment was afforded interested parties. By the August 3, 2001 NODA, EPA placed in the docket additional factual information that it compiled in the course of responding to the remand, and EPA allowed a 30-day comment period on that additional information. Many parties commented, and EPA has responded to those comments in today's notice. The August

3, 2001 NODA also outlined EPA's preliminary explanation in response to the remand, interested parties commented on that explanation, and EPA responded. Further, by the March 11, 2002 NODA, EPA again placed additional factual information compiled in the course of responding to the remand. As discussed above, two comments were submitted questioning whether there was time for submission of comments on the new information and questioning how the new data related to the response to remand. EPA thereafter explained to the commenters and the public the relevance of the documents and stated that the Agency would delay issuance of the final response to the remands until on or about April 17, 2001 and would consider timely submitted comments. EPA also received a third comment stating that the data referenced in the March 11, 2002 NODA were highly germane and supported EPA's heat input growth rate methodology.

A commenter claimed that section 307(d)(1) of the CAA requires that EPA provide a comment period and hold a hearing on its response to the remand. EPA disagrees.

Paragraph (1) of subsection (d) of section 307 provides that the procedural requirements found in subsection (d) apply to the items listed in subparagraphs (A) through (U). Each of these items refers to the ''promulgation'' (and, in almost all cases, the ''revision'') of a regulation or requirement under a provision of the CAA, except for subparagraph (N), which refers to an ''action of the Administrator under section 126,'' and subparagraph (U), which is a catch-all category that refers to ''such other actions as the Administrator may determine.'' EPA believes that the term ''action'' in subparagraph (N) is intended to cover both a grant or denial of a request for a finding under section 126(b), as well as a rulemaking establishing compliance requirements under section 126(c).

However, EPA does not believe that term should be read so broadly as to include today's response to the remand. Reading the term ''action'' so broadly would require that every remand response involving section 126 meet the procedural requirements of section 307(d), while a remand response involving any other provision referenced in section 307(d)(1) would not have to meet such requirements so long as the response was not a ''promulgation'' or ''revision'' of a regulation. EPA considers such a unique result for section 126 to be anomalous and therefore rejects that interpretation of the term ''action'' in section 307(d)(1)(N).

EPA also notes that, in today's response, the Agency is not taking any ''action'' under section 126. [55] Rather, EPA is simply explaining more clearly the basis for the ''action'' that it took in the section 126 Rule issued in January 2000, i.e., the final rulemaking that established compliance requirements, including State $NO_X$ budgets for EGUs.

2. Petition to Reconsider

Some commenters requested that EPA should treat any of their comments that EPA considered to be outside the scope of today's notice as petitions to reconsider and that EPA should respond to such petitions at the same time that it issues today's notice. Because EPA is responding on the merits to the comments submitted by these commenters, this request is moot.[56]

However, as discussed in section V.D.8 of this notice, a few comments by some other commenters are outside the scope of the remand and of today's response to remand. EPA does not regard the reconsideration request to apply to these comments.

**List of Subjects**

*40 CFR Part 51*

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

*40 CFR Part 52*

Air pollution control, Ozone, Reporting and recordkeeping requirements.

*40 CFR Part 96*

Administrative practice and procedure, Air pollution control, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

*40 CFR Part 97*

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Dated: April 23, 2002.

**Christine T. Whitman,**

*Administrator.*

[FR Doc. 02–10404 Filed 4–30–02; 8:45 am]

BILLING CODE 6560–50–P

[55] Under **Federal Register** drafting requirements, EPA must have an ''Action'' caption in every document published in the **Federal Register**. The use of caption at the beginning of today's notice does not make the notice an ''action'' under Section 307(d)(1)(N). The ''Action'' caption is required for all notices, including policy statements and interpretations for which public notice and comment and a public hearing are clearly not required.

[56] One of these commenters argued that EPA should remove any limit on the size of the Compliance Supplement Pool, which is a pool of extra allowances established by EPA for each State for use in the first 2 years of the $NO_X$ SIP Call and the section 126 Rule by sources that may not be able to install $NO_X$ emissions in time. Not only is this claim outside the scope of this notice, but also the Court has already ruled on and upheld EPA's imposition of the cap on the Compliance Supplement Pool. *See Michigan* v. *EPA*, 213 F.3d at 694.

Federal Register

Wednesday,
May 1, 2002

# Part V

# Department of the Interior

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 948

## West Virginia Regulatory Program; Final Rule

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 948**

**[WV–088–FOR]**

## West Virginia Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving proposed amendments to the West Virginia regulatory program (the ''West Virginia program'') authorized under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The amendments consist of the State's responses to several required program amendments codified in the Federal regulations at 30 CFR 948.16. The amendments are intended to revise the West Virginia program to be consistent with the corresponding Federal regulations and SMCRA.

**EFFECTIVE DATE:** May 1, 2002.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roger W. Calhoun, Director, Charleston Field Office, 1027 Virginia Street East, Charleston, West Virginia 25301. Telephone: (304) 347–7158, Internet address: *chfo@osmre.gov.*

**SUPPLEMENTARY INFORMATION:**

I. Background on the West Virginia Program
II. Submission of the Amendments
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

### I. Background on the West Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253 (a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of the approval in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning the West Virginia program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

### II. Submission of the Amendments

By letter dated November 30, 2000 (Administrative Record Number WV–1189), West Virginia sent us an amendment to its program, under SMCRA (30 U.S.C. 1201 *et seq.*). The amendment includes numerous attachments and was submitted in response to the following required program amendments: 30 CFR 948.16(a), (dd), (ee), (oo), (tt), (xx), (mmm), (nnn), (ooo), (qqq), (sss), (vvv)(1), (2), (3), and (4), (www), (xxx), (zzz), (aaaa), (bbbb), (ffff), (gggg), (hhhh), (iiii), (jjjj), (kkkk), (llll), (mmmm), (nnnn), (oooo), and (pppp).

However, in a previous decision dated October 1, 1999 (64 FR 53200), we found that the State had satisfied the required amendment codified at 30 CFR 948.16(mmm) and, therefore, it was removed.

In another previous decision dated August 18, 2000 (65 FR 50409), we found that the State had satisfied the required amendments codified at 30 CFR 948.16(www) and (xxx), and, therefore, we removed them.

We announced receipt of the proposed amendment in the January 3, 2001, **Federal Register** (66 FR 335–340). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Administrative Record Number WV–1194). We did not hold a public hearing or meeting, because no one requested one. The public comment period ended on February 2, 2001. However, a public commenter requested an extension of the public comment period, and to accommodate that request we extended the comment period to February 28, 2001. We received comments from one environmental organization and three Federal agencies.

We are also including in this final rule document our decisions on the State's responses to required program amendments that were submitted to us as part of a separate program amendment package dated May 2, 2001. We will address the remainder of the May 2, 2001, amendment in a separate final rule document at a later date. In a letter dated May 2, 2001 (Administrative Record Number WV–1209) West Virginia Department of Environmental Protection (WVDEP) submitted revisions to its Surface Mining Reclamation Regulations, Code of State Regulations (CSR) 38–2. Enrolled Committee Substitute for House Bill 2663 (Administrative Record Number WV–1210) that passed the Legislature on April 14, 2001, and was signed into law by the Governor on May 2, 2001, authorized WVDEP to promulgate the regulatory revisions. A notice (66 FR 28682) announcing receipt and a public comment period on the amendment was published in the **Federal Register** on May 24, 2001 (Administrative Record Number WV–1213). The amendments that we are deciding here were submitted by WVDEP to address the required amendments codified at 30 CFR 948.16(xx), (qqq), (zzz), (ffff), (gggg), (hhhh), (jjjj), (nnnn), and (pppp). The comment period closed on the program amendment on June 25, 2001. We received comments on the State's responses to the required amendments noted above from two Federal agencies.

We are also including in this final rule document our decisions on the State's responses to required program amendments that were submitted to us as part of a separate program amendment package dated November 28, 2001. We will address the remainder of the November 28, 2001, amendment in a separate final rule document at a later date. The amendments that we are deciding here were submitted by WVDEP to address the required amendments codified at 30 CFR 948.16(kkkk), (llll), and (mmmm). A notice (67 FR 4689–4692) announcing receipt and a public comment period on the program amendment package was published in the **Federal Register** on January 31, 2002 (Administrative Record Number WV–1267). The public comment period closed on March 4, 2002. We received comments on the required amendments noted above from three Federal agencies.

On January 15, 2002 (Administrative Record Number WV–1271), we met with the State to discuss the required amendments codified at 30 CFR 948.16. In that meeting, WVDEP agreed to provide us with further clarification on how and when they would provide additional information, amend policies set forth in its Permit, Inspection and Technical Handbooks, or propose rulemaking that would resolve specific issues.

By letter dated February 26, 2002, WVDEP sent us a status report regarding the required program amendments codified at 30 CFR 948.16 (Administrative Record Number WV–1276). The report included 14 attachments, and outlined actions taken in an attempt to satisfy the required program amendments. The actions

include proposed policies, rules and laws, form changes, and referrals to legal staff. Several actions include further justification of why WVDEP considers the State program to be sufficient. WVDEP stated that the law and rule changes would be proposed during the 2002 regular legislative session, and that none of the proposed revisions would be implemented without OSM approval.

By letter dated March 8, 2002, WVDEP sent us revisions to two of the attachments it had sent us in its February 26 letter (Administrative Record Number WV–1280). The March 8, 2002, letter also included one new attachment intended to address the required amendment at 30 CFR 948.16(sss).

In the March 25, 2002, **Federal Register** (67 FR 13577–13585) we reopened the comment period to provide the public an opportunity to review and comment on the topics discussed in the January 15, 2002, meeting; WVDEP's February 26 and March 8, 2002, submittals; and related information that we provided to WVDEP (Administrative Record Number WV–1285). The comment period closed on April 9, 2002. We received comments from one industry group and two Federal agencies.

## III. OSM's Findings

Following are the findings we made pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17 concerning the proposed amendments to the West Virginia program. We are approving these amendments and removing the required amendments. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes.

We are presenting our findings below in the following format: a description of the required amendment codified at 30 CFR 948.16; followed by a quotation or a description of the State's response to the required amendment; and our finding.

1. *Blasting.* 30 CFR 948.16(a) provides that West Virginia must submit copies of proposed regulations or otherwise propose to amend its program to provide that all surface blasting operations (including those using less than five pounds and those involving surface activities at underground mining operations) shall be conducted under the direction of a certified blaster.

*State Response*

This required program amendment should be removed. Current language in [subsection] 6.1 of the rules states ''a blaster certified by the Division of Environmental Protection shall be responsible for all blasting operations''. A letter dated August 30, 1994 from James Blankenship (OSM) to David C. Callaghan (WVDEP Director) stated ''required amendment 30 CFR 948.16(a) will be removed because the state has removed the offending language''. (Federal counterpart 816.61(c))

In the above referenced August 30, 1994, letter (Administrative Record Number WV–934) we acknowledged that the West Virginia program does require all blasting operations to be conducted by a certified blaster. Revised CSR 38–2–6.1 provides that ''a blaster certified by the Department of Environmental Protection shall be responsible for all blasting operations including the transportation, storage and use of explosives within the permit area in accordance with the blasting plan.'' We find, therefore, that the requirement of 30 CFR 948.16(a) is satisfied and can be removed.

2. *Revegetation.* 30 CFR 948.16(dd) provides that West Virginia must submit proposed revisions to Subsection CSR 38–2–9.3 of its Surface Mining Reclamation Regulations or otherwise propose to amend its program to establish productivity success standards for grazing land, pasture land and cropland; require use of the 90 percent statistical confidence interval with a one-sided test using a 0.10 alpha error in data analysis and in the design of sampling techniques; and require that revegetation success be judged on the basis of the vegetation's effectiveness for the postmining land use and in meeting the general revegetation and reclamation plan requirements of Subsections 9.1 and 9.2. Furthermore, West Virginia must submit for OSM approval its selected productivity and revegetation sampling techniques to be used when evaluating the success of ground cover, stocking or production as required by 30 CFR 816.116 and 817.116.

*State Response*

Productivity: The WVDEP has developed a policy (Attachment 1) that will use productivity standards developed by the Natural Resources Conservation Service (NRCS) or other publications of the United States Department of Agriculture. These standards will be compared to yields obtained from the particular site.

Ground cover: WVDEP has reviewed the modified Rennie-Farmer Method in addition to methods used in other states and has developed a policy (Attachment 1) which references section 3 of ''Technical Guides of Reference Areas and Technical Standards for Evaluating Surface Mine Vegetation in OSM Regions I and II,'' by Robert E. Farmer, Jr. *et al.,* OSM_J5701442/TV–54055A, 1981, U.S. Department of the Interior, Office of Surface Mining Reclamation and Enforcement.

*Productivity:* As discussed in the May 23, 1990, **Federal Register**, the State's regulations at Subsection 9.3(f) required the measurement of productivity, but they did not establish productivity success standards for grazing land, pasture land and cropland (55 FR 21322). In addition, the State failed to select and submit its productivity sampling technique(s) to be used in evaluating productivity.

WVDEP submitted a policy on February 26, 2002, addressing this issue. The policy was revised and resubmitted to us on March 8, 2002, as Attachment 1. The policy provides that the productivity standards for grazing land and hayland will be based upon determinations for similar map units as published in the productivity tables in NRCS soil surveys for the county or from average county yields recognized by the U.S. Department of Agriculture (USDA). We note that ''The West Virginia Bulletin,'' which is published annually by the West Virginia Agricultural Statistics Service, in cooperation with the USDA, lists average county yields for various principal crops throughout the State. The yields for grazing land or hayland will be measured in material produced per acre or animal units supported. The success of production shall be equal to or greater than that of the standard obtained from the tables. The evaluation methods for productivity to be used are described in Section 1 of ''Technical Guides of Reference Areas and Technical Standards for Evaluating Surface Mine Vegetation in OSM Regions I and II,'' by Robert E. Farmer, Jr. *et al.,* OSM__J5701442/TV–54055A, 1981, U.S. Department of the Interior, Office of Surface Mining Reclamation and Enforcement.

CSR 38–2–9.3.f of the State's existing Surface Mining Reclamation Regulations, which establishes the success standard for grazing land and pasture land, provides where the postmining land use requires legumes and perennial grasses, the operator shall achieve at least a ninety (90) percent ground cover and a productivity level as set forth in the (Technical) Handbook during any two years of the responsibility period except for the first year. The State does not intend to revise the Technical Handbook that is referenced in its rules. Instead, the proposed policy will become part of the Permitting or Inspector Handbook.

According to the policy, the productivity success standard for cropland will be determined using yields for reference crops from unmined lands. Reference crop yields shall be determined from the current yield

records of representative local farms in the surrounding area or from the average county yields recognized by the U.S. Department of Agriculture. The success of production shall be equal to or greater than that of the reference crop from unmined areas. Evaluation methods for productivity to be used are described in Section 1 of the ''Technical Guides of Reference Areas and Technical Standards for Evaluating Surface Mine Vegetation in OSM Regions I and II,'' by Robert E. Farmer, Jr. *et al.,* OSM__J5701442/TV–54055A, 1981, U.S. Department of the Interior, Office of Surface Mining Reclamation and Enforcement.

The policy further provides that the company (permit applicant) is responsible for providing WVDEP with copies of the productivity tables and/or data used to determine reference crop yield. Where the USDA or other agricultural data for productivity does not exist for a particular county, the applicant will work with WVDEP and USDA to develop standards for the proposed area.

CSR 38–2–9.3.f.2 provides that for areas to be used for cropland, the success of crop production from the mined area shall be equal to or greater than that of the approved standard for the crop being grown over (the) last two (2) consecutive seasons of the five growing season liability period. The proposed policy clarifies that the success standard for cropland is based on yields for reference crops from ''unmined'' lands. The policy further provides that reference crop yields shall be based on current yield records of representative local farms in the surrounding area or from the average county yields. The existing rules do not provide for the use of reference areas in evaluating the productivity success of cropland. As proposed in the policy, an operator will be required to use reference areas in the vicinity of the proposed mining operation or average county yield records in setting the success standard when cropland is the approved postmining land use. To ensure that management levels and other factors are given proper consideration, we recommend that yield data from both the reference areas and county records be given equal weight when establishing productivity success standards for cropland.

We encourage WVDEP to cite in its rules and/or policy the specific productivity standards developed by NRCS and the other publications of the USDA that the State plans to use. We also recommend the use of the ''West Virginia Bulletin'' published by the WV Department of Agriculture and the USDA. A copy of ''West Virginia Bulletin 2001, No. 32'' was provided to WVDEP on February 6, 2002. NRCS officials say that some soil surveys lack sufficient information to rate the yields for a particular soil type, especially in certain mining counties, and most yield information is based on higher levels of management. Although the WV Bulletin lacks yield information based on soil type, NRCS concurs that a combination of reports may be best to use, especially when the soil survey states that the soil is too variable to rate. Nevertheless, the lack of reference to specific publications does not render the proposed policy less effective than the Federal requirements. When submitting permit applications or permit modifications for existing operations with agricultural postmining land uses, applicants will be expected to include productivity data from the most current NRCS soil surveys and USDA publications for WVDEP review and approval. The applicant will be required to consult with WVDEP, NRCS and USDA to verify existing information or to develop data when production data is insufficient or missing for a particular county or area.

CSR 38–2–9.3.d and 9.3.e provide that when evaluating vegetative success, WVDEP must use a statistically valid sampling technique with a 90 percent statistical confidence interval. The proposed policy requires the use of a sampling technique for measuring productivity as set forth in Section 1 of the ''Technical Guides of Reference Areas and Technical Standards for Evaluating Surface Mine Vegetation in OSM Regions I and II.'' Section 1 is entitled, ''Planning and Evaluating Agricultural Land Uses on Surface-Mined Areas.''

As mentioned above, 30 CFR 948.16(dd) requires the establishment of productivity success standards for grazing land, pastureland, and cropland. Because the proposed policy establishes productivity success standards for grazing land, pastureland and cropland that are no less effective than those standards set forth in 30 CFR 816.116 and 817.116, this portion of the required amendment has been satisfied and can be removed. In addition, because State rules at CSR 38–2–9.3.d and 9.3.e require the use of a statistically valid sampling technique with a 90 percent statistical confidence interval and the proposed policy provides for the use of a productivity sampling technique that uses a 90-percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error) for measuring grazing land, pastureland and cropland, that portion of the required amendment has been satisfied and can be removed.

*Ground Cover:* As discussed in the May 23, 1990, **Federal Register** (55 FR 21322), the State program did not require that revegetation success be judged on the basis of the vegetation's effectiveness for the postmining land use and in meeting the general revegetation and reclamation plan requirements of Subsections 9.1 and 9.2. Furthermore, the State has failed to submit for OSM approval its selected revegetation sampling techniques to be used when evaluating ground cover.

Initially, WVDEP submitted its modified Rennie-Farmer Method as its preferred method for evaluating the success of ground cover. After further evaluation of that method and other State methods, WVDEP submitted a policy on February 26, 2002, and revised it on March 8, 2002, which provides that ground cover success shall be based on the Rennie and Farmer technique described in Section 3 of the ''Technical Guides of Reference Areas and Technical Standards for Evaluating Surface Mine Vegetation in OSM Regions I and II,'' by Robert E. Farmer, Jr. *et al.,* OSM__J5701442/TV–54055A, 1981, U.S. Department of the Interior, Office of Surface Mining Reclamation and Enforcement. Section 3 is entitled, ''An Inventory System for Evaluating Revegetation of Reclaimed Surface Mines to Forest Resource Conservation Standards,'' and contains a statistical technique for evaluating ground cover and stockings.

CSR 38–2–9.3.d and 9.3.e. provide that when evaluating vegetative success, WVDEP must use a statistically valid sampling technique with a 90 percent statistical confidence interval. Ground cover, production, or stocking can only be considered equal to the approved success standard when they are not less than 90 percent of the success standard. When evaluating vegetative success, an inspection report must be filed by the inspector. Only after the applicable success standards have been met and documented can Phase II or Phase III bond release be approved by the State.

Because State rules at CSR 38–2–9.3 and the proposed policy require the use of a statistical sampling technique for measuring ground cover and that measurement technique requires the use of a 90-percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error), that portion of the required amendment at 30 CFR 948.16(dd) has been satisfied and can be removed.

The West Virginia program at CSR 38–2–9.1.a. and 9.1.d. provide for the establishment of a diverse, effective and permanent vegetative cover of the same seasonal variety native to the area of disturbed land, or introduced species

that are compatible with the approved postmining land use. The requirement that the established vegetation be compatible with the approved postmining land use satisfies the requirement at 30 CFR 948.16(dd) which states that revegetation must be judged on the basis of the vegetation's effectiveness for the postmining land use. Therefore, that portion of 30 CFR 948.16(dd) has been satisfied and can be removed.

30 CFR 948.16(dd) also requires that the West Virginia program contain the requirement that revegetation success be judged on the basis of the vegetation's effectiveness in meeting the general revegetation and reclamation plan requirements of subsections CSR 38–2–9.1 and 9.2. As mentioned above, CSR 38–2–9.3.e., concerning the final bond release inspection, satisfies this requirement by providing that, ''. . . if applicable standards have been met, the Director shall release the remainder of the bond.'' CSR 38–2–12.2.c.3 further provides that only upon successful completion of the reclamation requirements of the Act, these rules and the permit conditions, may final bond release be approved by the Director. The ''applicable standards'' referred to at CSR 38–2–9.3.e. include the revegetation success standards and the ''reclamation requirements'' at CSR 38–12.2.c.3 would include all other requirements of the West Virginia program, including those requirements at CSR 38–2–9.1 and 9.2. Therefore, the remaining portion of 30 CFR 948.16(dd) has been satisfied and can be removed.

3. *Prime Farmland.* 30 CFR 948.16(ee) provides that West Virginia must submit documentation that the NRCS has been consulted with respect to the nature and extent of the prime farmland reconnaissance inspection required under Subsection 38–2–10.1 of the State's Surface Mining Reclamation Regulations. In addition, the State shall either delete paragraphs (a)(2) and (a)(3) of Subsection 38–2–10.2 or submit documentation that the NRCS State Conservationist concurs with the negative determination criteria set forth in these paragraphs.

*State Response*

Comments from NRCS resolve this issue (WV Administrative Record No. WV–1203). The NRCS stated in their comment letter dated February 9, 2001, to OSM that all prime farmlands in the State have been mapped and are available. WVDEP has contacted the NRCS and has drafted a letter seeking further concurrence (Attachment 1A).

In an attempt to clarify these issues and to gain further insight into NRCS comments of February 9, 2001 (Administrative Record Number WV–1203), we had several discussions with NRCS officials about these issues. Through these discussions we learned that NRCS does not have soil surveys completed for all counties in West Virginia. NRCS has completed soil surveys for approximately 98 percent of the State. They have draft reports for Logan, Mingo, Lincoln, and McDowell Counties that still need to be published. The final reports will not be published until late 2002 or early 2003. In the meantime, NRCS will have to conduct soil investigations in counties that do not have completed soil surveys. NRCS does not feel that it is necessary to conduct prime farmland reconnaissance inspections in all counties of West Virginia. However, the procedural details for identifying and protecting prime farmland within the State need to be negotiated through a memorandum of understanding (MOU) or an exchange of letters between NRCS and WVDEP.

In its February 25, 2002, letter that comprised Attachment 1A, WVDEP provided NRCS a copy of its rules governing prime farmlands at CSR 38–2–10. WVDEP requested that NRCS address its reconnaissance inspection requirements and concur with its negative determination criteria.

WVDEP described the State's reconnaissance inspection process as it currently exists. Included in that description were the following criteria, one or more of which can be the basis for a prime farmland negative determination: (1) No historical use of the land as cropland; (2) The slope of the land in the permit area is greater than 10 percent; (3) Other factors (i.e., rocky surface, frequent flooding) disqualify the land as prime farmland; and (4) A soil survey by a qualified person.

The letter further stated that WVDEP reviews the applicant's information in the application and will check county soil survey maps. The soils in the area are compared to a list from ''West Virginia's Prime Farmland Soil Mapping Units'' by NRCS (Attachment 3P). If the soils in the proposed mining area are not on the list, then the negative determinations are approved. If the negative determination is not approved, then the NRCS is consulted. If prime farmland is identified, then a much more detailed plan is required.

For counties where no mapping has been published, WVDEP's procedure is described in Attachment 2P. If the slopes are less than 10 percent and the area has historically been used as cropland, then NRCS is consulted.

WVDEP further stated that the criteria for both the slope and the rocky or flooded land were based on NRCS literature. Of all the soils identified in the ''West Virginia's Prime Farmland Soil Mapping Units'' document, not one has a slope greater than 10 percent and that same document says that prime farmland cannot be in areas that are flooded frequently nor in areas that are rocky (10 percent cover of rock fragments coarser than 3 inches).

Attachment 2P contains a proposed policy regarding prime farmlands identifications. The policy provides that soil surveys prepared by the NRCS will be the basis for the final determination of prime farmlands in West Virginia involving surface mining permits. In the cases where soil surveys are not complete in a county and prime farmland involvement is possible, the NRCS will conduct a soil survey for the permit area for final determination.

If a permit application contains any areas with less than 10 percent slope and it is evident the area has been used for crops at least 5 years out of the last 20 years, it is possible that these areas could be considered prime farmland.

If this condition is present, the applicant should check the NRCS soil survey for that county. If a soil survey does not exist for a particular county, the applicant should consult the local NRCS District Conservationist for a prime farmland determination.

In counties where soil surveys have been published, the applicant must locate the permit on the soils map and by using the symbols on the map, determine the soil types in the proposed area. Then, comparison with the attached list of soils constituting prime farmlands in West Virginia will have to be made. If the soil type is considered prime farmland on the list, the District Conservationist for that county must be contacted for final determination.

If the permit application involves prime farmland, all provisions of Sections 507(b)(16) and 515(b)(7) of Public Law 95–87 (Sections 22–3–9(a)(15) and 22–3–13(b)(7) of the West Virginia Surface Coal Mining and Reclamation Act) and Section 10 of the West Virginia Surface Mining Reclamation Regulations will apply.

Attachment 3P contains the publication entitled, ''West Virginia's Prime Farmland Soil Mapping Units.'' This publication contains a listing prime farmland soil mapping units throughout the State. The publication is dated April 1982.

As discussed in the May 23, 1990, **Federal Register** (55 FR 21322), although the State's negative determination criteria appeared

generally consistent with the national criteria established at 7 CFR 657, Federal rules allow the NRCS to alter these criteria and establish others. Furthermore, the definition of ''prime farmland'' at 30 CFR 701.5 vests responsibility for establishing prime farmland qualification criteria with the U.S. Secretary of Agriculture. To ensure that the State program is no less effective than the Federal definition of ''prime farmland'' in 30 CFR 30 CFR 701.5, West Virginia was required to submit documentation that the NRCS has concurred with all negative determination criteria contained in Subsection 10.2, except those of paragraph (a)(1), which pertain to historical use for cropland. In addition to demonstrating compliance with the consultation requirements of 30 CFR 785.17(b)(1), the State was to submit documentation that it has consulted with the NRCS State Conservationist in determining the nature and extent of the reconnaissance inspection.

On March 7, 2002, NRCS responded to WVDEP's inquiries regarding prime farmland (Administrative Record Number WV–1290). The NRCS acknowledged that it is the Federal agency with delegated authority under law to make determinations on the existence of prime farmland. NRCS acknowledged that it provides information on prime farmland through the soil survey program as part of its technical assistance effort to the fourteen soil conservation districts in West Virginia.

With respect to reconnaissance inspections, NRCS acknowledged that it could be satisfied by using locally available information. The soil map units in the soil survey are listed for prime farmland and are cross-referenced in the local Field Office Technical Guide. NRCS found that the reconnaissance inspection procedures outlined in WVDEP's proposed policy, ''Prime Farmlands Identifications,'' Attachment 2P, were acceptable to them. However, they requested that WVDEP change ''SCS'' to ''NRCS.''

In regard to the negative determination criteria, NRCS stated that its definitions were not consistent with several parts of CSR 38–2–10. Because cropping history is not considered in the NRCS definition of prime farmland, it could not agree with any historic use of the land as set forth in Subsections 10.2.a.1 through 10.2.a.1.C. According to the NRCS, prime farmland can be cultivated, cropland, pasture, or forestland. However, it cannot be built up land or water. The Federal regulations at 30 CFR 701.5 define prime farmland to mean those lands which are defined by the Secretary of Agriculture in 7 CFR Part 675 and which have historically been used for cropland. The State's requirements regarding historical use as cropland, like the Federal definition of prime farmland at 30 CFR 701.5, is consistent with Section 701(20) of SMCRA. That section defines prime farmland to have the same meaning as that previously prescribed by the Secretary of Agriculture on the basis of such factors as moisture availability, temperature regime, chemical balance, permeability, surface layer composition, susceptibility to flooding, erosion characteristics, and which historically have been used for intensive agricultural purposes. As discussed above, West Virginia was required to submit documentation that the NRCS concurs with all negative determination criteria contained in Subsection 10.2, except those of paragraph (a)(1), which pertain to historical use for cropland. In addition, the State's regulations at subsection 10.2.a.1 through 10.2.a.1.C are substantively identical to the Federal regulations at 30 CFR 701.5 (definition of ''historically used for cropland''). NRCS concurred with Subsection 10.2.a.2 and 10.2.a.3 relating to slopes greater than 10 percent and the presence of stones on the surface. It also agreed with Subsection 10.2.a.4 and recommended the use of soil surveys in making negative determinations.

NRCS concluded that nearly all areas in the State have basic information on prime farmland. If new mapping is in progress, they would provide advance information at the mapping scale used. Generally, NRCS makes prime farmland determinations at the scale of mapping used for the soil survey, either 1:12,000 or 1:24,000. This information is published through the soil survey or the local Field Office Technical Guide and provided through West Virginia's fourteen soil conservation districts. NRCS stated that it was presently updating its prime farmland statewide list.

Because the NRCS concurs with the State's negative determination criteria set forth at CSR 38–2–10.2.a.2 and 10.2.a.3, regarding steepness, stoniness and flooding, OSM finds that the State prime farmland requirements at CSR 38–2–10.2 are no less effective than the Federal requirements at 30 CFR 785.17. Therefore, that portion of the required amendment at 30 CFR 948.16(ee) regarding negative determination criteria has been satisfied and can be removed.

In addition, the State was to submit documentation demonstrating that it had consulted with the NRCS in determining the nature and extent of the reconnaissance inspection as provided under CSR 38–2–10.1. As mentioned above, the NRCS found the reconnaissance inspection procedures outlined in WVDEP's proposed policy, ''Prime Farmlands Identifications,'' to be acceptable. Because the NRCS concurs with the State's proposed reconnaissance inspection procedures, OSM finds the State's reconnaissance inspection requirements as set forth at CSR 38–2–10.1 and further defined in the proposed policy, ''Prime Farmlands Identifications,'' to be no less effective than those Federal requirements set forth at 30 CFR 785.17(b), which require a reconnaissance inspection in all instances. Therefore, the remaining portion of the required amendment at 30 CFR 948.16(ee) requiring the concurrence of NRCS on the State's reconnaissance inspection procedures has been satisfied and can be removed.

4. *Spillway Design.* 30 CFR 948.16(oo) provides that West Virginia must submit proposed revisions to Subsection 38–2–5.4(b)(8) of its Surface Mining Reclamation Regulations to require that excavated sediment control structures, which are at ground level and that have an open exit channel constructed of non-erodible material, be designed to pass the peak discharge of a 25-year, 24-hour precipitation event.

*State Response*

The WVDEP is proposing language (Attachment 2) that all sediment control structures spillways will be designed based on a 25-year/24-hour storm, except for haulroads.

State rules at CSR 38–2–5.4.b.8 currently require all sediment control structures or other water retention structures be designed with spillways to safely pass a 25-year, 24-hour precipitation event. However, subsection 5.4.b.8 contains a provision that allows excavated sediment control structures, which are at ground level and have an open exit channel constructed of non-erodible material, to be designed to pass the peak discharge of a 10-year, 24-hour precipitation event.

As discussed in the October 4, 1991, **Federal Register** (56 FR 50260) notice, the Federal regulations require that all sediment control structures not meeting the size or other criteria of 30 CFR 77.216(a) must have spillways designed to pass the peak discharge of a 25-year, 6-hour precipitation event. Therefore, the requirement at subsection 5.4.b.8 was found to be less effective than the Federal requirements at 30 CFR 816/817.46(c)(2)(ii)(B) [now 30 CFR 816/

817.46(c)(2) and 30 CFR 816/817.49(a)(9)(ii)(C)].

The Federal regulations at 30 CFR 816/817.46(c)(2) provide that a sedimentation pond must include either a combination of principal and emergency spillways or single spillway configured as specified in 30 CFR 816/817.49(a)(9). The Federal regulations at 30 CFR 816/817.49(a)(9)(ii)(C) further provide that the spillway for an impoundment not included in paragraph (a)(9)(ii) (A) and (B) of this section must be designed and constructed to safely pass a 25-year, 6-hour or greater precipitation event as specified by the regulatory authority.

On August 30, 1994, we provided the State a follow-up letter regarding several proposed revisions that the State had made to its program in 1993 (Administrative Record Number WV–934). As mentioned above, in October 1991, we had required the State to amend its program and provide that that all sediment control structures not meeting the size or other criteria of 30 CFR 77.216(a) must have spillways designed to pass the peak discharge of a 25-year, 6-hour precipitation event. Although we required the State to amend its program, the State had not proposed any revisions at the time. Instead, the State maintained that these types of structures by their vary nature are not subject to catastrophic failure or excessive erosion. According to the State, the design storm criteria are established to address these potentials and are of not significance for these structures. Initially WVDEP thought that the Illinois program contained a provision similar to the 10-year, 24-hour standard for excavated sediment control structures that WVDEP was seeking to adopt for West Virginia. However, we explained that the Illinois program does not contain such a standard. Rather, the Illinois program contains an exemption from the quarterly inspection requirements for excavated sediment control structures. The inspection frequency was reduced because most excavated sediment control structures have no embankments to examine for structural weaknesses or other hazardous conditions. West Virginia has a similar standard.

WVDEP stated that a spillway design for a 25-year, 24-hour precipitation event would adversely affect the effectiveness of the on-bench sediment control system. We and WVDEP decided that an OSM engineer and a WVDEP engineer would be assigned to review the spillway design standards and determine if the proposed change would actually reduce the effectiveness of on-bench sediment control systems. Upon completion of the joint State/Federal review, it was determined that spillways designed to safely pass a 25-year, 24 hour precipitation event would only require minor changes, and they would not impact the use of excavated sediment control structures (Administrative Record Number WV–1273). In addition, the engineers determined that there is no peak discharge control problem because the open exit channels for these sediment control structures are currently larger than required due to the size of the equipment used to construct them. As the result of the review, WVDEP proposed revisions to its spillway design requirements at 30 CFR 38–2–5.4.b.8.

In its February 26, 2002, submission, Attachment 2 contains a proposed revision for CSR 38–2–5.4.b.8. As amended, the provision that exempted excavated sediment control structures from the 25-year, 24-hour spillway design requirement is deleted. In its place, is language that provides the following: ''provided, however that this subsection does not apply to haulroads.'' As proposed, CSR 38–2–5.4.b.8. now reads as follows.

> 5.4.b.8. Be designed to safely pass a twenty-five (25) year, twenty-four (24) hour precipitation event. The combination of both principal and/or emergency spillway of the structures shall be designed to safely pass the peak discharge of a twenty-five (25) year, twenty-four (24) hour precipitation event, provided, that a single open channel spillway may be used only if it is of non-erodable construction and designed to carry sustained flows; or earth or grass-lined and designed to carry short term, infrequent flows at non-erosive velocities where sustained flows are not expected; provided, however, that this subsection does not apply to haulroads.

The proposed exemption from the 25-year, 24-hour design standard for a haulroad drainage control system is consistent with 30 CFR 816/817.151(d) and CSR 38–2–4.6, which provides that ditch lines, culverts, bridges or other structures associated with haulroads must be capable of passing the peak discharge of a 10-year, 24-hour precipitation event.

The State submitted the proposed rule changes to the Legislature in February 2002. However, because of a procedural error, the Legislature did not adopt the revised language. To correct this oversight, on April 19, 2002, WVDEP filed these changes with the Secretary of State as emergency rules. According to State law, emergency rules can remain in effect for not more than 15 months. Final legislative rules are to be adopted by the State during a special legislative session or during the regular 2003 legislative session. We will review the emergency and final rules adopted by the State to ensure that the language of those rules is substantively identical to the language that we are approving today, with the exception of the correction of typographical and grammatical errors such as the two noted in Finding 19. Any substantive differences in the language are subject to further public review as a program amendment under 30 CFR 732.17.

We find that the proposed revisions at CSR 38–2–5.4.b.8 regarding spillway design requirements for sediment control and other water retention structures are no less effective than the Federal requirements at 30 CFR 816/817.46(c)(2) and 816/817.49(a)(9)(ii)(C). On May 23, 1990, we approved the 24 hour event standard as being no less effective than a 6-hour event standard (55 FR 21304, 21318). Therefore, the required amendment at 30 CFR 948.16(oo) has been satisfied and can be removed. Upon promulgation of a final rule by the State, WVDEP will be required to provide a copy of it to OSM. OSM will review it to ensure that the language contained therein is identical to that language which is being approved today. Any substantive differences in the language will be subject to further public review and approval by us as a program amendment.

5. *Certification of Sediment Control Structures.* 30 CFR 948.16(tt) provides that West Virginia must submit proposed revisions to subsections 38–2–5.4(b)(1) and 5.4(d)(1) to require that all structures be certified as having been built in accordance with the detailed designs submitted and approved pursuant to subsection 3.6(h)(4), and to require that as-built plans be reviewed and approved by the regulatory authority as permit revisions.

*State Response*

> This required program amendment should be removed. The WVDEP has developed a procedure for review of as-built certifications (This procedure is included in the WVDEP Inspection and Enforcement Handbook B copy attached) For structures with minor design changes, the inspector will submit as-built plans in accordance with 5.4.b. Minor changes are those within the construction tolerances described in 3.35 of the rules. For structures with major design changes, a permit revision in accordance with 3.28.c of the rules is required to be submitted and approved prior to certification. The ''as built'' certifications are after review incorporated as part of the permit and the Aas built'' drawings become the design for the structure. A 1988 OSM directive (copy attached) describes the federal policy and procedures for processing construction certifications when they indicate that a structure has been

constructed differently from the approved design and this OSM directive treats ''as built'' certifications in a manner similar to the WV program.

In its response to this required amendment, quoted above, WVDEP stated that minor changes are those within the construction tolerances described in subsection 3.35 of the rules. Sediment control structures that have been constructed with minor changes that are within approved construction tolerances are, in effect, built in accordance with the approved, certified designs in the preplan. Therefore, we find that such structures are built in compliance with the requirement at CSR 38–2–5.4.b.1. which provides that sediment control structures be ''constructed in accordance with the plans, criteria, and specifications set forth in the preplan.''

WVDEP also stated that a permit revision is required for as-built structures with major design changes. Therefore, the requirements at CSR 38–2–3.28 concerning permit revisions would apply. In addition, CSR 38–2–5.4.b.1., concerning design and construction requirements, provides that as-built plans must be submitted by the operator and approved by WVDEP immediately following construction. The as-built plans shall indicate the original design, the extent of changes, and reference points. CSR 38–2–5.4.b.1. also provides that all sediment control or other water retention structures be certified in accordance with CSR 38–2–5.4.d. This satisfies the portion of 30 CFR 948.16(tt) that requires certification in accordance with the detailed design plans submitted and approved pursuant to subsection 3.6.h.4, which requires the Secretary to approve detailed design plans for a structure before construction begins. CSR 38–2–5.4.d.1. provides that if as-built plans are submitted, the certification shall describe how and to what extent the construction deviates from the proposed design, and the explanation and certification of how the structure will meet the performance standards.

We find that the West Virginia program requires that as-built sediment control structures be reviewed and approved as permit revisions, and that all sediment control structures shall be certified. Therefore, the required amendment at 30 CFR 948.16(tt) is satisfied and can be removed.

6. *Constructed Outcrop Barriers.* 30 CFR 948.16(xx) provides that West Virginia must revise CSR 38–2–14.8(a) to specify design requirements for constructed outcrop barriers that will be the equivalent of natural barriers and will assure the protection of water quality and will insure the long-term stability of the backfill.

*State Response*

The State added a new provision at CSR 38–2–14.8.a.6. The new language is as follows:

> 14.8.a.6. Constructed outcrop barriers shall be designed using standard engineering procedures to inhibit slides and erosion to ensure the long-term stability of the backfill. The constructed outcrop barriers shall have a minimum static safety factor of 1.3, and where water quality is paramount, the constructed barriers shall be composed of impervious material with controlled discharge points.

In addition, the State contended in its February 26, 2002, program submissions that:

> The word ''inhibit'' as in ''to inhibit slides and erosion'' is (no) less effective than the Federal standard of ''prevent'' at 30 CFR 816.99(a).
>
> The State statutory language for outcrop barriers at W.Va. Code 22–3–13(b)(25) requires the retention of the natural barrier to ''inhibit'' slides and erosion. As set forth in the **Federal Register** dated January 21, 1981, OSM agrees that provisions regarding natural barriers at W.Va. Code 22–3–13(b)(25) and (c)(4) were found to be consistent with Section 515(b)(25) of SMCRA.

Standard Engineering Practices

The constructed outcrop barriers are designed structures that have a required minimum long-term static safety factor, while the natural outcrop barriers are not designed structures and are not required to have a minimum factor of safety. Furthermore, the analysis of stability includes consideration of the material to be placed, the foundation, and site conditions. The WVDEP is in the process of developing guidelines for constructed outcrop barriers that will include: requirements for the outslope; sequencing of construction of the outcrop barrier; and minimum factor of safety when barrier is part of the sediment control system (Attachment 9).

The State guideline for constructed outcrop barriers is contained in Attachment 9. It is entitled ''Constructed Outcrop Barriers.''

Attachment 9 provides that standard engineering practices for constructed outcrop barriers shall include the following:

1. The design of the constructed barrier shall take into consideration site conditions.

2. The construction of the outcrop barrier shall occur simultaneously with the removal of the natural barrier and be located at or near the edge of the lowest coal seam being mined. Temporary measures must be (in) place until the barrier is constructed.

3. The recommended outslope of the constructed barrier is 2v:1v (This is a typographical error and should be 2h:1v) with a static safety factor of 1.3.

4. If the proposed outslope is steeper than 2v:1v (This is a typographical error and should be 2h:1v), the constructed barrier shall be designed to have a static safety factor of 1.5.

5. If constructed barrier is part of the sediment control system (sediment ditch), the constructed barrier shall be designed to have a static safety factor of 1.5.

As discussed in the January 21, 1981, **Federal Register** (46 FR 5919) notice, State law provides for the use of constructed outcrop barriers to prevent slides and erosion, while Section 525(b)(25) of SMCRA requires the retention of a natural barrier. It was determined in 1981 that the State's alternative for a constructed barrier may be more stringent than the SMCRA requirement. However, at the time, the State program lacked specific criteria for the design of constructed outcrop barriers that will ensure that their performance in preventing slides and erosion would be more effective than that of a natural barrier.

In April 1983, West Virginia submitted specific design criteria for outcrop barriers. The approval of the design criteria for constructed outcrop barriers was announced in the November 16, 1983, **Federal Register** notice (48 FR 52037). However, the design criteria were inadvertently deleted from the State program. As discussed in the October 4, 1991, **Federal Register** notice (56 FR 50265), we required the State to specify design requirements for constructed outcrop barriers.

We later published a notice in the February 21, 1996, **Federal Register** (61 FR 6525) which announced the modification of the required amendment at 30 CFR 948.16(xx) requiring that the State amend its program at CSR 38–2–14.8.a to specify design requirements of outcrop barriers that will be equivalent to natural barriers and will assure the protection of water quality and ensure the long-term stability of the backfill. The proposed rule and the new guideline are intended to satisfy that requirement.

Section 22–3–13(b)(25) of the Code of West Virginia (W. Va. Code) provides that constructed barriers may be allowed under specified circumstances, provided that, at a minimum, the constructed barrier must be of sufficient width and height to provide adequate stability and the stability factor must equal or exceed that of the natural outcrop barrier. Furthermore, where

water quality is paramount, the constructed barrier must be composed of impervious material with controlled discharge points.

As discussed above, the revised rule at CSR 38–2–14.8.a.6 further provides that constructed outcrop barriers shall be designed using standard engineering procedures to inhibit slides and erosion to ensure the long-term stability of the backfill. The constructed outcrop barriers shall have a minimum static safety factor of 1.3, and where water quality is paramount, the constructed barriers shall be composed of impervious material with controlled discharge points. The proposed rule was included in WVDEP's program amendment of May 2, 2001 (Administrative Record Number WV–1209). The promulgation of CSR 38–2–14.8.a.6 was authorized by Enrolled Committee Substitute for House Bill 2663. The bill was passed by the Legislature on April 14, 2001, and signed into law by the Governor on May 2, 2001 (Administrative Record Number WV–1210).

In addition, WVDEP has proposed a guideline that further clarifies what standard engineering practices will be followed when allowing for the removal of a natural barrier and constructing an outcrop barrier. Approval of the proposed guideline is being made with the understanding that the State will correct the typographical errors noted above.

We find that the specific design criteria described above will ensure that constructed outcrop barriers will be as effective as natural barriers in preventing slides and erosion. In addition, we find that the proposed rule at CSR 38–2–14.8.a.6, together with the proposed guideline containing standard engineering practices for the design of constructed outcrop barriers, are in accordance with Section 515(b)(25) of SMCRA. Therefore, the required program amendment codified at 30 CFR 948.16(xx) regarding constructed outcrop barriers is satisfied with the adoption of the proposed rule and guideline and can be removed.

7. *Unjust Hardship Criterion.* 30 CFR 948.16(nnn) provides that West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to revise Section 22B–1–7(d) to remove unjust hardship as a criterion to support the granting of temporary relief from an order or other decision issued under Chapter 22, Article 3 of the W. Va. Code.

*State Response*

The WVDEP is proposing language (Attachment 3) to exclude unjust hardship as criteria to support the granting of temporary relief under WV Code 22–3.

In its February 26, 2002, submission, WVDEP included Attachment 3. Attachment 3 contains a proposed revision to W. Va. Code Section 22B–1–7, Appeals to boards. The attachment consists of additions and deletions to language at paragraphs (d) and (h) of Section 22B–1–7 and identifies how these statutory provisions are to be amended. Only paragraph (d) pertains to the required amendment relating to unjust hardship.

WVDEP proposes to amend paragraph (d) by adding a proviso that provides as follows: ''Provided; however, the criterion of unjust hardship cannot be used to support the granting of temporary relief for an order or other decision issued under article three, chapter twenty-two of this code.'' The proposed language was submitted to the Legislature for consideration.

On February 27, 2002, the proposed language was modified and reported out of committee as Senate Bill 735. The revised language reads as follows: ''Provided, That unjust hardship shall not be grounds for granting a stay or suspension of such order, permit or official action for an order issued pursuant to article three, chapter twenty-two of this code.'' Engrossed Senate Bill 735 passed the Senate on March 1, 2002, and was reported to the House Judiciary Committee where it died in committee without further action by the Legislature.

As announced in the February 21, 1996, **Federal Register** (61 FR 6516) on we did not approve the language at Section 22B–1–7(d) concerning allowing temporary relief where the appellant demonstrates that the executed decision appealed from will result in the appellant suffering an ''unjust hardship,'' because the language is inconsistent with Sections 514(d) and 525(c) of SMCRA, which do not allow temporary relief to be granted based on a showing of unjust hardship. As discussed in the July 14, 1998, **Federal Register** notice (63 FR 37775), our earlier required amendment regarding unjust hardship was modified based on a settlement agreement in *West Virginia Mining and Reclamation Association* v. *Babbitt,* Civil Action No. 2:96–0371 (S.D. W.Va., July 11, 1997). We clarified our earlier decision by stating that Section 22B–1–7(d) is not approved only to the extent that it includes unjust hardship as a criterion to support the granting of temporary relief from an order or other decision issued under Chapter 22, Article 3 of the W. Va. Code, which is the State counterpart to SMCRA.

WVDEP has informed the Surface Mine Board that unjust hardship is an invalid basis for granting temporary relief for SMCRA purposes. In our meeting with the WVDEP on January 15, 2002, WVDEP stated that, to its knowledge, the Surface Mine Board has not used this criterion, and the State has never asked that it be a consideration in granting a stay or suspending an order pursuant to W. Va. Code 22B–1–7(d) (Administrative Record Number WV–1271).

On October 26, 1988, the West Virginia Supreme Court of Appeals in *Canestraro* v. *Faerber* ruled that, ''When a provision of the West Virginia Surface Coal Mining and Reclamation Act, W.Va. Code 22A–3–1 *et seq.*, is inconsistent with Federal requirements in the Surface Mining Control and Reclamation Act, 30 U.S.C. § 1201 *et seq.*, the State Act must be read in a way consistent with the Federal Act.'' See *Canestraro* v. *Faerber,* 179 W. Va. 793, 374 S.E.2d 319 (1988) (Administrative Record Number WV–761).

In another decision rendered on July 12, 1996, the West Virginia Supreme Court of Appeals held that, pursuant to 30 CFR 731.17(g), whenever changes to laws or regulations that make up the approved State program regarding surface mining reclamation are proposed by the State, no such change to the laws or regulations shall take effect for purposes of a State program until approved as an amendment by OSM. In addition, the Supreme Court ruled that a State regulation enacted pursuant to the West Virginia Surface Coal Mining and Reclamation Act (WVSCMRA), W. Va. Code 22A–3–1 to 40 (1993), [now West Virginia Code 22–3–1 to 32 (1994 and Supp.1995)], must be read in a manner consistent with Federal regulations enacted in accordance with SMCRA, 30 U.S.C. 1201 to 1328 (1986). See *Charles Schultz* v. *Consolidation Coal Company,* 197 W.Va. 375, 475 S.E.2d 467 (1996) (Administrative Record Number WV–1038).

As discussed above, we have previously ruled that West Virginia's temporary relief provision at W. Va. Code Section 22B–1–7(d) cannot be approved ''to the extent that the unjust hardship criterion supports the granting of temporary relief from an order or other decision issued under Chapter 22, Article 3 of the West Virginia Code'' (63 FR 37775; July 14, 1998). The effect of that decision is that the unjust hardship criterion at W. Va. Code 22B–1–7(d) is

not part of the State's approved regulatory program (63 FR 37775). Furthermore, as mentioned above, WVDEP has never asked that unjust hardship be a consideration by the Surface Mine Board in granting a stay or suspending an order pursuant to W. Va. Code 22B–1–7(d), and it has informed the Board that it should never be a basis for granting temporary relief under the approved State program. In addition, the West Virginia Supreme Court of Appeals has held that ''when there is a conflict between the Federal and State provisions, the less restrictive State provision must yield to the more stringent Federal provision. * * * *Canestraro,* 374 S.E.2d at 321. In light of our disapproval of the statutory language that is the subject of this required amendment, and in light of the principles articulated in *Canestraro,* and *Schultz,* we now believe that the concerns identified in the required amendment at 30 CFR 948.16(nnn) have been satisfied, thereby rendering the required amendment unnecessary. Therefore, we are removing it. However, to avoid confusion or misinterpretation of the approved State regulatory program, we recommend that the statutory provision discussed above be deleted.

8. *Economic Feasibility.* 30 CFR 948.16(ooo) provides that West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to revise W. Va. Code 22B–1–7(h) by removing reference to Article 3, Chapter 22.

*State Response*

In our meeting with the WVDEP on January 15, 2002, the WVDEP stated that W. Va. Code 22B–1–7(h) applies only to the Environmental Quality Board, which hears Clean Water Act appeals. In its February 26, 2002, submittal, WVDEP provided proposed language (at Attachment 3) to delete the reference to Article 3 Chapter 22 from W. Va. Code 22B–1–7(h). The language was included in Engrossed Senate Bill 735 and reported out of the Judiciary Committee on February 27, 2002. Despite WVDEP's good efforts, the bill did not pass the Legislature in the 2002 legislative session.

We have previously ruled that West Virginia's administrative appeals provision at W. Va. Code 22B–1–7(h) could not be approved ''only to the extent that it references Article 3, Chapter 22 of the W. Va. Code.'' (63 FR 37774, 37775; July 14, 1998). The effect of that decision is that the reference to Article 3 Chapter 22 at W. Va. Code 22B–1–7(h) is not part of the approved West Virginia program. This disapproved provision should never be implemented by the State because the West Virginia Supreme Court of Appeals has held that ''when there is a conflict between the federal and state provisions, the less restrictive state provision must yield to the more stringent federal provision. * * * *Canestraro,* 374 S.E.2d at, 321. As noted in Finding 7, the West Virginia Supreme Court of Appeals also held in *Schultz* that no change in a State surface mining law or regulation can take effect for purposes of a State program until approved by OSM, and State surface mining reclamation regulations must be read in a manner consistent with Federal regulations enacted in accordance with SMCRA, *Schultz,* 475 S.E.2d 467. (Administrative Record Number WV–1038). Because we have previously disapproved the language that is the subject of this required amendment, and because of the principle articulated in *Canestraro* and *Schultz,* we conclude that the required amendment at 30 CFR 948.16(ooo) has been satisfied. Therefore, we are removing it.

9. *Bond Release.* 30 CFR 948.16(qqq) provides that West Virginia must revise CSR 38–2–2.20, or otherwise revise the West Virginia program to clarify that a bond may not be released where passive treatment systems are used to achieve compliance with applicable effluent limitations.

*State Response*

CSR 38–2–12.2.e was amended to provide as follows.

> 12.2.e. Notwithstanding any other provisions of this rule, no bond release or reduction will be granted if, at the time, water discharged from or affected by the operation requires chemical or passive treatment in order to comply with applicable effluent limitations or water quality standards. Measures approved in the permit and taken during mining and reclamation to prevent the formation of acid drainage shall not be considered passive treatment; Provided, That the Director may approve a request for Phase I but not Phase II or III, release if the applicant demonstrates to the satisfaction of the Director that either. * * *

CSR 38–2–12.2.e was amended, in effect, by prohibiting bond release if water discharged from the permit area requires chemical or passive treatment. In addition, a new sentence is added that clarifies that measures approved in the permit and taken during mining and reclamation to prevent the formation of acid drainage shall not be considered passive treatment.

We find that as amended, the provision satisfies the required program amendment codified at 30 CFR 948.16(qqq) which can, therefore, be removed. We also find that the new language which clarifies that measures approved in the permit and taken during mining and reclamation to prevent the formation of acid drainage shall not be considered passive treatment, does not render the West Virginia program less effective than the Federal regulations. Such measures might include, for example, selective placement of acid-generating materials in the backfill, placing limestone or other alkaline-generating materials in the backfill in close proximity to acid-generating materials, and the use of underdrains to prevent groundwater from wetting acid-generating materials. Measures such as these are taken to prevent the formation of acid discharges, and not to treat such discharges once they are discovered. Therefore, we find the new provision does not render the West Virginia program less effective than the Federal regulations concerning bond release at 30 CFR 800.40, and the provisions concerning hydrologic balance protection at 30 CFR 816.41 and the backfilling and grading requirements at 30 CFR 816/817.102(f) and can be approved.

10. *Water Supply Replacement Waiver.* 30 CFR 948.16(sss) provides that West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to revise CSR 38–2–14.5(h) and W. Va. Code 22–3–24(b) to clarify that the replacement of water supply can only be waived under the conditions set forth in the definition of ''Replacement of water supply,'' paragraph (b), at 30 CFR 701.5.

*State Response*

In our January 15, 2002, meeting with WVDEP, State officials said they would reevaluate the Federal language set forth in the definition of ''Replacement of water supply'' paragraph (b), at 30 CFR 701.5. Subsequently, in its March 8, 2002, letter, WVDEP stated that it had reevaluated its water replacement and waiver requirements at W. Va. Code 22–3–24 and in its rules. WVDEP stated that it plans to propose changes for the 2003 regular legislative session that would clarify that replacement of an affected water supply that is needed for the existing land use or for the post-mining land use cannot be waived. WVDEP stated that historically, under the State program, replacement waivers are not sought nor granted for such water supplies. In addition, WVDEP stated that, until it amends its program explicitly to be consistent with the

Federal water replacement requirement, it will only allow water replacement waivers in accordance with the provisions in the definition of ''Replacement of water supply,'' paragraph (b), at 30 CFR 701.5.

W. Va. Code 22–3–24(b) states that ''[a]ny operator shall replace the water supply of an owner of interest in real property who obtains all or part of the owner's supply of water for domestic, agricultural, industrial or other legitimate use from an underground or surface source where the supply has been affected by contamination, diminution or interruption proximately caused by the surface-mining operation, unless waived by the owner.'' CSR 38–2–14.5(h) limits the availability of a waiver. It provides that ''[a] waiver of water supply replacement granted by a landowner as provided in subsection (b) of section 24 of the Act shall apply only to underground mining operations, provided that a waiver shall not exempt any operator from the responsibility of maintaining water quality.'' The limitation of maintaining water quality is not sufficient to be no less effective than the corresponding Federal requirements.

30 CFR 701.5 defines the term ''Replacement of water supply.'' Part (b) of the definition states that replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed, but only ''[i]f the affected water supply was not needed for the land use in existence at the time of loss, contamination, or diminution, and if the supply is not needed to achieve the postmining land use.* * *'' Thus, under Federal regulations, actual replacement of water supply is required unless consideration is given to effect on premining and postmining land uses. West Virginia's waiver provision contains no equivalent consideration. Federal law is therefore more restrictive and the State regulations are less effective.

We have previously ruled that West Virginia's water replacement waiver provision could not be approved ''to the extent that* * * [it] would not be implemented in accordance with the definition of ''Replacement of water supply'' at 30 CFR 701.5.'' (61 FR at 6524, February 21, 1996). In addition, OSM required that the West Virginia program be further amended to clarify that under W. Va. Code Section 22–3–24(b) and CSR 38–2–14.5.h, the replacement of water supply can only be waived under the conditions set forth in the definition of ''Replacement of water supply at 30 CFR 701.5(b). In the February 9, 1999, **Federal Register**, OSM announced the approval of the State's definition of replacement of water supply at W.Va. Code 22–3–3(z), but we required that the State adopt a counterpart to 30 CFR 701.5(b) (64 FR at 6202–6203). As noted above, the WVDEP has committed to allowing waivers only in a manner consistent with the Federal definition. This commitment complies with the mandate of the West Virginia Supreme Court of Appeals, which has held that ''when there is a conflict between the federal and state provisions, the less restrictive state provision must yield to the more stringent federal provision* * * *Canestraro,* 379 S.E.2.d, at 321.

As noted above in Finding 7, the West Virginia Supreme Court of Appeals has ruled that ''[w]hen a provision of the West Virginia Surface Coal Mining and Reclamation Act, W.Va. Code 22A–3–1 *et seq.*, is inconsistent with Federal requirements in the Surface Mining Control and Reclamation Act, 30 U.S.C. § 1201 *et seq.*, the State Act must be read in a way consistent with the Federal Act.'' *Canestraro,* 374 S.E.2d at 321 (Administrative Record Number WV–761).

In addition, State rules must be read in a manner consistent with Federal regulations, *Schultz.* As noted above in Finding 7, the West Virginia Supreme Court of Appeals also held in *Schultz* that no change in a State surface mining law or regulation can take effect for purposes of a State program until approved by OSM, and State surface mining reclamation regulations must be read in a manner consistent with Federal regulations enacted in accordance with SMCRA, *Schultz,* 475 S.E.2d 467. (Administrative Record Number WV–1038).

Because of the State's commitment to comply with the more restrictive Federal waiver requirement, and because of the principles established in *Canestraro* and *Schultz,* we conclude that the required amendment at 30 CFR 948.16(sss) has been satisfied. Therefore, we are removing it. We recommend that the provision be included in the program at some future date to avoid confusion or misinterpretation.

11. *Existing Structures and Approximate Original Contour (AOC).* 30 CFR 948.16(vvv)(1) provides that West Virginia must amend its program to be consistent with 30 CFR 701.11(e)(2) by clarifying that the exemption at CSR 38–2–3.8(c) does not apply to the requirements to restore the land to AOC.

*State Response*

This required program amendment should be removed. The State regulation in subsection 3.8.c. was amended to not apply to new and existing coal waste facilities and was submitted to the Office of Surface Mining on March 17, 2000, as a program amendment. A copy of the revised subsection 3.8.c. is attached and is pending OSM action. The State saw no need to add language about approximate original contour to regulation at subsection 3.8(c) since the WV Surface Coal Mining and Reclamation Act performance standard at Section 22–3–13(b)(3) is clear about the requirement to restore the approximate original contour with respect to surface mines.

On August 18, 2000 (65 FR 50413), we approved the State's change which clarifies that the exemption at CSR 38–2–3.8.c. does not apply to new and existing coal waste facilities. In that same notice, we revised 30 CFR 948.16(vvv)(1) by deleting the requirement to clarify that the exemption at CSR 38–2–3.8(c) does not apply to the requirements for new and existing coal mine waste disposal facilities. However, we continued to require at revised 30 CFR 948.16(vvv)(1) that the State clarify that the exemption at CSR 38–2–3.8(c) does not apply to the requirement to restore the land to approximate original contour (AOC).

In its response quoted above, WVDEP stated that Section 22–3–13(b)(3) of the West Virginia Surface Coal Mining and Reclamation Act is clear about the requirement to restore the AOC with respect to surface mines. W.Va. Code at 22–3–13(b)(3) requires surface mines to be restored to AOC, except those which receive a variance under W.Va. Code 22–3–13(c) concerning mountaintop removal mining operations, and for those situations where the overburden is thin and the resulting material is insufficient to achieve AOC. In addition, W.Va. Code 22–3–13(d) and (e) provide for variances from AOC for steep slope mining operations under certain circumstances. Given this clarification, we are approving the State's response to the required amendment at 30 CFR 948.16(vvv)(1) to the extent that the exemption at CSR 38–2–3.8(c) does not apply to the requirement to restore the land to AOC. Therefore, to the extent that CSR 38–2–3.8(c) is limited to existing facilities and does not apply to the requirement to restore the land to AOC, we find that the required amendment codified at 30 CFR 948.16(vvv)(1) is satisfied and can be removed.

12. *Certification of Haulroads.* 30 CFR 948.16(vvv)(2) provides that West Virginia must amend CSR 38–2–4.12 to reinstate the following deleted language:

''and submitted for approval to the Director as a permit revision.''

*State Response*

The WVDEP has established guidelines (Series 20 Effective 1–97, page 22 of the I&E Handbook, Attachment 4) for approval of minor revisions to the original design. Minor deviations from the approved plan for haulroads (width, grade, etc.) are permissible as long they are within the construction tolerance specified in 38–3.35 [38–2–3.35].

The provision at CSR 38–2–4.12 concerns the certification of haulroads. However, the procedures that were initially submitted to OSM only applied to the approval of as-built certifications for drainage systems. During the January 15, 2002, meeting WVDEP agreed to reevaluate this issue and, if necessary, amend its policy to make it applicable to haulroads (Administrative Record Number WV–1271).

On February 26, 2002, WVDEP submitted revised guidelines for the approval of minor revisions to the original design of haulroads (Administrative Record Number WV–1276). The guidelines are set forth in Attachment 4. As noted above, the State clarified that minor deviations from the approved plan for haulroads are permissible so long as they are within the construction tolerance limits specified in CSR 38–2–3.35, not 38–3.35 as quoted above.

Attachment 4 is entitled, ''Minor Revisions Approvable by Field Level Personnel'' and contains the following language:

*Purpose:* Establish guidelines for approval of minor adjustments to original proposals.

*Policy/Procedures:* Minor revisions to original designs must be within the construction tolerances specified in 38–2–3.35. If not, a permit revision is required. The following are examples of minor revisions that are approvable at the field inspector level.

1. Minor drainage structure configuration changes (i.e., round vs. square, spillway one one side instead of the other, etc.) as long as the required sediment storage capacity is maintained. (Approved by virtue of the inspector signing off on the as-built certification)

2. Minor road width/slope configuration (as long as the width/slope do not compromise safety considerations). (Approved as an as-built certification)

3. Additional sediment control capacity (i.e., additional sumps on roads, pre sumps in front of sediment ponds). (Approved as an as-built certification)

4. Species substitution on planting plans (i.e., substituting legume for legume, hardwoods for hardwoods, etc.). Approved by letter submittal and inspector signs off on it.

5. Minor bench size changes on fills (i.e., wider than twenty (20) feet. (Approved on the final certification)

6. Outlets/spillways constructed of different material than originally proposed. (Approved on the as-built certification)

7. Additional rock flumes on backfill areas (letter approval when constructed).

8. Minor encroachment of the permit boundary (i.e., slips, shootovers, etc.). These need to be covered with a notice of violation (NOV) then shown on a progress map or on the final map. The acreage involved has to be included in the disturbed acreage number on the Phase I release application, and the bond reduction calculated accordingly.

Keep in mind that some of these changes need to be delineated on the ''map of record.'' This can be done by requesting a progress map to accompany the certification or letter, or at a mid term review, or at the time of final map submittal (Phase I release).

As described in the July 24, 1996, **Federal Register** notice (61 FR 38384), we approved West Virginia's haulroad certification requirements, except to the extent that the Director (now Secretary) is removed from the responsibility of reviewing permit revisions as required under 30 CFR 774.11(c). In addition, we required the State to reinstate the following deleted language at CSR 38–2–4.12, ''and submitted for approval to the Director as a permit revision.''

CSR 38–2–3.35 provides that all grade measurements and linear measurements in the State's rules shall be subject to a tolerance of two (2) percent. All angles in the rules shall be measured from the horizontal and shall be subject to a tolerance of five (5) percent. Provided, however, this allowable deviation from the approved plan does not affect storage capacity and/or performance standards. We announced our approval of these requirements in the February 9, 1999, **Federal Register** (64 FR 6208). The approved tolerances pertain to the amount of allowed variance between the approved designs in the permit application and the ''as built'' measurements of those designs.

Only Item (2) of the proposed guidelines described above relates to haulroads. As noted in Attachment 4, a minor road width/slope configuration, as long as the width/slope revision is within the construction tolerance limits specified in CSR 38–2–3.35 and does not compromise safety considerations, can be approved as an as-built certification by field personnel. All other as-built haulroad configurations must be approved by the Secretary as permit revisions.

Neither SMCRA nor the Federal regulations provides for the approval of as-built certifications that are within the construction tolerance limits as set forth in CSR 38–2–3.35. However, we find that the existing State requirements regarding as-built certifications, together with the proposed State clarification regarding minor changes in the width and/or slope of haulroads, as described in Item (2) of Attachment 4, appear reasonable and are not inconsistent with SMCRA or the Federal regulations. Because the State has clarified that only minor deviations from the approved designs for haulroads are permissible as long as they are within the construction tolerance limits specified at CSR 38–2–3.35, and all other as-built haulroad configurations that exceed those limits require the Secretary's approval as permit revisions, we are approving the State's proposal and removing the required amendment at 30 CFR 948.16(vvv)(2) which requires that all as-built certifications for haulroads be submitted and approved as permit revisions. This approval is limited to minor as-built haulroad certifications as described herein and does not apply to the other proposed minor revisions that field personnel may authorize as described in Attachment 4, ''Minor Revisions Approvable by Field Level Personnel,'' Series 20, page 22 of the Inspection and Enforcement Handbook. The other revisions mentioned therein do not pertain to this rulemaking.

13. *Slurry Impoundments.* 30 CFR 948.16(vvv)(3) provides that West Virginia must amend its program by clarifying that the requirements at CSR 38–2–5.4(c) also apply to slurry impoundments.

*State Response*

The WVDEP is proposing a change to subsection 5.4.d.4 (Attachment 5) which clarifies that non-MSHA size coal processing waste dams and embankments will be certified by a registered professional engineer as indicated in 30 CFR 780.25.

In the July 24, 1996, **Federal Register** (61 FR 38384), we found that the removal of the words, ''which may include slurry impoundments'' from CSR 38–2–5.4.c. made it unclear as to whether slurry impoundments are subject to the impoundment requirements at CSR 38–2–5.4.c. If CSR 38–2–5.4.c. does not apply to slurry impoundments (which appeared to be the purpose of the deletion), the provision is rendered less effective than 30 CFR 816.49 and 817.49.

The State's existing rules at CSR 38–2–22.4.c. governing small impoundments state that coal refuse sites which result in impoundments which are not subject to the Dam Control Act or the Federal Mine Health and Safety Act shall be designed, constructed, and maintained subject to the requirements of this subsection and subsections CSR 38–2–5.4 and 22.5.j.6.

By referencing subsection 5.4, the required amendment at 30 CFR 948.16(vvv)(3) appears to be satisfied in so far as it is clear that all non-MSHA size or small coal refuse impoundments must comply with the State's impoundment requirements at subsection 5.4. However, because CSR 38–2–5.4.d allows certain impoundments to be certified by a registered professional engineer or a licensed land surveyor, we questioned whether the State's existing requirements were as effective as the Federal rules. The Federal requirements at 30 CFR 780.25(a)(3)(i) provides that all coal refuse impoundments, regardless of size, must be certified by a registered professional engineer. In addition, it was unclear if coal refuse dams and embankments which are subject to the Dam Control Act or the Federal Mine Health and Safety Act are subject to the impoundment requirements at CSR 38–2–5.4(c).

On February 26, 2002, WVDEP submitted the proposed revision described above to its program (Administrative Record Number WV–1276). Attachment 5 contains a proposed revision to CSR 38–2–5.4.d. According to the State, this provision is to be amended at subdivision 38–2–5.4.d.3. by adding the words ''except all coal processing waste dams and embankments covered by subsection 22.4.c. shall be certified by a registered professional engineer.'' As amended, CSR 38–2–5.4.d.3. would read as follows: Design and construction certification of embankment type sediment control structures may be performed only by a registered professional engineer or licensed land surveyor experienced in construction of embankments ''except all coal processing waste dams and embankments covered by subsection 22.4.c. shall be certified by a registered professional engineer.''

The State submitted the proposed rule changes to the Legislature in February 2002. However, because of a procedural error, the Legislature did not adopt the revised language. To correct this oversight, on April 19, 2002, WVDEP filed these changes with the Secretary of State as emergency rules. According to State law, emergency rules can remain in effect for not more than 15 months. Final legislative rules are to be adopted by the State during a special legislative session or during the regular 2003 legislative session. We will review the emergency and final rules adopted by the State to ensure that the language of those rules is substantively identical to the language that we are approving today, with the exception of the correction of typographical and grammatical errors such as the two noted in Finding 19. Any substantive differences in the language are subject to further public review as a program amendment under 30 CFR 732.17.

As discussed above, CSR 38–2–22.4.c. clarifies that CSR 38–2–5.4 applies to small, non-MSHA size coal refuse dams and embankments. In addition, the proposed revision at CSR 38–2–5.4.d.3 clarifies that all small coal refuse dams and embankments must be certified by a registered professional engineer. Furthermore, CSR 38–2–5.4.d.4. provides that the design and construction of coal refuse impoundments meeting the MSHA size or other requirements at 30 CFR 77.216(a) may only be performed by a registered professional engineer. Given that there are design and construction certification requirements for both MSHA and non-MSHA size coal refuse impoundments at CSR 38–2–5.4.d, the structure of this section implies that all coal refuse impoundments must comply with the impoundment requirements at CSR 38–2–5.4.c. In addition, CSR 38–2–22.1 requires that all coal slurry impoundments, including MSHA size impoundments, must comply with all applicable requirements of the State program. These would include those requirements contained in CSR 38–2–5.4. In accordance with 30 CFR 780.25(a)(3)(i) and 784.16(a)(3)(i), we are approving the proposed revision at CSR 38–2–5.4.d.3. which provides that all coal processing waste dams and embankments covered by subsection 22.4.c. shall be certified by a registered professional engineer. Furthermore, given that the State has clarified that slurry impoundments, regardless of size, are subject to the requirements of CSR 38–2–5.4.c., we find that the required amendment at 30 CFR 948.16(vvv)(3) is satisfied and can be removed.

Upon promulgation of a final rule by the State, WVDEP will be required to provide a copy of it to OSM. OSM will review it to ensure that the language contained therein is identical to that language which is being approved today. Any substantive differences in the language will be subject to further public review and approval by us as a program amendment.

14. *Coal Refuse Disposal in the Backfill.* 30 CFR 948.15(vvv)(4) provides that West Virginia must amend CSR 38–2–14.15(m), or otherwise amend its program to require compliance with 30 CFR 816/817.81(b), (d), and (e) regarding coal refuse disposal, foundation investigations and emergency procedures and to clarify that where the coal processing waste proposed to be placed in the backfill contains acid-or toxic-producing materials, such material must not be buried or stored in proximity to any drainage course such as springs and seeps, must be protected from groundwater by the appropriate use of rock drains under the backfill and along the highwall, and be protected from water infiltration into the backfill by the use of appropriate methods such as diversion drains for surface runoff or encapsulation with clay or other material of low permeability.

*State Response*

This required program amendment should be removed. Coal refuse placed in the backfill pursuant to subsection 14.15(m) is placed into the mine workings or excavation areas. This placement, when done in accordance with the State's backfilling and grading, stability and toxic material handling plan requirements, is consistent with the provisions of 30 CFR 816.81 and 817.81.

In our January 15, 2002, meeting with WVDEP (Administrative Record Number WV–1271), State officials agreed to clarify how the State's existing rules require that coal processing waste outside the permit area must be disposed of in accordance with the standards at 30 CFR 816/817.81(b). In addition, WVDEP would clarify how its rules require sufficient foundation investigations as required by 30 CFR 816/817.81(d). Further, WVDEP agreed to provide us with an explanation of how its other program requirements regarding underdrains, diversions, and toxic handling plans apply to the disposal of coal refuse as allowed by CSR 38–2–14.14.m. Finally, they noted that the State's emergency procedures at CSR 38–2–14.15.m.2. are no less effective than the Federal requirements at 30 CFR 816/817.81(e).

*Material from Outside the Permit Area:* In its February 26, 2002, response State officials assured us that WVDEP requires the permittee to identify the source of the coal refuse to be disposed of in the backfill in addition to the laboratory testing. Any changes in the source of the coal refuse require the approval of the Secretary. The State noted that its rules at CSR 38–2–14.15.m.2. clearly require that prior approval of the Secretary is necessary

before placing coal refuse material in the backfill, regardless of where the material originates. This assurance from the State and the existing requirements at CSR 38–2–14.15.m.2. ensure that, as required by 30 CFR 816/817.81(b), coal refuse from activities located outside the permit area must be approved by the Secretary, and the approval must be based on a showing that the disposal will be in accordance with the standards set forth in CSR 38–2–14.15.m.

*Foundation Investigations:* According to State officials, the part of the required program amendment relating to foundation investigations is satisfied due to the requirements at CSR 38–2–14.15.a. and 14.15.m. Those requirements provide that the backfill must be designed and certified by a registered professional engineer so that a minimum long-term static safety factor of 1.3 is achieved for the final graded slope. All stability analyses include properties of the material to be placed, properties of the foundation (whether on solid bench or backfill) and include site conditions that will affect stability. The State requirements at CSR 38–2–14.15.a. and 14.15.m. ensure that sufficient foundation investigations, including any necessary laboratory testing of foundation material, will be performed prior to placing any coal refuse in a backfill as required by 30 CFR 816/817.81(d).

*Acid Material Handling Plan:* In its February 26, 2002, response WVDEP clarified that coal processing waste cannot be placed in the backfill pursuant to CSR 38–2–14.15.m., unless it is non-acid and/or non-toxic producing or is rendered non-acid and/or non-toxic producing pursuant to subsection 14.15.m.2.

CSR 38–2–14.15.m.2. provides the following:

> The coal processing waste will not be placed in the backfill unless it has been demonstrated to the satisfaction of the Secretary that:
>
> The coal processing waste to be placed based upon laboratory testing to be non-toxic and/or non-acid producing; or
>
> An adequate handling plan including alkaline additives has been developed and the material after alkaline addition is non-toxic and/or non-acid producing.

WVDEP officials stated that the rules at subsection 14.6. apply to the handling of all acid producing material. CSR 38–2–14.6.a. requires that all acid-forming or toxic-forming material be handled and treated in accordance with the approved toxic handling plan. According to State officials, all coal refuse must be rendered non-toxic or non-acid producing before it is placed in the backfill. Furthermore, any alkaline addition that may be required must occur prior to placement in the backfill.

In addition, CSR 38–2–14.6.b. provides that, ''[a]cid-forming or toxic-forming material shall not be buried or stored in proximity to a drainage course or groundwater system.'' Therefore, when a toxic handling plan for the disposal of acid-forming or toxic-forming materials is submitted under CSR 38–2–14.15.m.2.B., the plan must identify whether or not a drainage course or groundwater system exists in proximity to the burial site. If such a drainage course or groundwater system exists in proximity to the burial site, the Secretary must disapprove the burial of the acid-producing or toxic-producing material at the proposed site. This requirement ensures that where the coal processing waste proposed to be placed in the backfill contains acid- or toxic-producing materials, such materials cannot be buried or stored in proximity to any drainage course such as springs and seeps as required by 30 CFR 816/817.83(a) and 30 CFR 816/817.102(e).

In addition, we note that CSR 38–2–14.16.g. also provides that the disposal of coal processing waste and underground development waste in the mined out area of previously mined areas must be done in accordance with Section 22, except that a long-term static safety factor of 1.3 must be achieved. Subsection 14.16.g. ensures that coal refuse placed in the backfill on previously mined areas is protected from groundwater by the appropriate use of rock drains under the backfill and along the highwall and from water infiltration into the backfill by the use of appropriate methods such as diversion drains for surface runoff or encapsulation with clay or other material of low permeability. Subsection 14.16.g. contains requirements regarding the disposal of coal processing waste in the backfill that are no less effective than the Federal requirements at 30 CFR 816/817.83(a) and 30 CFR 816/817.102(e)

*Emergency Procedures:* 30 CSR 38–2–14.15.m.2. provides that a qualified registered professional engineer, experienced in the design of similar earth and waste structures, shall certify the design of the disposal facility. If any examination or inspection discloses that a potential hazard exists, the Secretary shall be informed promptly of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the Secretary shall be notified immediately, and the Secretary will then notify the appropriate agencies that other emergency procedures are required to protect the public. Subsection 14.15.m.2. contains emergency procedures that are substantively identical to the Federal requirements at 30 CFR 816/817.81(e).

As discussed above, we find that CSR 38–2–14.15.m.2. provides that the disposal of coal processing waste outside the permit area must be disposed of in accordance with the standards at CSR 38–2–14.15.m., as required by 30 CFR 816/817.81(b). The State's backfilling requirements at subsections 14.15.a. and 14.15.m. ensure that sufficient foundation investigations, including any necessary laboratory testing of foundation material, will be performed prior to placing any coal refuse in a backfill as required by 30 CFR 816/817.81(d). The State program provisions at CSR 38–2–14.15.m.2., CSR 38–2–14.6. and CSR 38–2–14.16.g. prohibit the burial or storage of acid-forming or toxic-forming materials in the backfill in proximity to a drainage course or groundwater system and ensure the protection of acid- or toxic-forming material from groundwater or from infiltration into the backfill as required by 30 CFR 816/817.83(a) and 30 CFR 816/817.102(e). Finally, CSR 38–2–14.15.m.2. contains emergency procedures that are no less effective than the Federal emergency procedures at 30 CFR 816/817.81(e). Therefore, we find that the required program amendment codified at 30 CFR 948.16(vvv)(4) relating to the disposal of coal refuse in the backfill has been satisfied and can be removed.

15. *Subsidence Control Plan.* 30 CFR 948.16(zzz) provides that West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to revise 38–2–3.12.a.1., or otherwise amend the West Virginia program to require that the map of all lands, structures, and drinking, domestic and residential water supplies which may be materially damaged by subsidence show the type and location of all such lands, structures, and drinking, domestic and residential water supplies within the permit and adjacent areas, and to require that the permit application include a narrative indicating whether subsidence, if it occurred, could cause material damage to or diminish the value or reasonably foreseeable use of such structures or renewable resource lands or could contaminate, diminish, or interrupt drinking, or residential water supplies.

*State Response*

In its May 2, 2001, submittal, the State amended CSR 38–2–3.12.a.1. concerning subsidence control plans by adding the words, ''a narrative indicating'' to the survey and map requirements of this subsection. As amended, this provision requires a survey, map, and a narrative indicating whether or not subsidence could cause material damage to the identified structures and water supplies. We find that the addition of the words ''a narrative indicating'' satisfies the narrative requirement codified at 30 CFR 948.16(zzz).

In our January 15, 2002, meeting with WVDEP, State officials agreed to modify its permit application to ensure that the identification of structures would also indicate the type of structures being identified. In its February 26, 2002, letter, WVDEP submitted (at Attachment 6) a portion of its permit application that it had modified to require the identification of the location and type of structures, streams, renewable resource lands and water works. Therefore, the applicant must identify both the location and type of structures within a 30-degree angle of draw. With that submittal, the State has satisfied the requirement that the map show the location and type of structures that could be materially damaged by subsidence. We find that the revised permit application together with revised CSR 38–2–3.12.a.1. satisfy the requirements at 30 CFR 948.16(zzz) and can be approved. Therefore, 30 CFR 948.16(zzz) can be removed.

16. *Water Supply Survey.* 30 CFR 948.16(aaaa) provides that West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to revise CSR 38–2–3.12.a.2., or otherwise amend the West Virginia program to require that the water supply survey required by CSR 38–2–3.12.a.2. include all drinking, domestic, and residential water supplies within the permit area and adjacent area, without limitation by an angle of draw, that could be contaminated, diminished, or interrupted by subsidence.

*State Response*

In our January 15, 2002, meeting, WVDEP agreed to amend its program. By letter dated February 26, 2002, WVDEP sent us draft language (at Attachment 7) that it had submitted to the State Legislature for approval. The proposed amendment clarifies that the State reserves the right to request surveys within a larger area based on evaluation of the application. As submitted, the revised language at CSR 38–2–3.12.a.1. provides that the applicant for an underground coal mining permit must provide a survey on a map that identifies structures, perennial and intermittent streams or renewable resource lands and a narrative indicating whether or not subsidence could cause material damage or diminution of value or use of such structures or renewable resource lands both on the permit and adjacent areas within an angle of draw of at least 30 degrees ''unless a greater area is specified by the Secretary.'' In addition, the State has revised CSR 38–2–3.12.a.2. to also require a survey of the quality and quantity of water supplies that could be contaminated, diminished or interrupted by subsidence ''within the permit area and adjacent areas.''

The State submitted the proposed rule changes to the Legislature in February 2002. However, because of a procedural error, the Legislature did not adopt the revised language. To correct this oversight, on April 19, 2002, WVDEP filed these changes with the Secretary of State as emergency rules. According to State law, emergency rules can remain in effect for not more than 15 months. Final legislative rules are to be adopted by the State during a special legislative session or during the regular 2003 legislative session. We will review the emergency and final rules adopted by the State to ensure that the language of those rules is substantively identical to the language that we are approving today, with the exception of the correction of typographical and grammatical errors such as the two noted in Finding 19. Any substantive differences in the language are subject to further public review as a program amendment under 30 CFR 732.17.

We find that the emergency rules approved by West Virginia satisfy the requirements codified at 30 CFR 948.16(aaaa) and can be approved. Therefore, 30 CFR 948.16(aaaa) can be removed. Upon promulgation of a final rule by the State, WVDEP will be required to provide us with a copy. We will review it to ensure that the language contained therein is identical to that language which is being approved today. Any substantive differences in the language will be subject to further public review and approval by us.

17. *Presubsidence Survey.* 30 CFR 948.16(bbbb) provides that West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to revise 38–2–3.12.a.2., or otherwise amend the West Virginia program to require that the permit applicant pay for any technical assessment or engineering evaluation used to determine the premining quality of drinking, domestic or residential water supplies, and to require that the applicant provide copies of any technical assessment or engineering evaluation to the property owner and to the regulatory authority.

*State Response*

In our January 15, 2002, meeting, WVDEP agreed to amend its program to clarify that the permit applicant must pay for any surveys, including technical assessments or engineering evaluations, conducted to determine the premining quality and quantity of water supplies and to require that copies of any technical assessments or engineering evaluations prepared as part of the survey be provided to the property owner and the WVDEP. In its February 26, 2002, letter, WVDEP submitted language at Attachment 7 to amend CSR 38–2–3.12.a.2.B. to address this issue. As amended, CSR 38–2–3.12.a.2.B. provides that ''at the cost of the applicant,'' a written report of the survey ''containing any technical assessments and engineering evaluation used in the survey'' shall be prepared and signed by the person or persons who conducted the survey. The provision also provides that copies of the report shall be provided to the property owner and to the Secretary

The State submitted the proposed rule changes to the Legislature in February 2002. However, because of a procedural error, the Legislature did not adopt the revised language. To correct this oversight, on April 19, 2002, WVDEP filed these changes with the Secretary of State as emergency rules. According to State law, emergency rules can remain in effect for not more than 15 months. Final legislative rules are to be adopted by the State during a special legislative session or during the regular 2003 legislative session. We will review the emergency and final rules adopted by the State to ensure that the language of those rules is substantively identical to the language that we are approving today, with the exception of the correction of typographical and grammatical errors such as the two noted in Finding 19. Any substantive differences in the language are subject to further public review as a program amendment under 30 CFR 732.17.

We find that, to the extent that CSR 38–2–3.12.a.2.B. requires the permit applicant to pay for the actual technical assessments or engineering evaluations, these amendments satisfy the required amendment codified at 30 CFR

948.16(bbbb) and can be approved. Therefore, 30 CFR 948.16(bbbb) can be removed. Upon promulgation of a final rule by the State, WVDEP will be required to provide us with a copy. We will review it to ensure that the language contained therein is identical to that language which is being approved today. Any substantive differences in the language will be subject to further public review and approval by us.

18. *Extension of the 90-Day Abatement Period.* 30 CFR 948.16(ffff) provides that West Virginia must amend CSR 38–2–16.2.c.4. or otherwise amend the West Virginia program to be no less effective than the Federal regulations at 30 CFR 817.121(c)(5), which provide that an extension of the 90-day abatement period may be granted for one of only three reasons: that subsidence is not complete; that not all subsidence related material damage has occurred; or that not all reasonably anticipated changes have occurred affecting the protected water supply.

*State Response:*

In its program amendment submittal dated May 2, 2001 (Administrative Record Number WV–1209), the State amended CSR 38–2–16.2.c.4 regarding bonding for subsidence damage. CSR 38–2–16.2.c.4 has been revised in pertinent part as follows.

The director may extend the ninety (90) day abatement period but such extension shall not exceed one (1) year from the date of the notice. Provided, however, the permittee demonstrates in writing, and the director concurs that subsidence is not complete, that not all probable subsidence related material [damage] has occurred to lands or structures; or that not all reasonably anticipated changes have occurred affecting the water supply, and that it would be unreasonable to complete repairs or replacement within the ninety (90) day abatement period. If extended beyond ninety (90) days, as part of the remedial measures, the permittee shall post an escrow bond to cover the estimated costs of repairs to land or structures, or the estimated cost to replace water supply.

As discussed in the February 9, 1999, **Federal Register** notice, the State's rule at subsection 16.2.c.4. provided for an extension to the 90-day abatement period (64 FR 6212–6213). However, it allowed an extension if the permittee demonstrates that it would be unreasonable to complete repairs within the 90-day abatement period. Because Federal rules limit the circumstances under which an extension to the 90-day abatement period can be granted, it appeared that operators in West Virginia could get extensions to the abatement period for additional reasons.

The required program amendment codified at 30 CFR 948.16(ffff) requires the State to amend the West Virginia program at CSR 38–2–16.2.c.4. to be no less effective than the Federal regulations at 30 CFR 817.121(c)(5), which provide that an extension of the 90-day abatement period may be granted for one of only three reasons: that subsidence is not complete; that not all subsidence-related material damage has occurred; or that not all reasonably anticipated changes have occurred affecting the protected water supply. We find that the State's amendment to CSR 38–2–16.2.c.4., as quoted above, provides for extensions to the 90-day abatement period that are no less effective than those set forth in 30 CFR 817.121(c)(5). Therefore, the required program amendment at 30 CFR 948.16(ffff) has been satisfied, and it can be removed. We are approving this revision with the understanding that the State will revise subsection 16.2.c.4. and insert the word ''damage'' after the words ''subsidence-related material'' in the third sentence to correct a typographical error.

19. *Bonding for Water Supply Replacement.* 30 CFR 948.16(gggg) provides that West Virginia must amend CSR 38–2–16.2.c.4, or otherwise amend the West Virginia program to be no less effective than the Federal regulations at 30 CFR 817.121(c)(5) by requiring additional bond whenever protected water supplies are contaminated, diminished, or interrupted by underground mining operations conducted after October 24, 1992. The amount of the additional bond must be adequate to cover the estimated cost of replacing the affected water supply.

As discussed in the February 9, 1999, **Federal Register**, 30 CFR 817.121(c)(5) requires that the permittee post additional bond whenever protected water supplies contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992 are not replaced within a specified time (64 FR 6212–6213). However, the State rule limited this requirement to water supplies that are affected by subsidence whereas the Federal rule applies this requirement to all water supplies affected by underground mining operations in general.

*State response*

In its February 26, 2002, submission, WVDEP officials stated that additional bond would be required whenever a protected water supply is contaminated, diminished, or interrupted by underground mining, and the amount of bond to be posted would be based on the estimated cost of replacing the water supply (Administrative Record No. WV–1276). However, for clarification, WVDEP proposed to amend CSR 38–2–16.2.c.4. to read as follows:

16.2.c.4. Bonding for Subsidence Damage: The Secretary shall issue a notice to the permittee when subsidence related material damage has occurred to lands, structures, or when contamination, diminution or interruption occurs to a domestic or residential water supply, and that the permittee has ninety (90) days from the date of notice to complete repairs or replacement. The Secretary may extend the ninety (90) day abatement period but such extension shall not exceed one (1) year from the date of the notice. Provided, however, the permittee demonstrates in writing, and the Secretary concurs that subsidence is not complete, that not all probable subsidence related material [material damage] has occurred to lands or structures; or that not all reasonably anticipated changes have occurred affecting the water supply, and that it would be unreasonable to complete repairs or replacement within the ninety (90) day abatement period. If extended beyond ninety (90) days, as part of the remedial measures, the permittee shall post an escrow bond to cover the estimated costs of repairs to land or structures, or the estimated cost to replace water supply.

The State submitted the proposed rule changes to the Legislature in February 2002. However, because of a procedural error, the Legislature did not adopt the revised language. To correct this oversight, on April 19, 2002, WVDEP filed these changes with the Secretary of State as emergency rules. According to State law, emergency rules can remain in effect for not more than 15 months. Final legislative rules are to be adopted by the State during a special legislative session or during the regular 2003 legislative session. We will review the emergency and final rules adopted by the State to ensure that the language of those rules is substantively identical to the language that we are approving today, with the exception of the correction of typographical and grammatical errors such as the two noted in Finding 19. Any substantive differences in the language are subject to further public review as a program amendment under 30 CFR 732.17.

As proposed, the emergency rules at subsection 16.24.c.4. require additional bond whenever domestic or residential water supplies are contaminated, diminished, or interrupted by underground mining operations, not just by subsidence. In addition, the amount of the additional bond must be adequate to cover the estimated cost of replacing the affected water supply. Therefore, we find that proposed 30 CSR 38–2–16.24.c.4. is no less effective than the Federal requirements at 30 CFR

817.125(c)(5). The proposed revisions satisfy the required amendment at 30 CFR 948.16(gggg), which we are removing. Upon promulgation of a final rule by the State, WVDEP will be required to provide a copy to us. We will review it to ensure that it is substantively identical to the language being approved today. Any substantive differences in the language will be subject to further public review and approval by us. We are approving this revision with the understanding that the State will revise subsection 16.2.c.4. to replace the comma between ''lands'' and ''structures'' in the first sentence with ''or'' and to correct the spelling of the word ''material'' and insert the word ''damage'' after the words ''subsidence-related material'' in the third sentence as shown above.

20. *Timetable for Posting Bond for Subsidence-Related Material Damage and Damaged Water Supplies.* 30 CFR 948.16(hhhh) provides that West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to amend CSR 38–2–16.2.c.4., or to otherwise amend the West Virginia program, to be no less effective than the Federal regulations at 30 CFR 817.121(c)(5), by requiring that the 90-day period before which additional bond must be posted begin to run from the date of occurrence of subsidence-related material damage.

*State Response*

In a program amendment submittal dated May 2, 2001 (Administrative Record Number WV–1209), the State amended CSR 38–2–16.2.c.4. to read as follows:

> 16.2.c.4. Bonding for Subsidence Damage: The director shall issue a notice to the permittee that subsidence related material damage has occurred to lands, structures, or water supply, and that the permittee has ninety (90) days from the date of notice to complete repairs or replacement. The director may extend the ninety (90) day abatement period but such extension shall not exceed one (1) year from the date of the notice. Provided, however, the permittee demonstrates in writing, and the director concurs that subsidence is not complete, that not all probable subsidence related material [damage] has occurred to lands or structures; or that not all reasonably anticipated changes have occurred affecting the water supply, and that it would be unreasonable to complete repairs or replacement within the ninety (90) day abatement period. If extended beyond ninety (90) days, as part of the remedial measures, the permittee shall post an escrow bond to cover the estimated costs of repairs to land or structures, or the estimated cost to replace water supply.

On February 26, 2002, WVDEP proposed to further amend CSR 38–2–16.2.c.4. by (1) replacing ''director'' with ''Secretary,'' (2) replacing ''that'' with ''when'' in the first sentence immediately after the word ''permittee,'' and (3) adding the words ''when contamination, diminution or interruption occurs to a domestic or residential'' before ''water supply'' in the first sentence. As amended, CSR 38–2–16.2.c.4. provides that the Secretary shall issue a notice to the permittee when subsidence-related material damage has occurred to lands [or] structures, or when contamination, diminution or interruption occurs to a domestic or residential water supply, and that the permittee has ninety (90) days from the date of notice to complete repairs or replacement.

As discussed in the February 9, 1999, **Federal Register**, CSR 38–2–16.2.c.4. originally differed from its Federal counterpart at 30 CFR 817.121(c)(5) in that the State rule provided that the 90-day period during which no bond need be posted began with the issuance of a notice of violation to the permittee, rather than with the date of occurrence of damage (64 FR 6212–6213). As amended, the 90-day grace period in the State rule continues to commence upon issuance of a notice (although the notice is no longer a notice of violation), not the date of occurrence of the damage. For the reasons discussed below, we no longer believe that the State must amend its rule to provide that the grace period begins on the date of occurrence of the damage.

The preamble to the Federal rule contains the following explanation of its basis and intent:

> The current rules at 30 CFR Part 800 already require the permittee to adjust the amount of the bond when the costs of future reclamation increase or when a reclamation obligation is established; for example, when material damage from subsidence occurs. The final rule is intended to avoid incomplete reclamation by clarifying the application to actual subsidence damage of the requirement in 30 CFR 800.15(a) that the regulatory authority specify a period of time or a set schedule to increase the amount of bond when the cost of reclamation changes. Thus, this provision assures that funds are available in a timely fashion to cover the cost of repairs in case of default by the permittee and to encourage prompt repair through the use of a grace period.
> 62 FR 16742, col. 1, March 31, 1995.

While the Federal rule includes no provision for notice to the permittee, we find that the notice provision is both equitable and a practical means of implementing this requirement. The preamble quoted above indicates that we did not intend for the rule to apply before a reclamation obligation is established, which often requires some investigation. Furthermore, exact dates that damage occurred may be unknown or difficult to establish, particularly for damage to land and damage that occurs in a gradual fashion. The cause of a water supply loss can be extremely difficult to ascertain, especially when the loss occurs near a mine during adverse climatic conditions. Like the Federal rule, the State rule establishes a deadline for posting additional bond and a 90-day grace period to encourage prompt repair or replacement. The State rule requires issuance of notice to a permittee ''when'' damage occurs, which we interpret as obligating the State to (1) conduct prompt investigations upon receiving a damage complaint and (2) issue a notice as soon as the investigation is completed. The permittee would be required to post the additional bond upon notification by the State if the damage cannot be corrected within 90 days. In addition, West Virginia has an alternative bonding system approved under 30 CFR 800.11(e), which means that any reclamation obligations not covered by a permittee's site-specific bond are the responsibility of the Special Reclamation Fund. Therefore, we find that the State rule is no less effective than the Federal rule, and that it satisfies the requirements of 30 CFR 948.16(hhhh), which we are removing.

The State submitted the proposed rule changes to the Legislature in February 2002. However, because of a procedural error, the Legislature did not adopt the revised language. To correct this oversight, on April 19, 2002, WVDEP filed these changes with the Secretary of State as emergency rules. According to State law, emergency rules can remain in effect for not more than 15 months. Final legislative rules are to be adopted by the State during a special legislative session or during the regular 2003 legislative session. We will review the emergency and final rules adopted by the State to ensure that the language of those rules is substantively identical to the language that we are approving today, with the exception of the correction of typographical and grammatical errors such as the two noted in Finding 19. Any substantive differences in the language are subject to further public review as a program amendment under 30 CFR 732.17.

21. *Recreational Facilities Use.* 30 CFR 948.16(iiii) provides that West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to:

Amend the term ''recreational uses'' at W. Va. Code 22–3–13(c)(3) to mean

''recreational facilities use'' at SMCRA section 515(c)(3).

*State Response*

In our January 15, 2002, meeting with the WVDEP, WVDEP asserted that when the West Virginia law and rules are read together, they are no less stringent than SMCRA at section 515(c)(3). In addition, by letter dated February 26, 2002, WVDEP stated that neither State code nor State rules define the term ''public facility including recreational land use.'' Furthermore, WVDEP provided the following policy statement to address this required amendment.

It is the state position that the term ''public facility including recreational land use,'' implies structures or other significant developments that the public is able to use, or that confer some type of public benefit. Depending upon individual circumstances, this term may include schools, hospitals, airports, reservoirs, museums, and developed recreational sites such as picnic areas, campgrounds, ballfields, tennis courts, fishing ponds, equestrian and off-road vehicle trails, and amusement areas, together with any necessary supporting infrastructure such as parking lots and rest facilities. In general, those sites with a public or public facility postmining land use will provide the public with access as a matter of right on a non-profit basis. Facilities that meet a public need, like water supply reservoirs and publicly owned prisons, and facilities that provide a benefit, like flood control structures and institutions of higher education, also qualify, even if they are not readily accessible to all members of the public or completely non-profit.

We find that the state policy quoted above renders the term ''recreational uses'' at W. Va. Code 22–3–13(c)(3) will always include facilities. Therefore, that term is no less stringent than the term ''recreational facilities use'' at SMCRA section 515(c)(3) and can be approved. For this reason, we find that the required amendment codified at 30 CFR 948.16(iiii) is satisfied and can be deleted.

22. *Forfeiture of Bonds.* 30 CFR 948.16 (jjjj) provides that West Virginia must remove the words ''other responsible party'' at CSR 38–2–12.4.e.

*State Response*

In the program amendment submittal dated May 2, 2001, the State revised CSR 38–2–12.4.e. by deleting the words, ''or other responsible party.'' As amended, this provision is as follows:

12.4.e. The operator or permittee shall be liable for all costs in excess of the amount forfeited. The Director may commence civil, criminal or other appropriate action to collect such costs.

We find that the deletion of the words ''or other responsible party'' satisfies the required program amendment codified at 30 CFR 948.16(jjjj) and can be approved. In addition, we are removing the required program amendment codified at 30 CFR 948.16(jjjj).

23. *Preblast Survey Requirements.* 30 CFR 948.16(kkkk) provides that West Virginia must submit either a proposed amendment or a description of an amendment to be proposed together with a timetable for adoption, to remove the words ''upon request'' at W. VA. Code 22–3–13a(g), or otherwise amend its program to require that a copy of the pre-blast survey be provided to the owner and/or occupant even if the owner or occupant does not specifically request a copy.

*State Response*

In the amendment submitted by letter dated November 28, 2001, concerning blasting, the State amended the W. Va. Code at 22–3–13a(g) by revising language concerning the availability of the preblast survey. As amended, the office of explosives and blasting shall provide a copy of the preblast survey to the owner or occupant. Prior to this amendment, the office was only required to notify the owner or occupant of the location and availability of a copy of the preblast survey.

As amended, W. Va. Code 22–3–13a(g) is rendered consistent with 30 CFR 817.62(d) which requires that a copy of the preblast survey be provided to the person who requested the survey. Therefore, the amendment can be approved. This amendment satisfies the required program amendment codified at 30 CFR 948.16(kkkk) which can, therefore, be removed.

24. *Preblast Survey Requirements.* 30 CFR 948.16(llll) provides that West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to remove the phrase ''or the surface impacts of the underground mining methods'' from 22–3–13a(j)(2), or otherwise amend its program to clarify that the surface blasting impacts of underground mining operations are subject to the requirements of 22–3–13a.

*State Response*

In the amendment submitted by letter dated November 28, 2001, concerning blasting, the State amended W. Va. Code 22–3–13a(j) by revising language concerning applicability of section W. Va. Code 22–3–13a. Among its changes to this section, the State deleted the phrase ''or the surface impacts of the underground mining methods.'' As amended, section 22–3–13a(j) provides that the provisions of section 22–3–13a do not apply to the extraction of minerals by underground mining methods.

We find that this amendment has removed the offending language and satisfies the required program amendment codified at 30 CFR 948.16(llll). Therefore, we are approving the amendment and deleting the required amendment at 30 CFR 948.16(llll).

25. *Blasting Requirements.* 30 CFR 948.16(mmmm) provides that West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to remove the phrase ''of overburden and coal'' from W.Va. Code 22–3–30a(a), or to otherwise clarify that its general surface coal mining blasting laws and regulations apply to all blasting at surface coal mining and reclamation operations and surface blasting activities incident to underground coal mining, including, but not limited to, initial rounds of slopes and shafts.

*State Response*

In the amendment submitted by letter dated November 28, 2001, concerning blasting, the State amended W. Va. Code 22–3–30a(a) by deleting the words ''of overburden and coal.'' As amended, W. Va. Code 22–3–30a(a) provides that blasting shall be conducted in accordance with the rules and laws established to regulate blasting.

We find that this revision has removed the offending language and satisfies the required program amendment codified at 30 CFR 948.16(mmmm). Therefore, we are approving the amendment and deleting the required amendment at 30 CFR 948.16(mmmm).

26. *Removal of Abandoned Coal Refuse.* 30 CFR 948.16(nnnn) provides that West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to either delete CSR 38–2–3.14 or revise CSR 38–2–3.14 to clearly specify that its provisions apply only to activities that do not qualify as surface coal mining operations as that term is defined in 30 CFR 700.5; *i.e.,* that subsection 3.14 does not apply to either the removal of abandoned mine waste piles that, on average, meet the definition of coal or to the on-site reprocessing of coal mine waste piles. If the State chooses the second option it must submit a sampling protocol that will be used to determine whether the refuse piles meet the definition of coal. The protocol must be designed to ensure that no activities meeting the definition of surface coal

mining operations escape regulation under the West Virginia Surface Coal Mining and Reclamation Act.

*State Response*

In its program amendment submittal dated May 2, 2001, the State amended CSR 38–2–3.14.a., regarding the removal of abandoned coal refuse piles, by changing the proviso concerning the minimum BTU value standard of refuse material to be classified as coal. As amended, subsection 3.14.a. now provides for:

> ''* * * the removal of abandoned coal processing waste piles; provided that, if the average quality of the refuse material meets the minimum BTU value standards to be classified as coal, as set forth in ASTM standard D 388–99, and if not AML eligible, a permit application which meets all applicable requirements of this rule shall be required.''

Prior to this amendment, the words ''and if not AML eligible'' did not appear in subsection 3.14.a, and the subsection did not require the submittal of a permit application if the refuse material met the minimum BTU value to be classified as coal.

As discussed in the May 5, 2000, **Federal Register**, we approved subsection 3.14 to the extent that it would apply to the removal of abandoned coal mine refuse pile where, on average, the material to be removed did not meet the definition of coal at 30 CFR 700.5 (65 FR 26131). In addition we did not approve subsection 3.14 to the extent that it could be interpreted as applying to the on-site reprocessing of abandoned coal refuse piles. However, we noted that the removal of abandoned coal processing piles may qualify for the government-financed construction requirement under section 528(2) of SMCRA. CSR 38–2–3.31 is the approved State regulation governing government-financed construction within the State. We amended the Federal definition of government-financed construction on February 12, 1999, to provide that government funding of less than 50 percent of a project's cost may qualify if the construction is undertaken as an approved abandoned mine reclamation project under Title IV of SMRCA (64 FR 7469–7483). However, because the West Virginia program lacks counterparts to the revised Federal definition of ''government-financed construction,'' we concluded that the exemption is not available to West Virginia projects with less than 50 percent government financing.

In our January 15, 2002, meeting, we stated that because the State chose to clarify that subsection 3.14 does not apply to activities that qualify as surface coal mining operations as the term is defined at 30 CFR 700.5, it needed to submit a sampling protocol to determine when a coal refuse pile would meet the definition of coal (Administrative Record Number WV–1271). The sampling protocol must be designed to ensure that no activities meeting the definition of surface coal mining operations escape regulation under the State counterpart to SMCRA and the Federal regulations. WVDEP also needed to select and submit the BTU standard that it would use to determine the difference between coal and non-coal. The ASTM criteria should be used to determine the BTU value of a sample. WVDEP agreed to provide us a sampling protocol and to set the BTU value for coal to ensure that these projects are not surface coal mining operations. The WVDEP acknowledged that since there is only bituminous coal in West Virginia, it would use a BTU value for bituminous coal from the ASTM standard.

On February 26, 2002, WVDEP sent us another program submission (Administrative Record Number WV–1276). In that submission, WVDEP was noted that:

> WVDEP included the words ''and if not AML eligible'' to allow for the removal of abandoned coal refuse piles under AML enhancement requirements. The State has developed a sampling protocol and set the BTU value for coal (Attachment 8).

Attachment 8 contains a draft policy entitled, ''Removal of Abandoned Coal Refuse Piles'' and provides the following:

> The Secretary may issue a reclamation contract, in accordance with 38–2–3.14, solely for the removal of existing abandoned coal processing waste piles; only if the average quality of the refuse material *does not* meet the minimum BTU value standards to be classified as coal and/or has a percent ash value of greater than 50, as set forth in ASTM standard D 388–99.
>
> Refuse material that *does not* meet minimum BTU value standards to be classified as coal means; a pile of waste products of coal mining, physical coal cleaning, and coal preparation operations (*e.g.* culm, gob, etc.) containing coal, matrix material, clay, and other organic and inorganic material in which the material in the pile has a calculated average BTU value less than 10,500.
>
> Calculation of the average BTU value of the pile will be based on the average of five minimum samples taken in different and uniformly distributed locations. The number and spacing of sampling locations shall be taken into account variability of the material in short distances.

On March 8, 2002, WVDEP submitted revisions to its program amendment submission of February 26, 2002 (Administrative Record Number WV–1280). In that amendment, the State submitted a revision to Attachment 8. The revised policy is identical to the one described above, except for the last paragraph regarding the calculation of average BTU values. The revised policy provides the following:

> Calculation of the average BTU value of the pile will be based on samples taken in a minimum of five different, uniformly distributed locations. The number and spacing of sampling locations should be take into account variability of the material in short distances.

As amended, CSR 38–2–3.14.a. requires the submittal of a surface mining permit application for the removal of existing abandoned coal processing waste piles if the average quality of the refuse material meets the minimum BTU value standards to be classified as coal, as set forth in ASTM standard D 388–99 and if not AML eligible. In addition, the State has established a sampling protocol through its policy described above that will be used to determine whether abandoned coal refuse piles meet the definition of coal. As provided by 30 CFR 700.5, coal is defined to mean combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous or lignite by ASTM Standard D 388–77. The sampling protocol is designed to ensure that no activities meeting the definition of surface coal mining operations escape regulation under the approved State regulatory program. Furthermore, through the ASTM standard for coal at D 388–99, the State has established a minimum BTU value and/or ash content to be used in determining when coal refuse material does not constitute coal as that term is defined at 30 CFR 700.5.

We find that, because revised CSR 38–2–3.14.a. and the proposed State policy clearly specify that their provisions apply only to activities that do not qualify as surface coal mining operations as that term is defined in 30 CFR 700.5, the required amendment at 30 CFR 948.16(nnnn) has been satisfied, and it can be removed.

At this time, we are only approving the phrase, ''and if not AML eligible'' at CSR 38–2–3.14.a. to the extent that it would exempt reclamation projects approved under West Virginia's abandoned mine land reclamation program that corresponds to Title IV of SMCRA. We are interpreting the WVDEP's February 26, 2002, policy statement as a commitment to restrict the scope of this phrase in this manner. Furthermore, as noted above, until the State revises its government-financed construction requirements at CSR 38–2–

3.31, WVDEP cannot allow for the removal of abandoned coal refuse piles under an approved abandoned mined land project that is less than 50 percent government financed.

27. *Coal Removal Incidental to Development.* 30 CFR 948.16(oooo) provides that West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to remove CSR 38–2–23.

*State response:*

WVDEP proposed to delete the incidental mining requirements at section 23 during the 2001 regular legislative session. However, the WVDEP Advisory Council recommended that the proposed deletion be removed from the final rule change.

As discussed in the May 5, 2000, **Federal Register**, we disapproved proposed regulatory provisions at CSR 38–2-23 (65 FR 26133). As proposed, CSR 38–2–23 would allow special authorization for coal extraction as an incidental part of development of land for commercial, residential, or civic use. The new requirements would allow lesser standards for coal extraction conducted as an incidental part of land development. In disapproving these provisions, we noted that on February 9, 1999, we had found similar statutory provisions at W. Va. Code 22–3–28(a) through (c) to be less stringent than sections 528 and 701(28) of SMCRA, and therefore, unapprovable (64 FR 6201–6204). In our disapproval, we stated that we are bound by the constraints of SMCRA which does not provide a blanket exemption from the definition of surface mining operation for privately financed construction as proposed by the State.

In our January 15, 2002, meeting, and in its resubmission of February 26, 2002, WVDEP acknowledged that the provisions at CSR 38–2–23 have been disapproved by OSM, and that West Virginia is not implementing them, as recently evidenced by the West Virginia Supreme Court decision in *DK Excavating, Inc.* v. *Michael Miano, Director, WVDEP,* 209 W.Va. 406, 549 S.E.2d 280 (2001) (Administrative Record Number WV–1292). (Administrative Record Nos. WV–1271 and WV–1276).

As noted above in Finding 7, the West Virginia Supreme Court of Appeals in *Canestraro* v. *Faerber* ruled that, ''When a provision of the West Virginia Surface Coal Mining and Reclamation Act, W.Va. Code 22A–3–1 *et seq.*, is inconsistent with Federal requirements in the Surface Mining Control and Reclamation Act, 30 U.S.C. § 1201 *et seq.*, the State Act must be read in a way consistent with the Federal Act.'' *Canestraro,* 374 S.E.2d at 321 (West Virginia Administrative Record No. WV–761). See also *Schlutz,* supra (State regulation enacted pursuant to the West Virginia Surface Coal Mining and Reclamation Act , W. Va. Code 22A–3–1 to 40 (1993), [now W. Va. Code 22–3–1 to 32 (1994 and Supp.1995)], must be read in a manner consistent with Federal regulations enacted in accordance with the Surface Mining Control and Reclamation Act, 30 U.S.C. 1201 to 1328 (1986)).

Also noted above in Finding 7, the West Virginia Supreme Court of Appeals also held in *Schultz* that no change in a State surface mining law or regulation can take effect for purposes of a State program until approved by OSM, and State surface mining reclamation regulations must be read in a manner consistent with Federal regulations enacted in accordance with SMCRA, Schultz, 475 S.E.2d 467. (Administrative Record Number WV–1038).

Finally, and as noted above, in *DK Excavating,* supra, the West Virginia Supreme Court of Appeals reversed a lower State Circuit Court ruling which provided that coal extraction authorized as an incidental part of land development did not come within the State's definition of surface mining. The Supreme Court found that, ''Once a state plan is approved under the federal Surface Mining Control and Reclamation Act, any subsequent amendments to such plan do not become effective until approved by the federal Office of Surface Mining, and may not be approved by the Office of Surface Mining if inconsistent with the Surface Mining Control and Reclamation Act.'' Id. Also, ''Since the Office of Surface Mining has concluded that the amendment to our state plan, codified as West Virginia Code § 22–3–3(u)(2)(ii) (1997) (Repl.Vol.1998), is inconsistent with the Surface Mining Control and Reclamation Act, that proposed amendment cannot be deemed as an amendment to the approved West Virginia surface mining plan.'' Id.

We have previously ruled that West Virginia's incidental mining requirements cannot be approved, because they are inconsistent with sections 528 and 701(28) of SMCRA. In addition, we required that the West Virginia program be further amended by removing CSR 38–2–23. As discussed above, WVDEP is committed to not implementing the disproved provisions at CSR 38–2–23. This commitment complies with the mandate of the West Virginia Supreme Court of Appeals, which has held that ''when there is a conflict between the federal and state provisions, the less restrictive state provision must yield to the more stringent federal provision * * *'' *Canestraro,* supra. Furthermore, State rules must be read in a manner consistent with Federal regulations, *Schultz,* supra.

Given the State's commitment not to implement the disapproved regulatory provisions at CSR 38–2–23, as demonstrated by its actions in *DK Excavating*, and because of the principles established in *Canestraro*, *Schultz*, and *DK Excavating*, we conclude that the required amendment at 30 CFR 948.16(oooo) is no longer needed because the concerns contained in that required amendment have been satisfied. Therefore, we are removing it. However, to avoid further confusion or misinterpretation of its approved State regulatory program, we recommend that the State remove CSR 38–2–23.

28. *Bond Release and Premining Water Quality.* 30 CFR 948.16(pppp) provides that West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to remove CSR 38–2–24.4.

*State Response*

In its program amendment submittal dated May 2, 2001, the State amended CSR 38–2–24.4., regarding requirements to release bonds, by deleting language concerning an exception to the requirements to release bonds, and by adding a new proviso concerning revegetation (Administrative Record Number WV–1209). As amended, subsection 24.4 reads as follows:

24.4. Requirements to Release Bonds. Bond release for remining operations shall be in accordance with all of the requirements set forth in subsection 12.2 of this rule; Provided that there is no evidence of a premature vegetation release.

In the May 5, 2000, **Federal Register**, at Finding 9, we disapproved the predecessor to amended subsection 24.4 in part because the U.S. Environmental Protection Agency (EPA) declined to concur with the approval of CSR 38–2–24.4 due to its inconsistency with section 301(p) of the Clean Water Act (CWA) (65 FR 26133). Under section 301(p) of the CWA, the State may issue a National Pollutant Discharge Elimination System (NPDES) permit which modifies the pH, iron, and manganese standards for preexisting discharges from the remined area or affected by a qualifying remining operation. However, the permit may not allow the pH, iron, or manganese levels of any discharge to exceed the levels being discharged from the remined area

before the advent of the coal remining operation.

Section 301(p), however, does not apply to all remining operations. Instead, section 301(p) defines ''coal remining operation'' to mean a coal mining operation which begins after February 4, 1987 (the date of enactment of section 301(p), at a site on which coal mining was conducted before August 3, 1977 (the effective date of SMCRA). EPA declined to concur with approval with the CSR 38–2–24.4 because that subsection would allow use of the section 301(p) standards for remining operations that began prior to February 4, 1987, and for sites on which coal mining was originally conducted on or after August 3, 1977.

As discussed in our May 5, 2000, **Federal Register** decision, we noted that 30 CFR 816.42 and 817.42 require that discharges of water from areas disturbed by surface mining activities must comply with all applicable State and Federal water quality laws and regulations. Because CSR 38–2–24.4 was inconsistent with those requirements, we required its removal.

The State has not deleted CSR 38–2–24.4 in its entirety, but it has deleted the offending language. In effect, CSR 38–2–24.4 now requires that bond release for remining operations must comply with the requirements of CSR 38–2–12.2 concerning replacement, release, and forfeiture of bonds. Subsection CSR 38–2–12.2.e. provides that no bond release or reduction will be granted if, at the time, water discharged from or affected by the operation requires chemical or passive treatment in order to comply with applicable effluent or water quality standards; or long-term water treatment is provided for under subsections 12.2.e.1. or 12.2.e.2. By requiring compliance with ''applicable effluent limitations or water quality standards,'' CSR 38–2–12.2.e requires compliance with the State's water quality requirements, including section 301(p) of the CWA. Furthermore, in our January 15, 2002, meeting with WVDEP, State officials clarified that the addition of the proviso concerning premature vegetation release is intended to ensure that there are no premature vegetation releases on remining operations (Administrative Record Number WV–1271).

For the reasons discussed above, we find that the amended provision satisfies the required amendment at 30 CFR 948.16(pppp) and can be approved. Therefore, we are removing the required amendment.

On January 23, 2002, EPA announced in the **Federal Register** that is was amending its current regulations at 40 CFR Part 434 to establish a coal remining subcategory that will address preexisting discharges at coal remining operations in the Appalachian and mid-continent coal regions of the eastern United States (67 FR 3370–3410). The new guidelines are to provide incentives for remining abandoned coal sites. According to EPA, under the new rules, remining operations will be required to implement strategies that control pollutant releases and ensure the pollutant discharges during remining activities are less than the pollutant levels released from the abandoned site prior to remining. Upon completion, the operators will reclaim the land to meet the same standards currently imposed on active mining areas. EPA believes that the new guidelines will provide operators with greater certainty about environmental requirements for remining operations. As mentioned in its letter of April 10, 2002 (Administrative Record Number WV–1294), EPA stated that it expects that WVDEP will be submitting regulations in the near future to comply with the new remining requirements at 40 CFR 434 Subpart G.

## IV. Summary and Disposition of Comments

*Public Comments*

A. We asked for public comments on the State's initial amendment in the **Federal Register** on January 3, 2001 (66 FR 335) (Administrative Record Number WV–1194). By letter dated February 28, 2001 (Administrative Record Number WV–1202) the West Virginia Highlands Conservancy (WVHC) responded with the following comments.

1. 30 CFR 948.16(dd). WVHC stated that the State program is narrower and less effective than the Federal program. Whereas the Federal standards are specific and somewhat detailed, the State program is not. WVHC stated that the rules the State references are not even part of the approved program. The State effectively admits, WVHC asserted, that its program is deficient by relying on weak guidance documents to plug the holes in its approved program.

Even if its Technical Handbook were as effective as the Federal requirements, WVHC stated, the State could not rely on the Technical Handbook as part of its approved program since it can change such guidance documents at any time without notice to OSM or the public. WVHC stated that all portions of the approved State program must be codified in statute or legislative rule. These productivity rules are central to proper reclamation, and to the State's economic future. There must be specific standards for operators to follow.

In response, we disagree that guidance documents cannot be part of an approved State program. Any changes in laws, rules, policies, or guidance documents that make up an approved State program are subject to public review and comment and require OSM approval. As discussed in Finding 2, WVDEP chose to include its productivity success standards and the statistical sampling techniques for measuring the success of ground cover, stocking, and production in a policy that will be included in its Inspection and Enforcement Handbook. As required by CSR 38–2–9.3.d. and 9.3.e., only after the applicable success standards have been met and verified by inspectors with the use of the approved statistical sampling methods can the State approve Phase II or III bond release. For the reasons set forth in Finding 2, we have determined that State's proposed policy entitled ''Productivity and Ground Cover Success Standards'' as set forth as Attachment 1 in its March 8, 2002, letter (Administrative Record Number WV–1280) is no less effective than the Federal requirements at 30 CFR 816.116 and 817.116. Therefore, the required amendment at 30 CFR 948.16(dd) has been satisfied and can be removed.

2. 30 CFR 948.16(ee). WVHC stated that the State cites to less effective portions of its approved program and its guidance documents. The State cannot rely on mere guidance documents, WVHC asserted, as a way to circumvent the public notice and comment process established by Congress. If the State could rely on these guidance documents, there would be no stable State program, and operators and the public would be subject to the whims of WVDEP, WVHC asserted. In any event, the provisions that the State relies on are less effective than the Federal requirements.

In response, again, we must disagree that guidance documents cannot be a part of an approved State program. These documents are subject to the same review and approval standards as laws or regulations. As provided by 30 CFR 948.16(ee), WVDEP was required to submit documentation that it had consulted with NRCS with respect to the nature and extent of its prime farmland reconnaissance inspections required by CSR 38–2–10.2 and obtained the concurrence of NRCS regarding its negative determination criteria at CSR 38–2–10.2. WVDEP submitted a letter to NRCS on February 25, 2002 (Administrative Record Number WV–1276, Attachment 1A),

outlining its requirements and procedures regarding prime farmlands and seeking specific concurrence with respect to reconnaissance inspections and its negative determination criteria. As discussed in Finding 3, on March 7, 2002, NRCS responded (Administrative Record Number WV–1290) and concurred with the State's prime farmland requirements. Therefore, the required amendment at 30 CFR 948.16(ee) has been satisfied and can be removed.

3. 30 CFR 948.16(oo). WVHC stated that OSM must not remove this requirement since it has promulgated a Federal regulation requiring these standards to prevent failure, flooding and erosion. OSM's standard has been subject to a public notice and comment process, and is necessary to protect communities and the environment from storms, the WVHC asserted. Any lesser standard is not as effective as Federal law WVHC stated.

In response, as discussed in Finding 4, WVDEP proposed modifications to its spillway design requirements at CSR 38–2–5.4.b.8 on February 26, 2002 (Administrative Record Number 1276). Under the proposed State standard, the spillways of all sediment control structures, except for haulroads, must be designed to safely pass a 25-year, 24-hour precipitation event. The proposed rule at CSR 38–2–5.4.b.8. is no less effective than the Federal requirements at 30 CFR 816/817.46(c)(2)(ii)(B). Therefore, the required amendment at 30 CFR 948.16(oo) has been satisfied and can be removed.

4. 30 CFR 948.16(tt). WVHC stated that the State submission improperly relies on guidance documents and is, in any event, less protective than the Federal program.

In response, the Federal regulations at 30 CFR 732.17 concerning State program amendments states, at paragraph (a), that 30 CFR 732.17 applies to ''any alteration of an approved State program.'' If a State regulatory authority submits a policy, technical guidance, or written statement as a means of rendering the State program no less effective than the Federal regulations, that policy, technical guidance, or written statement, if approved by OSM, becomes part of the approved State program. If, after approval by OSM, the policy, technical guidance, or written statement subsequently changed, it should be submitted to OSM as a State program amendment.

As discussed above in Finding 5, we have determined that the State program has satisfied the part of the required amendment that requires all sediment control structures be certified as having been built in accordance with the detailed designs submitted and approved pursuant to CSR 38–2–3.6.h.4 for the following reasons. CSR 38–2–3.6.h.4. requires that detailed design plans for a structure be certified and approved before construction begins. CSR 38–2–5.4.b.1. provides that such structures be constructed in accordance with those plans. CSR 38–2–5.4.d.1. requires that prior to any surface mining activities in the component drainage area, the controlling structures must be certified as to construction in accordance with the plans.

We have also determined that the State program has satisfied the part of the required amendment that requires as-built plans be reviewed and approved by the regulatory authority as permit revisions for the following reasons. In its submittal, WVDEP stated that for structures with major design changes, a permit revision would be necessary. WVDEP further clarified that minor design changes are those within the construction tolerances described in CSR 38–2–3.35. Therefore, major design changes are those that exceed the construction tolerances. We have concluded that sediment control structures that are constructed with only minor design changes as described above are, in effect, built to the standards of the approved, certified designs in the preplan.

5. 30 CFR 948.16(mmm). WVHC stated that the State program has completely confused the variance procedures of steep slope mining and mountaintop removal mining. There are many differences in the Federal program that must be part of the State program, WVHC stated. For example, WVHC stated, the steep slope variance is not available for agricultural variances. Accordingly, the State provisions are less effective than Federal requirements and must be rejected, WVHC stated.

In response, this required program amendment was previously satisfied and removed. See the October 1, 1999, **Federal Register** (64 FR 53200, 53201 and 53203).

6. 30 CFR 948.16(nnn). The commenter stated that WVDEP admits that its program is deficient in regard to this amendment and OSM must continue to require the State to amend its program so that it is as effective as Federal law.

In response, as discussed above in Finding 7, we are removing this required amendment because we have previously disapproved the provision that is the subject of the required amendment, and because of the principals established in Canestraro, we have concluded that (nnn) has been satisfied.

7. 30 CFR 948.16(ooo). The commenter stated that the State program is less effective than the Federal program and the State must amend the program. The commenter further stated that the WVDEP admits that its citation is wrong and that it must be changed.

In response, as discussed above in Finding 8, we are removing this required amendment because we have previously disapproved the provision that is the subject of the required amendment, and because of the principals established in *Canestraro,* we concluded that (ooo) has been satisfied.

8. 30 CFR 948.16(sss). The commenter stated that the State's provision is clearly less effective than Federal law and does not require action by the operator to remedy the damage it may do to citizens' property value related to water supply. The commenter further stated that operators must be forced to pay for any damage they do to citizens' water use or potential water use that affects the value of the citizen's property.

In response, as discussed above in Finding 10, we have previously ruled that West Virginia's water replacement waiver provisions could not be approved ''to the extent'' * * * [i]t would not be implemented in accordance with the definition of ''Replacement of water supply'' at 30 CFR 701.5. Because of the State's commitment to comply with the more restrictive Federal waiver requirement, and because of the principles established in *Canestraro* and *Schultz,* we conclude that the required amendment at 30 CFR 948.16(sss) has been satisfied.

9. 30 CFR 948.16(vvv)(1) through (4). The commenter stated that all three parts of this provision the State proposal is not as effective as Federal law and must be rejected, particularly as it relies on guidance documents rather than on properly adopted rules or statutes. These provisions, the commenter stated, are especially important given the potential for damage associated with refuse fills. All requirements must be scrupulously observed, the commenter stated.

In response, as discussed above in Findings 11, 12, 13, and 14, we determined that the proposed or existing State requirements were no less effective than the Federal requirements with regard to restoring the land to AOC, certification of haulroads, applicability of subsection 5.4.c to slurry impoundments, and placement of coal refuse in the backfill, respectively. Therefore, the required amendments at

30 CFR 948.16(vvv) (1), (2), (3) and (4) have been satisfied and can be removed.

10. 30 CFR 948.16(zzz). The commenter stated that none of the State's proposals are as effective as Federal law requires. For example, the commenter added, there is a clear difference between ''adjacent areas'' and ''adjacent areas with an angle of draw of at least 30 degrees.'' The former protects a larger area, the commenter stated. Generally, the commenter asserted, the specific language of the Federal requirements is more protective of citizens in the area and the State should not be permitted to compromise citizens' rights by letting coal companies harm their homes and properties without compensating them.

In response, and as stated above in Finding 15, the State has complied with this required amendment by revising its permit application to require that the type and location of the applicable structures, lands and water supplies be identified. In addition, in its May 2, 2001, submittal, the State amended CSR 38–2–3.12.a.1. concerning subsidence control plans by adding the requirement to include a narrative. Therefore, the required amendment at 30 CFR 948.16(zzz) has been satisfied.

11. 30 CFR 948.16(aaaa). The commenter stated that the State provisions would not protect citizens' drinking water supplies because they are not as effective as Federal law. The commenter asserted that the WVDEP could not rely on lax and informal guidance documents as substitutes for the approved State program.

In response, as we discussed above in Finding 16, the State has addressed this required amendment by adding language to CSR 38–2–3.12.a.1. that makes it clear that the WVDEP can specify a area greater than that encompassed by a 30-degree angle of draw. In addition, the State has amended CSR 38–2–3.12.a.2. to require a survey of the quality and quantity of water supplies that could be contaminated, diminished or interrupted by subsidence ''within the permit area and adjacent areas.'' Therefore, the required amendment at 30 CFR 948.16(aaaa) has been satisfied.

12. 30 CFR 948.16(bbbb). The commenter asserted that the State's provisions are less effective than the Federal program, and the State may not substitute guidance documents for the approved State program.

In response, and as discussed above in Finding 17, the State amended CSR 38–2–3.12.a.2.B. to clarify that the applicant must pay for the surveys and any technical assessments or engineering evaluations. Therefore, the required amendment at 30 CFR 948.16(bbbb) has been satisfied.

13. 30 CFR 948.16(iiii). The commenter stated that the current State language is not as effective as Federal requirements, and the State must be required to submit provisions that are as stringent as Federal law.

In response, and as discussed above at Finding 21, WVDEP asserted that when the State law and rules are read in concert, there is no confusion that the State provision is no less effective than SMCRA section 515(c)(3). In addition, the WVDEP submitted its policy concerning how the provision will be interpreted by WVDEP. We found that policy renders the West Virginia program no less effective than the term ''recreational facilities use'' at SMCRA section 515(c)(3) and we approved that policy as part of the West Virginia program.

14. 30 CFR 948.16(kkkk). The commenter stated that the current State language is not as effective as Federal requirements, and the State must be required to submit provisions that are as stringent as Federal law.

In response, and as we discuss above at Finding 23, the State has satisfied the required amendment at 30 CFR 948.16(kkkk) by amending the W. Va. Code at 22–3–13a(g).

15. 30 CFR 948.16(llll). The commenter stated that the current State language is not as effective as Federal requirements, and the State must be required to submit provisions that are as stringent as Federal law.

In response, and as we discuss above at Finding 24, the State has satisfied the required amendment at 30 CFR 948.16(llll) by amending the W. Va. Code at 22–3–13a(j).

16. 30 CFR 948.16(mmmm). The commenter stated that the current State language is not as effective as Federal requirements, and the State must be required to submit provisions that are as stringent as Federal law.

In response, and as we discuss above at Finding 25, the State has satisfied the required amendment at 30 CFR 948.16(mmmm) by amending the W. Va. Code at 22–3–30a(a).

B. We also published a notice in the **Federal Register** on March 25, 2002 (67 FR 13577), and requested public comments on the State's February 26, 2002, and March 8, 2002, amendments (Administrative Record Number WV–1285). By letter dated April 9, 2002 (Administrative Record Number WV–1295), the West Virginia Coal Association (WVCA) responded with the following comments.

17. According to the WVCA, for years, OSM has saddled West Virginia's mining regulatory program with numerous required amendments. Some of these amendments were truly warranted in order for the State program to satisfy the mandates of the Federal statute and regulations. In other cases, WVCA asserted, the demanded changes have been superficial, lacking any substantive basis and generally unnecessary. WVCA stated that for WVDEP and the regulated mining community, OSM's practice of continually generating required amendments has placed the State's approved mining program in turmoil. The most offending manifestation of OSM's actions, WVCA asserted, is the legal action filed by the WVHC and currently pending in Federal District Court (*WVHC* vs. *Norton,* Civil Action 2:00–CV–1062). WVDEP proposed program amendments have been allowed to accrue for years, WVCA stated, giving rise to the Conservancy's legal action which seeks to substitute judicial mandate for agency discretion, a result never intended by OSM's guiding statute, SMCRA. WVCA stated that, in general, and with two exceptions, it supports the proposed amendments and responses offered by WVDEP to satisfy several outstanding required program amendments. WVCA urged OSM to approve the amendments as offered by WVDEP or accept the responses offered by the State agency in instances where it believes no program amendment is necessary.

In response, we disagree that the required amendments that have been placed on the West Virginia program are superficial, lack substance and are generally unnecessary. Changes in both State and Federal surface mining laws and regulations over the years have resulted in the imposition of the required amendments that are being considered today. Resolution of these issues will ensure that the State's program is consistent with Federal law and regulations. Compliance with these minimum Federal standards ensures that the regulation of the mining community is fair and consistent from state to state and affords West Virginians the same level of environmental protection of other States. It is unfortunate that some of these required amendments have gone unresolved for many years. We are hopeful that in the future issues of this nature will be resolved in a more timely manner.

18(a). WVCA has four main concerns regarding WVDEP's proposed amendment to CSR 38–2–5.4.b.8 offered to satisfy required program amendment (oo). First, WVCA would like a clarification that 30 CFR 948.16(oo)

deals with a standard to ensure that spillways associated with sediment control structures can ''*safely pass*,'' meaning, ''withstand,'' 25-year 24-hour precipitation events. WVCA stated that 30 CFR 948.16(oo) and the Federal and State counterparts, 30 CFR 816.49(sic)(a)(9)(ii)(C) and W.Va. CSR 38–2–5.4.b.8, do not contain *storage capacity* requirements for sediment control structures.

In response, we agree that the required amendment at 30 948.16(oo) relates to the design and construction of spillways for sediment control structures and does not concern the storage capacity of sedimentation ponds. The State's storage capacity requirements for sedimentation ponds are contained in CSR 38–2–5.4.b.4. On May 23, 1990, these requirements were determined to be no less effective than the Federal requirements at 30 CFR 816/817.46(c)(1)(iii)(C) (55 FR 21304, 21319).

18(b). Second, WVCA maintains that CSR 38–2–5.4.b.8 not only corresponds to the Federal requirement at 30 CFR 816.49(a)(9)(ii)(C), but that CSR 38–2–5.4.b.8's 25-year 24-hour precipitation event standard is more stringent than 30 CFR 816.49(a)(9)(ii)(C)'s 25-year 6-hour precipitation event standard.

In response, as discussed in the May 23, 1990, **Federal Register**, we found that, under most conditions in West Virginia, the peak runoff from a 24-hour precipitation event would exceed that from a 6-hour event or that the difference was insignificant in terms of design considerations. Therefore, we found that the State's use of the 24-hour storm duration for spillway design and construction was no less effective than the Federal 6-hour standard (55 FR 21304, 21319).

18(c). Third, WVCA stated that it believes that CSR 38–2–5.4.b.8 should be applied prospectively only, as it exceeds the requirements of the corresponding Federal law and there is no reason to believe that spillways designed to pass 10-year 24-hour storm events at excavated ponds need to be rebuilt.

In response, we disagree that these requirements should only be applied prospectively and that the proposed State standard exceeds the Federal requirements. As discussed above in Finding 4, a joint review of this issue disclosed that the spillways for many of these sediment control structures are currently larger than the required 25-year, 24-hour standard due to the size of the equipment used to construct them. In addition, retroactive application of the 25-year, 24-hour standard will only pertain to excavated sediment control structures that are at ground level, because existing State requirements already provide that other sediment control structures must have spillways designed and constructed to safely pass a 25 year, 24-hour event. Furthermore, the applicability requirements at CSR 38–2–1.2 provide for the application of these requirements to all existing and new surface mining operations. We anticipate that upon mid-term review, permit revision or permit renewal, the State will require spillways for excavated sediment control structures that do not safely pass a 25-year, 24-hour event to be redesigned and constructed to comply with these requirements.

18(d). Finally, WVCA stated that, as explained in subsequent paragraphs, it would be remiss not to identify the inconsistency of OSM regarding this required program amendment.

In response, as discussed above in Finding 4, we do not believe that we have been inconsistent in our treatment of this required amendment.

19. According to the WVCA, in the past and in news accounts following flooding, which occurred in July 2001, standards regarding the storage capacity of sediment control structures have been confused with requirements governing the integrity of spillways associated with sediment control structures. Therefore, WVCA asserted, OSM should clarify the distinction between requirements to ''safely pass'' a given precipitation event and requirements to ''contain or treat'' a given precipitation event (''storage capacity'' requirements). WVCA stated that 30 CFR 948.16(oo), titled ''Spillway design,'' requires CSR 38–2–5.4.b.8 to be amended to require that ''excavated sediment control structures which are at ground level and have an open exit channel constructed of non-erodible material be designed ''to pass'' the peak discharge of a 25-year 24-hour precipitation event.'' 30 CFR 948.16(oo)(emphasis added by WVCA). According to the WVCA, while CSR 38–2–5.4.b.4 and the corresponding Federal regulation at 30 CFR 816.46(c)(1)(iii)(C) focus on the requirements for ''containing and treating'' precipitation events, the requirement in 30 CFR 948.16(oo) focuses on the storm event which a spillway must be designed to ''safely pass.'' 30 CFR 816.49(a)(9) is the Federal regulation that corresponds to CSR 38–2–5.4.b.8. 30 CFR 816.49(a)(9) states, ''[a]n impoundment shall include either a combination of principal and emergency spillways or a single spillway * * * designed and constructed to ''safely pass'' the applicable design precipitation event specified in paragraph (a)(9)(ii) of this section. . . .'' 30 CFR 816.49(a)(9)(emphasis added by WVCA). 30 CFR 816.46(a)(9)(ii)(C) prescribes the design event that ''spillways'' must be capable of withstanding, WVCA stated, and provides that: ''[f]or an impoundment not included in paragraph (a)(9)(ii)(A) and (B) of this section, a 25-year 6-hour or greater event as specified by the regulatory authority.'' 30 CFR 816.46(a)(9)(ii)(C). The WVCA concluded that the requirement to ''safely pass'' such a storm event is distinct from the requirement to ''contain or treat'' such a storm event.

In response, we agree that the required amendment at 30 CFR 948.16(oo) pertains only to the design and construction of spillways for excavated sediment control structures. As discussed above in our response to Comment 18(a), we clarified that this required amendment does not relate to the storage capacity of sediment control structures. It should be pointed out that the Federal requirements have been revised and reorganized since this required amendment was imposed on the State's program. This may be partly to blame for the confusion. As discussed above in Finding 4, the State's proposed 25-year, 24-hour spillway design and construction standard is no less effective than the Federal requirements at 30 CFR 816/817.46(c)(2) and 30 CFR 816/817.49(a)(9)(ii)(C), not 30 CFR 816.46(a)(9)(ii)(C), as mentioned above.

20. According to the WVCA, the provisions of section 505(b) of SMCRA expressly provide that State law that imposes requirements not found in SMCRA or ones more stringent than required by the Federal program are not legally defective by reason of that inconsistency. WVCA asserted that the West Virginia requirement to withstand a 25-year *24-hour* storm is more stringent than the federal standard in 30 CFR 816.46(a)(9)(ii)(C) requiring safe passage of a 25-year *6-hour* event, because of the longer duration storm event utilized under the West Virginia standard. In this regard, WVCA concluded, West Virginia has not complied with its own statutory prohibition on adopting regulations that are more stringent than corresponding Federal regulations without first making specific findings (See W.Va. Code §§ 22–1–3(c) & -3a).

In response, a 25-year, 24-hour event is longer in duration than a 25-year, 6-hour event. Typically, a 24-hour storm yields more total water volume, but a lower peak flow (depth of water in a channel) than a 6-hour storm. However, as discussed above in response to Comment 18(b), we found that, in West

Virginia, this does not hold true. Rather, on May 23, 1990 (55 FR 21304, 21318), we found the State's proposed 25-year, 24-hour standard to be no less effective than the Federal 25-year, 6-hour standard. That is, we found that in West Virginia, under most conditions, the peak runoff from a 24-hour storm would exceed that from a 6-hour storm or that the difference was insignificant in terms of design considerations. While we agree that the State standard is no less effective than the Federal standard, we do not consider it to be more stringent than the Federal requirements. Furthermore, our determination was made four years prior to the State adopting its more stringent statutory provisions in 1994. Therefore, even if the 24-hour standard is considered to be more stringent than the Federal requirements, the State has not violated its own statutory prohibition on adopting regulations that are more stringent than corresponding Federal regulations.

21. According to the WVCA, because the proposed amendment to CSR 38–2–5.4.b.8 exceeds the requirements of the Federal program, it should be applied on a prospective basis only. Further, WVCA stated, prior scrutiny by OSM of the West Virginia program and experience have validated that use of a 10-year 24-hour storm event standard is safe. WVCA stated that in August 1994, OSM Charleston Field Office Director James Blankenship, in a letter to WV DEP Director David Callaghan regarding the West Virginia regulatory program acknowledged the sufficiency of the 10-year 24-hour storm event standard when applied to excavated sediment control structures: ''These types of structures by their very nature are not subject to catastrophic failure or excessive erosion. The designed storm criteria are established to address these potentials and are of no significance for these structures' (see W.Va. Administrative Record 934). WVCA stated that historic events have further confirmed the adequacy of the previous standard utilized by WVDEP. The WVCA concluded that following a record storm event in July 2001, the West Virginia Surface Mine Board determined that structures constructed according to the 10-year 24-hour storm event standard were subjected to 100-year 24-hour storm event but did not breach or fail, just as OSM originally opined in 1994.

In response, we disagree that the proposed revision to CSR 38–2–5.4.b.8 exceeds the Federal requirements, and should only be applied prospectively. As discussed above in Finding 4, we found the State's 10-year, 24-hour standard for the design and construction of spillways to be less effective than the Federal 25-year, 6-hour standard in October 1991. We has never approved the State's 10-year, 24-hour spillway design standard for excavated sediment control structures. Neither is the proposed 25-year, 24-hour State standard more stringent than the Federal 25-year, 6-hour spillway standard. The proposed revision will simply make the State's spillway design and construction requirements for excavated sediment control structures no less effective than the Federal requirements. Retroactive application of these requirements (ie. application to existing ground level, excavated sediment control structures on sites that have not received final bond release) is required by the State's approved program. As provided by CSR 38–2–1.2.a., these rules apply to all existing surface mining operations in the State. Only CSR 38–2–3.8.c. provides an exemption for existing structures. CSR 38–2–2.48 defines existing structure to mean a structure or facility used with or to facilitate surface coal mining and reclamation operations for which construction began prior to January 18, 1981, the effective date of the State's approved program. Even then, such structures are subject to revision or reconstruction when it is necessary to comply with a performance standard.

Furthermore, the comments made above by WVCA regarding the safety of these types of structures are incorrectly attributed to OSM. The language that WVCA quoted is the State's response to our comment that the proposed State standard was still less effective than the Federal requirements. During a meeting with the State in 1994, it was alleged that OSM had approved the 10-year, 24-hour standard in other States. In response to this allegation, we agreed to determine if a similar exemption existed in the Illinois program. As addressed above in Finding 4, there is no such standard in the Illinois program. We understand that the West Virginia Surface Mine Board recently dismissed a case based on the State's 10-year, 24-hour spillway standard. We believe that, at the time, the Surface Mine Board was not aware that OSM had earlier found the State's standard to be less effective than the Federal requirements. Furthermore, such standard cannot be considered to be part of the approved State program. As discussed above, the West Virginia Supreme Court of Appeals has held that, when an amendment to the State program is found by OSM to be inconsistent with the Federal requirements, the proposed amendment cannot be deemed an amendment to the approved State program, *DK Excavating*, 549 S.E.2d 280, (Administrative Record Number WV–1292).

22. According to the WVCA, OSM previously pledged to remove the required program amendment at 30 CFR 948.16(oo). WVCA stated that in a 1994 communication from OSM to WVDEP, Charleston Field Office Director James Blankenship pledged to resolve 30 CFR 948.16 (oo) by approving CSR 38–2–5.4.b.8 ''as an exemption similar to the one approved in the Illinois state program'' (W.Va Administrative Record 934). Additionally, WVCA stated, in two official exchanges subsequent to Blankenship's 1994, letter WVDEP again argues that CSR 38–2–5.4.b.8 is as stringent as the federal program and that OSM's original ''promise'' regarding the outstanding program amendment at 30 CFR 948.16(oo) should be honored. In November 2000, WVDEP responded to required amendment (oo) by citing the language from the 1994 letter (WV Administrative Record 1189). Despite WVDEP's response to OSM, in January 2001 the required amendment to CSR 38–2–5.4.b.8 is again restated (66 Fed. Reg. 335) WVCA stated. In response, WVDEP again pointed to the 1994 pledge by OSM to approve the existing regulation as a program exemption. WVCA stated that to its knowledge, OSM has never clarified why the intent of the 1994 letter regarding amendment (oo) was never implemented. Unfortunately, WVCA stated, the disparity of OSM regarding this particular amendment is illustrative of how the Federal agency communicates with WVDEP regarding the consistency of the State program with its Federal counterpart. Far too often, WVCA asserted, OSM demands changes of WVDEP for insignificant or nonexistent reasons. WVCA stated that, as illustrated by the Federal agency's conduct regarding 30 CFR 948.16(oo), OSM often fails to follow its own directives regarding State programs. The result of this confusion between the Federal and State programs, WVCA asserted, is demonstrated by the current litigation pending against OSM in Federal District Court (*WVHC v. Norton*) and the ongoing section 733 actions undertaken by OSM against WVDEP. WVCA urged that, in the spirit of ending this confusion, OSM approve the amendment to CSR 38–2–5.4.b.8 as offered by WVDEP.

In response, as discussed above in regard to Comment 21, we agreed to consider approving the State's proposal if such an exemption had been previously approved in the Illinois program. As discussed above in Finding

4, no such exemption exists in the Illinois program. If we had determined that this provision was as effective as the Federal requirements, it would have removed the required amendment. Instead, the required amendment has remained on the State program since 1991, because the State's spillway standard for excavated sediment control structures was determined to be less effective than the Federal standard. This information was conveyed to the State both informally and formally. In addition, we regularly provides State officials and the public an update on the status of the State's outstanding required amendments and 30 CFR Part 732 issues in the West Virginia Annual Report. We stand by our earlier decision. However, as discussed above in Finding 4, because we now find the State's proposed spillway revision of February 26, 2002 (Attachment 2), to be no less effective than the Federal requirements, we are removing the required amendment at 30 CFR 948.16(oo).

23. WVCA stated that it has the following observation regarding the required amendment specified at 30 CFR 948.16(oooo). WVCA stated that by demanding that WVDEP remove CSR 38–2–23, OSM appears committed to wasting coal resources that could be extracted through incidental, non-mining related construction or development. WVCA stated that such a desire by OSM is counter to the purpose and spirit of SMCRA, and simply does not agree with conventional common sense. WVCA urged OSM, as WVDEP has for several years, to remove the required program amendment.

In response, as discussed above in Finding 28, we disapproved the State's incidental mining requirements at CSR 38–2–23 on May 5, 2000 (65 FR 26130, 26133). In addition, on February 9, 1999 (64 FR 6201, 6204), we found similar statutory provisions at W.Va. Code 22–3–28(a) through (c) to be less stringent than sections 528 and 701(28) of SMCRA, and therefore unapprovable. In our disapproval, we noted that we are bound by the constraints of SMCRA which does not provide a blanket exemption from the definition of surface mining operations for privately financed construction as proposed by the State. A similar two-acre exemption had existed under section 528(2) of SMCRA, but was repealed by Public Law 100–34 on May 7, 1987. While incidental mining activities are not exempt from the requirements of SMCRA, we have encouraged WVDEP to work with applicants in providing more timely review and approval of such applications to avoid the wasting of coal resources. Furthermore, given the State's commitment not to implement the disapproved regulatory provisions at CSR 38–2–23, as demonstrated by its actions in *DK Excavating*, and because of the principles established in *Canestraro, Schultz*, and *DK Excavating*, we are removing the required amendment at 30 CFR 948.16(oooo) because the concerns contained therein have been satisfied and it is no longer needed.

C. We asked for public comments on the amendment package submitted on May 2, 2001, concerning House Bill 2663 in the **Federal Register** on May 24, 2001 (Administrative Record Number WV–1213). We did not receive any specific public comments on the State's responses to the required amendments addressed in this document. However, some of the public comments discussed above were addressed by amendments included in this submission.

D. We asked for public comments on the amendment package submitted on November 28, 2001, concerning blasting in the **Federal Register** on January 31, 2002 (Administrative Record Number WV–1267), but we did not receive any comments from the public.

*Federal Agency Comments*

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendments from various Federal agencies with an actual or potential interest in the West Virginia program by letters dated January 26, and May 30, 2001, and February 1, and March 11, 2002 (Administrative Record Numbers WV–1199, WV–1215, WV–1268, and WV–1284, respectively).

1. By letter dated February 14, 2001 (Administrative Record Number 1204), the United States Department of Labor, Mine Safety and Health Administration (MSHA) responded to our request for comments. MSHA requested that we contact MSHA in the event that any long-standing regulation or amendment thereto should change or alter the areas of a surface or underground coal mine or a preparation facility, including refuse piles, impoundments, sealed mines, or highwalls at surface mines. MSHA further stated that if such regulations or amendments do cause such changes or alterations, MSHA will assign a technical inspector to discuss the mine operator's approved plans concerning the affected areas for the amendment at issue.

In response, changes in State laws and regulations are usually incorporated into existing permits at the time of permit renewal, permit revision, or mid-term review. MSHA is provided copies of any request for renewal or significant revisions to permit applications. In addition, notification of any changes in State laws or regulations that make up an approved State regulatory program are provided to MSHA for review and comment prior to our approval.

2. The United States Department of Agriculture, Natural Resources Conservation Service (NRCS) responded on February 9, 2001 (Administrative Record Number WV–1203), and provided the following comments. At required amendment 30 CFR 948.16(dd), NRCS suggested language to be used in place of the WVDEP's response to the required amendment codified at 30 CFR 948.16(dd). NRCS suggested the following language: ''The productivity for grazing land, hayland, and cropland can be based upon the productivity determinations for similar soil classifications, or similar map units, as published in the productivity tables in NRCS soil surveys, or in the NRCS Grassland Suitability Groups.''

In response, we note that after NRCS commented, the State amended its response. As discussed in Finding 2, WVDEP proposed a policy to satisfy the required amendment at 30 CFR 948.16(dd) regarding productivity and ground cover. In effect, the policy will do what the NRCS has suggested. In addition, operators will be expected to work with the NRCS, West Virginia Agricultural Statistics Service/USDA and WVDEP in developing productivity standards for proposed mining operations that have hayland, pastureland, or cropland as the postmining land use.

3. NRCS also commented on the required amendment codified at 30 CFR 948.16(ee). NRCS stated that when evaluating important farmland, NRCS uses form AD–1006 to determine a Relative Value of Farmland to be Converted. This form gives weight to Prime and Unique Farmland, and also gives weight to statewide Important Farmland and Locally Important Farmland. This is the national system of Land Evaluation and Site Assessment, or LESA. Many map units of Statewide importance exceed 10 percent slope, and impact our evaluation. Lists of Prime Farmland, Unique Farmland, Statewide Important Farmland, and Locally Important Farmland are available for each county.

In response, we note that after the NRCS commented, WVDEP revised its response to the required amendment at 30 CFR 948.16(ee). As discussed in Finding 3, WVDEP submitted its prime farmland requirements and procedures to the NRCS for review. The NRCS commented on the nature and extent of WVDEP's reconnaissance inspections

and concurred with the State's negative determination criteria for prime farmland. The documents described above are taken into consideration when evaluating areas for prime farmland.

4. The U. S. National Park Service (NPS) responded and provided two suggestions (Administrative Record Number WV–1289). Concerning the State's response to the required amendment at 30 CFR 948.16(iiii), NPS stated that recreational uses such as off-road vehicle use requires only a minimal amount of reclamation, and operators will naturally gravitate towards reclaiming areas to this level if allowed to. The State's reclamation standards in effect would be lowered through what appears to be an unintended interpretation of what constitutes ''recreational facilities use'' under SMCRA section 515(c)(3).

In response, SMCRA at section 515(c)(3) provides the minimum standards for approval of mountaintop removal mining operations. Section 515(c)(3)(A) provides that after consultation with the appropriate land use planning agencies, if any, the proposed postmining land use must be deemed to constitute an equal or better economic or public use of the affected land, as compared with premining use. That is, while the applicant may propose a certain postmining land use for mountaintop removal mining operations, it is the decision of the regulatory authority whether to approve a proposed postmining land use. The decision, in accordance with section 515(c)(3)(A), must focus on the value of the proposed use as compared to the premining use. In addition, SMCRA section 515(c)(3)(B) provides that the applicant must present specific plans for the proposed use and appropriate assurances that such use: will be compatible with adjacent land uses; obtainable according to data regarding expected need and market; assured of investment in necessary public facilities; supported by commitments from public agencies where appropriate; practicable with respect to private financial capability for completion of the proposed use; and planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the postmining land use. Also, Section 515(c)(3)(C) also provides that the proposed use must be consistent with existing State and local land use plans and programs. The State counterparts to these requirements are at W. Va. Code 22–3–13(c)(3).

It is our belief that compliance with the SMCRA provisions discussed above leads to the following conclusions: (1) A postmining land use cannot be approved where the use could be achieved without waiving the AOC requirement, except where it is demonstrated that a significant public or economic benefit will be realized therefrom; and, (2) where an exception or variance from the approximate original requirements is sought, the postmining land use must always offer a net benefit to the public or the economy. As discussed above in Finding 21, we find that the policy statement provided by WVDEP renders the term ''recreational uses'' at W. Va. Code 22–3–13(c)(3) no less stringent than the term ''recreational facilities use'' at section 515(c)(3) of SMCRA and can be approved.

5. NPS also stated that language identified in the amendments as 30 CFR 948.16(dd) allows for the continuation of the practice of returning previously mined lands to grazing land, pasture land or cropland. NPS stated that while grazing is an acceptable reclamation goal under some circumstances, it should be a limited option, especially in the highly productive hardwood forest region that surrounds the New River Gorge National River and Gauley River National Recreation Area. The circumstances under which grazing land, pasture land or cropland would be an acceptable reclamation goal, NPS stated, need to be specified and meet the higher and better use test.

In response, we note that SMCRA and the Federal regulations currently allow such considerations. Under section 515(c)(3) of SMCRA, industrial, commercial, agricultural, residential, or public facility (including recreational facilities) uses may be approved as postmining land uses for mountaintop removal mining operations. Certain managed grassland uses, such as grazing land, pasture land, or hayland, are included within the Federal ''agricultural'' land use category under section 515(c)(3). The State's mountaintop-removal provisions at W.Va. Code 22–3–13(c)(3) contain similar requirements. However, as discussed in the August 16, 2000, **Federal Register**, we approved a new provision at CSR 38–2–7.3.c (65 FR 50409, 50414). Subsection 7.3.c. provides that a change in postmining land uses to grassland uses, such as rangeland and/or hayland or pasture, is prohibited on mountaintop removal mining operations that receive an approximate original contour variance described in W.Va. Code 22–3–13(c). Therefore, as recommended by the NPS, the grassland uses described above, except for cropland, are no longer approvable postmining land uses for mountaintop removal mining operations in West Virginia. Few, if any, mountaintop removal mining operations in the State have cropland as an approvable postmining land use. In addition, the change from one land use category to another category would have to satisfy the alternative postmining land use requirements of CSR 38–2–7.3.

6. By letter dated March 29, 2002 (Administrative Record Number WV–1291), the U.S. Army Corps of Engineers (COE) responded and suggested the inclusion of a statement indicating that separate authorization from the COE be required for all work involving any discharge of dredged or fill material into waters of the U.S. COE made this recommendation it said in order to avoid any inadvertent implication that the requirements of Section 404 of the Clean Water Act are somehow superseded by the amendments.

In response, as provided by section 702(a)(3) of SMCRA, we acknowledge that nothing in the SMCRA requirements may be construed as superseding, amending, modifying or repealing the Federal Water Pollution Control Act [amended as The Clean Water Act (CWA)] or the regulations promulgated thereunder. State programs do not have to contain a statement regarding the discharge of dredge or fill material in waters of the United States. However, many States make it a condition of permit approval requiring that the surface mining reclamation operation cannot commence without the issuance of a CWA Section 404 Permit by the COE.

7. By letter dated March 7, 2002 (Administrative Record Number WV–1290), NRCS stated that its definitions are not consistent with several parts of the State's rules at CSR 38–2–10 regarding negative determination criteria. Because cropping history is not considered in the NRCS definition of prime farmland, they concluded that they could not agree with any historic use of the land as set forth in the State's rules at CSR 38–2–10.2.a though 10.2.a.1.C.

In response, as discussed above in Finding 2, section 701(20) of SMCRA defines prime farmland to include lands ''which have been used for intensive agricultural purposes * * *.'' In addition, 30 CFR 701.5 defines prime farmland to mean those lands which are defined by the Secretary of Agriculture in 7 CFR Part 675 and which have been historically used for cropland. Because the State's prime farmland requirements include an historical use criterion that is no less effective than the Federal requirements at 30 CFR 701.5 and because the NRCS concurs with the

State's other negative determination criteria, we found WVDEP's proposal to be no less effective than the Federal requirements at 30 CFR 785.17. Therefore, we are removing the applicable portion of the required amendment at 30 CFR 948.16(ee).

We asked for comments from Federal agencies by letter dated May 30, 2001, concerning the amendment package submitted to us on May 2, 2001, concerning House Bill 2663 (Administrative Record Number WV–1215).

8. On June 25, 2001, the U.S. Fish and Wildlife Service responded to our request for comments, but it did not comment on any of the State's proposed revisions to the outstanding required amendments (Administrative Record Number WV–1224) that we are addressing in this document. Therefore, no response by us is necessary.

We also asked for comments from Federal agencies by letter dated February 1, 2002, concerning the amendment package submitted to us on November 28, 2001, concerning blasting (Administrative Record Number WV–1268).

9. On March 1, 2002 (Administrative Record Number WV–1281), MSHA responded and stated that the employee and adjacent landowner safety provisions are consistent with MSHA blasting standards. MSHA also stated it found no issues or impact upon coal miner's health and safety.

10. On February 26, 2002 (Administrative Record Number WV–1279), COE responded and stated that their review of the proposed amendment found it to be generally satisfactory. The COE did not have any other comments related to the required amendments codified at 30 CFR 948.16(kkkk), (llll), or (mmmm) that were addressed in the State's blasting amendment package.

11. On February 5, 2002 (Administrative Record Number WV–1270), the NPS responded to the State's blasting amendment and stated that it had no specific comments.

*Environmental Protection Agency (EPA) Comments/Concurrence*

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to get comments and the written concurrence of EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

On January 26, 2001, and March 11, 2002, we asked for concurrence on the amendments from EPA (Administrative Record Numbers WV–1198 and WV–1283, respectively). On July 3, 2001, and April 10, 2002 (Administrative Record Numbers WV–1225 and WV–1294), EPA sent us its written concurrence with comments. EPA stated that there are no apparent inconsistencies with the Clean Water Act (CWA), the National Pollutant Discharge Elimination System (NPDES) regulations, or other statutes and regulations under the authority of EPA. EPA said that it is providing its concurrence with the understanding that implementation of the amendments must comply with the CWA, NPDES regulations, and other statutes and regulations under its authority.

In addition, EPA provided the following comments on the proposed amendments.

1. Required amendment codified at 30 CFR 948.16(oo) concerning the required design standard for excavated sediment control structures. EPA stated that it does not have any comments on the design of sediment control structures to pass certain size storm flows, but wished to point out that settleable solids effluent limits are required by 40 CFR Part 434 for discharges to waters of the United States resulting from 10-year, 24-hour or less storms.

In response, we acknowledge the applicability of the regulations at 40 CFR Part 434 to the West Virginia program at CSR 38–2–14.5.b.

2. Required amendment codified at 30 CFR 948.16(vvv)(4) concerning the placement of coal processing waste in the backfill. EPA stated that it emphasizes the importance that all assurances be made during placement of any acidic material into backfills, whether refuse or overburden, to minimize acid formation and prevent acid seepage. If conditions exist where there are questions about the effectiveness of measures for preventing acid seepage, EPA stated, then acidic materials should not be placed in the backfill.

In response, and as discussed above in Finding 14, acid-or toxic-producing materials will be rendered non-acid and/or non-toxic prior to being placed in a backfill. WVDEP stated that CSR 38–2–14.15.m.2. provides that coal processing waste will not be placed in the backfill unless it is non-acid and/or non-toxic material or rendered non-acid and/or non-toxic material. In addition, CSR 38–2–1.6.b. prohibits acid-forming or toxic-forming material from being buried or stored in proximity to a drainage course or groundwater system. We agree with EPA that if conditions exist where there are questions about the effectiveness of measures for preventing acid seepage, then acidic materials should not be placed in the backfill.

3. Required amendment codified at 30 CFR 948.16(bbbb) concerning premining surveys that require technical assessments or engineering evaluations of water supplies prior to underground mining. EPA recommended that these surveys also include the quantity and chemical and biological quality of intermittent and perennial streams. Subsidence has caused impairment of aquatic habitat from water loss through streambed fissures and from ponding in subsided stream stretches, the EPA also stated.

In response, we note that the Federal regulation at 30 CFR 784.20(a)(3), upon which the State rule is based, applies only to technical assessments or engineering evaluations of certain protected water supplies, and not to land, or to streams in general.

4. On April 10, 2002, in response to the State's proposed revision to satisfy 30 CFR 948.16(pppp) regarding bond release and premining water quality, EPA noted that on January 23, 2002, it promulgated effluent guideline regulations for remining operations. The regulations are consistent with section 301(p) of the CWA (Rahall Amendment) and provide an incentive for remining by requiring less stringent effluent limits than are required for conventional mining operations. According to EPA, the remining effluent limits in 40 CFR Part 434 Subpart G apply to preexisting discharges until bond release and, at a minimum, may not exceed preexisting baseline levels. Applications for NPDES permits for remining operations must include pollution abatement plans that identify the best management practices to be used. Applications must also include monitoring data on preexisting baseline loadings, unless such monitoring is considered infeasible due to inaccessible discharges or other reasons. EPA noted that it is expected that WVDEP will be providing regulations consistent with 40 CFR Part 434 Subpart G in the near future.

In response, as discussed above in Finding 28, we acknowledge that EPA has recently issued effluent limitation guidelines for remining operations, and it is anticipated that the State's remining requirements, including CSR 38–2–24.4 if necessary, will have to be revised in the near future to comply with the new requirements.

5. We asked EPA for comments by letter dated February 1, 2001, on the amendment package submitted on November 28, 2001, concerning blasting (Administrative Record Number WV–1268). On February 28, 2002, EPA responded and stated that it has

determined that there are no apparent inconsistencies with the Clean Water Act or other statutes and regulations under EPA's jurisdiction (Administrative Record Number WV–1282).

6. We also asked EPA for comment and concurrence by letter dated May 29, 2001, on the amendment package submitted on May 2, 2001, concerning State House Bill 2663 (Administrative Record Number WV–1214). By letter dated November 23, 2001, EPA provided the following comments (Administrative Record Number WV–1252). Concerning the State's response to 30 CFR 948.16(xx), EPA stated that this provision includes a requirement that, ''where water quality is paramount,'' outcrop barriers be constructed with impervious material and have controlled discharge points. EPA recommended that a definition or some clarification of the term ''paramount'' be added as it relates to water quality.

In response, as discussed above in Finding 6, the State revised its rules at CSR 38–2–14.8.6.a. to provide design requirements for constructed outcrop barriers. In addition, on February 26, 2002, WVDEP proposed guidelines that further clarify what standard engineering practices will be followed when allowing for the removal of a natural barrier and constructing an outcrop barrier. The term ''paramount'' that EPA recommends be defined is also contained in W.Va. Code Section 22–3–13(b)(25). Like the proposed rule, the statute provides that where water quality is paramount, the constructed barrier must be composed of impervious material with controlled discharge points. The State statutory provision allowing for constructed outcrop barriers was conditionally approved on January 21, 1981 (46 FR 5915, 5919). The conditional approval required the State to provide specific design criteria for constructed outcrop barriers. At time of approval, the State was not required to define the term, paramount. The purpose of both constructed and natural outcrop barriers is to prevent slides and to control erosion. By requiring an operator to construct an outcrop barrier of impervious material with controlled discharge points, the State should be able to ensure that the constructed barrier will effectively control erosion and protect surrounding streams. Not all outcrop barriers need to be constructed with impervious material, such as clay, to control erosion. As proposed, it can be asserted that the State believes that it may be necessary to construct some outcrop barriers of impervious material whenever water quality is paramount. This may be due to the fact that the proposed outcrop barrier may be adjacent to or in the vicinity of a high quality stream. However, given that the State's existing statutory provision is identical to the proposed regulatory provision at CSR 38–2–14.8.a.6. and because the State's constructed outcrop barrier requirements are in accordance with the Federal requirements for natural barriers at SMCRA section 515(b)(25), we do not agree that the term ''paramount'' needs to be defined or further clarified as recommended by EPA.

7. Concerning the required amendments at 30 CFR 948.16(ffff), (gggg), and (hhhh), EPA noted that these provisions relate to the amount of time allowed to remedy subsidence damage to lands, structures, or water supplies. EPA stated that it is unclear in this section or other sections regarding subsidence control if the term ''lands'' includes streams and wetlands which may be adversely affected by water loss through subsidence cracks and ponding of subsided stream portions. To provide clarification, EPA recommended that the words ''streams and wetlands'' be included along with lands, structures, and water supplies in this section and other appropriate sections addressing subsidence control.

In response, we note that the Federal definition of ''material damage'' at 30 CFR 701.5 covers damage to the surface and to surface features, such as wetlands, streams, and bodies of water, and to structures or facilities. 60 FR 16724, col. 3, March 31, 1995. The State's definition of material damage contained in CSR 38–2–16.2.c. is substantively identical to the Federal definition in these pertinent respects. Therefore, we expect the State to interpret its definition of ''material damage'' in the same manner as we interpret the Federal definition.

## V. OSM's Decision

Based on the above findings, we approve the amendments sent to us by West Virginia. In addition, we are removing the required program amendments codified at 30 CFR 948.16(a), (dd), (ee), (oo), (tt), (xx), (nnn), (ooo), (qqq), (sss), (vvv)(1) through (4), (zzz), (aaaa), (bbbb), (ffff), (gggg), (hhhh), (iiii), (jjjj), (kkkk), (llll), (mmmm), (nnnn), (oooo), and (pppp).

To implement this decision, we are amending the Federal regulations at 30 CFR Part 948, which codify decisions concerning the West Virginia program. We find that good cause exists under 5 U.S.C. 553 (d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

## VI. Procedural Determinations

*Executive Order 12630—Takings*

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

*Executive Order 12866—Regulatory Planning and Review*

This rule is exempt from review by the Office of Management and Budget (OMB) under Executive Order 12866.

*Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowable by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

*Executive Order 13132—Federalism*

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations ''consistent with''

regulations issued by the Secretary pursuant to SMCRA.

*Executive Order 13211 '' Regulations That Significantly Affect the Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse affect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

*National Environmental Policy Act*

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by the OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulation.

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: a) Does not have an annual effect on the economy of $100 million; b) Will not cause a major increase in costs or prices for consumers, individual industries, geographic regions or Federal, State, or local government agencies; and c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

*Unfunded Mandates*

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

**List of Subjects in 30 CFR Part 948:**

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 19, 2002.

**Tim L. Dieringer,**

*Acting Regional Director, Appalachian Regional Coordinating Center.*

For the reasons set out in the preamble, 30 CFR part 948 is amended as set forth below:

## PART 948—WEST VIRGINIA

1. The authority citation for Part 948 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

2. Section 948.15 is amended in the table by adding a new entry in chronological order by ''Date of publication of final rule'' to read as follows:

**948.15 Approval of West Virginia regulatory program amendments.**

* * * * *

| Original amendment submission dates | Date of publication of final rule | Citation/description |
|---|---|---|
| * | * | * * * * * |
| November 30, 2000; May 2, 2001; November 28, 2001; February 26, 2002; March 8, 2002. | May 1, 2002 ..... | Emergency rule provisions: CSR 38–2–3.12.a.1, a.2, a.2.B; 5.4.b.8, d.3; 16.2.c.4.<br>Policy/guidance documents submitted February 26, 2002: Attachments 1A; 2P; 3P and the updated listing (Administrative Record Number WV–1278); 4 except examples 1 and 3 through 8; 6; and 9.<br>Policy/guidance documents submitted March 8, 2002: Attachments 1; 3A; and 8.<br>In House Bill 2663: CSR 38–2–3.12.a.1; 3.14.a; 12.2.e; 12.4.e; 14.8.a.6; 16.2.c.4; and 24.4.<br>In Senate Bill 689: W. Va. Code 22–3–13a(g), (j); 30a(a). |

3. Section 948.16 is amended by removing and reserving paragraphs (a), (dd), (ee), (oo), (tt), (xx), (nnn), (ooo), (qqq), (sss), (vvv), (zzz), (aaaa), (bbbb), (ffff), (gggg), (hhhh), (iiii), (jjjj), (kkkk), (llll), (mmmm), (nnnn), (oooo), and (pppp).

[FR Doc. 02–10759 Filed 4–30–02; 8:45 am]

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# Part VI

# Department of Agriculture

## 9 CFR Part 53

## Foot-and-Mouth Disease Payment of Indemnity; Update of Provisions; Proposed Rule

**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**9 CFR Part 53**

**[Docket No. 01–069–1]**

**RIN 0579–AB34**

## Foot-and-Mouth Disease Payment of Indemnity; Update of Provisions

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the regulations pertaining to the control and eradication of foot-and-mouth disease and other serious diseases, including for both cooperative programs and extraordinary emergencies. Specifically, we are proposing changes in indemnity provisions primarily related to foot-and-mouth disease. The proposed changes are prompted, in part, by a review of the regulations in light of the recent series of outbreaks of foot-and-mouth disease in the United Kingdom and elsewhere around the world. We believe these changes are necessary to ensure the success of a control and eradication program in the event of an occurrence of foot-and-mouth disease in the United States.

**DATES:** We will consider all comments we receive that are postmarked, delivered, or e-mailed by July 1, 2002.

**ADDRESSES:** You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01–069–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–069–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 01–069–1'' on the subject line.

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

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

**FOR FURTHER INFORMATION CONTACT:** Dr. Mark E. Teachman, Senior Staff Veterinarian, Emergency Programs, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737–1231; (301) 734–8073.

**SUPPLEMENTARY INFORMATION:**

### Background

The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA or the Department) administers regulations at 9 CFR part 53 (referred to below as the regulations) that provide for the payment of indemnity to owners of animals that are required to be destroyed because of foot-and-mouth disease, pleuropneumonia, rinderpest, exotic Newcastle disease, highly pathogenic avian influenza, infectious salmon anemia or any other communicable disease of livestock or poultry that in the opinion of the Secretary of Agriculture constitutes an emergency and threatens the U.S. livestock or poultry population. The regulations authorize payments to be based on the fair market value of the animals destroyed, as well as payments for their destruction and disposal. The regulations also authorize payments for materials that must be cleaned and disinfected or destroyed because of being contaminated by or exposed to disease.

We recently reviewed the regulations to determine their adequacy in the event of an occurrence of foot-and-mouth disease (FMD). This review was prompted, in part, by the recent series of outbreaks of FMD in the United Kingdom and elsewhere around the world. An occurrence of FMD in the United States could be devastating given the Nation's extensive holdings of livestock, poultry, and other animals. Besides the direct effects on producers of susceptible animals, the consequences of the disease could ripple throughout the economy, causing indirect costs in other sectors.

As a result of this review, we are proposing changes to the regulations relating to the valuation of animals and materials and the payment of indemnity to claimants that relate primarily to FMD. We do not cover in this proposed rule these specific cooperative arrangements that the Administrator may enter into with States and other cooperators in the control and eradication of disease such as FMD. However, APHIS continues to work with States and other cooperators in developing appropriate response plans and strategies that entail the cooperative efforts of APHIS, other Federal agencies, States, and animal industries in the event of an occurrence of FMD or other disease covered by the regulations. We recognize cooperative arrangements with States and other cooperators are a critical element in the control and eradication of diseases such as FMD, and therefore invite your comments on this subject.

We are also proposing other changes to the regulations that involve updating certain provisions that would be applicable to FMD.

The purpose of this proposed rule is to remove possible sources of delay in achieving FMD eradication, should an occurrence of that disease occur in this country. Under existing compensation regulations, delays may occur because of some producers' perceptions on receiving full payment, as well as because of current eradication program requirements. In the first instance, delays can derive from livestock owners' uncertainty of being fully compensated for the fair market value of destroyed animals, products, and materials, including livestock vaccinated as part of an FMD eradication program (official vaccinates). Owners of affected herds may also be uncertain that they will receive full compensation for cleaning and disinfection costs. In the second instance, delays may be caused by having to rely on appraisal for the valuation of livestock when an insufficient number of appraisers or other constraints would prevent timely destruction of infected and exposed animals. This proposed rule sets forth regulatory changes to address these possible sources of delay.

### Proposed Changes to 9 CFR Part 53

*Definitions*

We are proposing to add to current § 53.1 definitions for the terms *animals affected by disease, APHIS representative, breeding animal, commercial breeding animal, disease outbreak, donor animal, endangered or threatened species, exotic animal, Federal veterinarian, Livestock Marketing Information Center, market animal, National Veterinary Services Laboratories, official vaccinate, rare animal, registered animal, seedstock herd or flock, State representative,* and *State veterinarian*.

The term *animals affected by disease* would refer to animals determined to be infected with, infested with, or exposed to, a disease covered by part 53. The term would also cover official vaccinates. The regulations currently use the term ''affected by or exposed to disease'' in discussing the valuation and destruction of animals eligible for indemnification. In other animal health regulations promulgated by the Agency, the terms ''affected with'' or ''affected by'' apply to animals infected with a disease or exposed to a disease agent. Therefore, to avoid confusion, we propose to use the term ''animals affected by disease'' to cover both animals infected with a disease or exposed to a disease agent. The term ''animals affected by disease'' would also cover ''infested with'' because part 53 could apply to animals affected by screwworm, ticks, or organisms other than bacteria, viruses, or other agents typically associated with infection.

The regulations define *APHIS employee* as any individual employed by APHIS who is authorized by the Administrator to do any work or perform any duty in connection with the control and eradication of disease. The regulations define *inspector in charge* as an APHIS employee who is designated by the Administrator to take charge of work in connection with the control and eradication of diseases. We are proposing to remove references to the terms *APHIS employee* and *inspector in charge* throughout the regulations and replace them with the term *APHIS representative*. An *APHIS representative* would be defined as any individual employed by or acting as an agent on behalf of APHIS who is authorized by the Administrator to perform the services required by part 53. We would make this change since, depending on the location and magnitude of the disease occurrence, it may not always be possible to use APHIS employees for all the services authorized under the regulations. Therefore, to reflect the possibility that we may have to contract for some of the services covered by the regulations, we are proposing to use the term ''APHIS representative'' in place of ''APHIS employee'' and ''inspector in charge'' throughout the regulations.

We would define a *breeding animal* as any animal that is raised for the purpose of producing market animals or other breeding animals and that, in the case of a female, has donated embryos or been bred, and in the case of a male, is sexually intact and has reached the age of sexual maturity.

We would define the term *commercial breeding animal* to cover any breeding animal other than a registered animal, an animal that is part of a seedstock herd or flock, or a donor animal.

The term *disease outbreak* would refer to the initial occurrence of the disease, as determined and reported by the United States Department of Agriculture.

A *donor animal* would be defined as any animal, other than a registered animal or an animal that is part of a seedstock herd or flock, that has donated at least two embryos, in the case of females, or at least 100 units of semen, in the case of males, for sale to another producer or transfer to a separate herd or flock.

The term *endangered or threatened species* would refer to those species defined as endangered species or threatened species in the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and the regulations promulgated thereunder and as they may be subsequently amended.

We would define an *exotic animal* as any animal that is native to a foreign country or of foreign origin or character or is not native to the United States.

We would define a *Federal veterinarian* as a veterinarian employed and authorized by the Federal Government to perform the services required by part 53. A Federal veterinarian could be an APHIS veterinarian or a veterinarian employed by another agency of the Federal Government.

The *Livestock Marketing Information Center* would refer to the organization funded cooperatively by the United States Department of Agriculture, State land grant universities, and livestock industry associations that develops, disseminates and maintains economic and market data relating to the livestock industry.

The term *market animal* would apply to any animal being raised for the primary purpose of slaughter for meat, or, in the case of dairy animals, the production of milk, or, in the case of certain sheep, the production of wool.

We would define *National Veterinary Services Laboratories* as the organizational unit within the Animal and Plant Health Inspection Service delegated responsibility for providing services for the diagnosis of domestic and foreign animal diseases, diagnostic support for disease control and eradication programs, import and export testing of animals, training, and laboratory certification for selected diseases.

We are proposing to define an *official vaccinate* as any animal that has been: Vaccinated with an official vaccine for FMD under the supervision of a State or Federal veterinarian; identified by an eartag specifically approved by APHIS for identification of animals officially vaccinated for FMD; and reported to the Administrator as an *official vaccinate* for FMD promptly after vaccination by the State or Federal veterinarian supervising the vaccination. Because of our current focus on FMD, the term *official vaccinate* would only include those animals that have been officially vaccinated for FMD. In the future, we may propose to amend the regulations to include animals vaccinated for other diseases.

The term *rare animal* would mean an animal that is extremely uncommon in the United States and that is neither an exotic animal nor a member of an endangered or threatened species.

We would define a *registered animal* as an animal of a particular breed for which individual records of ancestry are maintained, and for which individual registration certificates are issued and recorded by a recognized breed association whose purpose is the improvement of the breed.

The term *seedstock herd or flock* would mean, in the case of cattle and sheep, a herd or flock in which, during the previous 5 years, at least 25 percent of the animals born to the herd or flock have, for breeding purposes, been sold to another producer or transferred to a separate herd or flock, or, in the case of swine, a herd in which at least 50 percent of the gilts produced have, for breeding purposes, been sold to another producer or transferred to a separate herd. This definition represents our best estimates based on our observations of the livestock industry. However, we recognize that a seedstock herd or flock is a concept that is evolving as a result of changes in technology and marketing, most notably in the swine industry. We therefore solicit your comments and suggestions on this definition, including alternative approaches for defining this term.

The term *State representative* would refer to an individual employed by a State or a political subdivision to perform the specified functions agreed to by the Department and the State, while *State veterinarian* would refer specifically to a veterinarian employed and authorized by a State or its political subdivision to perform the services required by part 53.

We would also amend definitions that already appear in current § 53.1 for the terms *Animal and Plant Health Inspection Service, disease, exotic Newcastle disease, highly pathogenic avian influenza, materials*, and *Secretary*.

We would make a minor change to the definition of *Animal and Plant Health Inspection Service* so that its recognized abbreviation, ''APHIS,'' would appear as part of the term defined instead of in the text of the definition.

Current § 53.1 defines *disease* as FMD, rinderpest, contagious pleuropneumonia, exotic Newcastle disease, highly pathogenic avian influenza, and infectious salmon anemia, or any other communicable disease that in the opinion of the Secretary constitutes an emergency and threatens the livestock or poultry of the United States. We are proposing to amend the definition of this term to more closely follow the various statutory language for the control and eradication of diseases. We propose to define the term *disease* as any communicable disease of livestock or poultry for which indemnity is not provided elsewhere in 9 CFR chapter I, subchapter B, and contagious or infectious diseases of animals, such as FMD, rinderpest, contagious pleuropneumonia, exotic Newcastle disease, highly pathogenic avian influenza, and infectious salmon anemia, that, in the opinion of the Secretary, constitute an emergency or an extraordinary emergency and threaten the livestock or poultry of the United States. The revised definition would also clarify that diseases covered under part 53 would not include those diseases covered by indemnification regulations elsewhere in 9 CFR chapter I, subchapter B, such as tuberculosis, brucellosis, pseudorabies, and scrapie.

We would make a minor technical correction to the definition of *exotic Newcastle disease* as it currently appears in § 53.1 by not capitalizing the word ''disease.''

We are also proposing to make a technical correction, for purposes of clarification, to the definition of *highly pathogenic avian influenza*. We would add the words ''in the test described in paragraph (1) of this definition'' to immediately follow the words ''one to five chickens'' in the third paragraph of the definition.

The regulations currently define the term *materials* to include parts of barns or other structures, straw, hay, and other feed for animals, farm products or equipment, clothing, and articles stored in or adjacent to barns or other structures. The existing definition focuses primarily on articles or objects associated with farms. However, it is possible that locations other than farms, such as slaughtering facilities and other livestock concentration points, could be contaminated by or exposed to a disease agent. Therefore, we would broaden the definition of materials to also include ''any other article.'' We would change ''farm products'' to ''agricultural products or byproducts'' in order to include those products that may be produced somewhere other than on a farm. We would add references to ''bedding'' and ''conveyances.'' We would also remove the words ''parts of'' that precede the words ''barns or other structures'' to make the provision easier to understand without changing its substantive meaning. Based on these proposed changes, we would define the term *materials* as barns or other structures; straw, hay, and other feed and bedding for animals; agricultural products and byproducts; conveyances; equipment; clothing; and any other article.

The term *Secretary* is defined in current § 53.1 as the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has been or may be delegated to act in the Secretary's stead. We would simplify this term to mean the Secretary of Agriculture of the United States or any officer or employee of the Department authorized to act for the Secretary.

We are also proposing to remove from current § 53.1 the definitions of *APHIS employee,* inspector in charge, *mortgage*, and *pet bird*. As discussed previously, we are proposing to use *APHIS representative* in place of *APHIS employee* and *inspector in charge* throughout the regulations, and, therefore, no longer require definitions of these terms. We do not believe a definition of *mortgage* is necessary because our use of the term in the regulations is in keeping with the dictionary meaning. The term *pet bird* is no longer used in the regulations.

*Disease Control and Eradication, Payments Authorized, Determination of Disease*

Current § 53.2 provides that the Administrator is authorized to agree to cooperate with a State in the control and eradication of those diseases covered by the regulations. Current § 53.2 further provides that, upon agreement with the State, the Administrator is authorized to pay 50 percent of the expenses of the purchase, destruction, and disposition of animals and materials required to be destroyed because of being contaminated by or exposed to such disease, except that for infectious salmon anemia the Administrator is authorized to pay 60 percent of those costs, and for exotic Newcastle disease or highly pathogenic avian influenza, the Administrator is authorized to pay up to 100 percent of those costs. Current § 53.2 also states that, if animals are exposed to such disease prior to or during interstate movement and are not eligible to receive indemnity from any State, the Department may pay up to 100 percent of the costs of the purchase, destruction, and disposition of animals or materials required to be destroyed. Current § 53.2 further provides that any cooperative program for the purchase, destruction, and disposition of birds is limited to those birds that are ''identified in documentation pursuant to Cooperative Agreements'' as constituting a threat to the U.S. poultry industry. In addition, current § 53.2 provides that the Secretary of Agriculture may authorize other arrangements for the payment of expenses covered in this section upon finding that an extraordinary emergency exists.

We are proposing to make a number of changes to current § 53.2. Some of these are minor changes to make the regulations easier to understand. We are also proposing changes to § 53.2 that are more substantive in nature.

We would change the section heading ''Determination of existence of disease; agreements with States'' to ''Disease control and eradication; payments authorized; determination of disease.''

We are proposing this change so that the section heading better reflects the order of topics covered under § 53.2 and its scope of coverage. We would also delete some of the language from current paragraph (a) and reorganize a revised version of the remainder of current § 53.2(a) and (b) into a new paragraph (a).

We would clarify that the Department may cooperate not only with States, but also with political subdivisions of States, farmers' associations and similar organizations, and individuals in the control and eradication of disease. We would refer to these other potential cooperators to be consistent with the statutory language on this subject. In the absence of an extraordinary emergency, we would continue to provide that the Administrator would pay costs covered under § 53.2 upon agreement of the States or others to cooperate in the control and eradication of the disease. We would remove the specific language requiring that such agreement is subject to the State agreeing to enforce quarantine restrictions and directives properly issued in the control and eradication of disease, since there may be a number of activities relating to the control and eradication of disease that States and other cooperators would agree to perform in fulfilling their cooperative obligations. We would add that the payment of costs provided in proposed § 53.2 by the Administrator

would be subject to the availability of funding. Throughout proposed § 53.2, we would also make a stylistic change by substituting the word ''costs'' in place of ''expenses.''

In describing those costs eligible for indemnification under a cooperative program, current § 53.2(b) refers to ''the expenses of purchase, destruction and disposition of animals and materials required to be destroyed because of being contaminated by or exposed to such disease.''

We would change this characterization by referring to animals ''affected by disease.'' We would continue to use the term ''contaminated by or exposed to'' when referring to materials. However, we would make a technical change for purposes of clarification by referring to materials as contaminated by or exposed to ''a disease agent.''

The subject of sharing cleaning and disinfection costs is currently covered by § 53.7 of the regulations. We are proposing that this subject be covered in proposed § 53.2 so that § 53.2 would reference all costs for which payments are authorized.

We are proposing that, in the case of a cooperative program for FMD, the Administrator will pay 100 percent of the costs for:

- Purchase, destruction, and disposition of animals affected by FMD, including official vaccinates; and
- Cleaning and disinfection of materials that are contaminated by or exposed to FMD, and the purchase, destruction, and disposition of such materials when the cost of cleaning and disinfection would exceed the value of the materials or cleaning and disinfection would be impracticable.

In the case of costs for cleaning and disinfection of materials because of FMD, we would require that such costs be ''fair and reasonable'' based on the plain meaning of that phrase. As discussed below, these types of costs would be verified based on receipts or other similar documentation submitted by the claimant. The concept of ''fair and reasonable'' would allow for compensation that takes into account that costs incurred for these items or services may vary from region to region.

We are proposing these indemnity changes in the case of FMD to provide the Administrator with sufficient resources and flexibility to effectively control and eradicate any occurrence of FMD in this country. An FMD occurrence in the United States could be devastating, given the Nation's extensive livestock holdings. We believe that effective disease control strategies at the first sign of an FMD occurrence are imperative if losses are to be minimized. Authorizing the Administrator to pay 100 percent of the costs for the purchase, destruction, and disposition of animals affected by FMD, 100 percent of the costs for cleaning and disinfection of materials contaminated by or exposed to FMD, and 100 percent of the costs for the purchase, destruction, and disposition of such materials when the cost of cleaning and disinfection would exceed the value of the materials or cleaning and disinfection would be impracticable, would reassure livestock industries of the Department's full commitment to eradication, thereby helping to bolster the cooperation of affected parties.

We would also expressly provide compensation for official vaccinates destroyed because of FMD. Vaccination of animals for FMD may be part of our cooperative control and eradication strategy should FMD be introduced into the United States. Specifically, susceptible animals at a certain distance from an occurrence may be vaccinated to help prevent the spread of the disease. Subject to certain exceptions that may include exotic or rare animals or endangered or threatened species, as discussed below in our proposed changes to § 53.4, vaccinated animals would be destroyed as part of an FMD eradication program.

Because nonvaccinated animals affected with FMD would be destroyed first, it may be necessary for vaccinated animals to be held on a premises for an indeterminate length of time prior to destruction. During this period, producers would be responsible for the care and feeding of their vaccinated animals. The regulations currently do not provide compensation for care and feeding of animals. However, we are seriously considering whether the regulations should authorize compensation to cover all or part of the costs of care and feeding of official vaccinates awaiting destruction.

Compensating producers for the care and feeding of official vaccinates would help remove any reluctance by producers to have their herds vaccinated as part of a cooperative program to control and eradicate FMD. Without providing such financial assistance, there could be a disincentive on the part of producers to cooperate and participate in the program since the costs of care and feeding would, in effect, offset the producers' compensation for these animals. Should paying for this activity be a responsibility of the producer or of the Federal Government through the payment of compensation? We would like your comments on this subject.

We would consider compensable costs relating to care and feeding to include those operating costs that are fair and reasonable and are directly attributable to maintaining the animals, such as costs for veterinary services and medicines, bedding and litter, fuel and electricity, repairs, allocated hired labor, and feed. Claims for such costs could be based on receipts or other documentation submitted to the Administrator that would verify a claimant's costs for care and feeding of official vaccinates. Certain livestock and feed assistance programs administered by USDA's Farm Services Agency (FSA) provide that compensation for feed may also be calculated based upon rates that are tied to pre-established energy or nutrient maintenance requirements designed to meet the daily maintenance needs of different types and weight classes of livestock.

We solicit your comments that specifically address the appropriateness of, and need for, providing compensation to producers for costs relating to the care and feeding of official vaccinates in the event of FMD. We further invite your comments on the types of costs that should be eligible for compensation, and the most suitable means for determining such costs ( *i.e.,* through receipts or other documentation, pre-established animal energy or nutrient maintenance requirements, or some other means). We also solicit your comments on the amount of expenditures that might be incurred in the care and feeding of official vaccinates over a particular time duration, such as one or two months.

We would also make a technical change to current § 53.2 with regard to cooperative programs for the purchase, destruction, and disposition of birds. We would provide that the birds covered under such a program would be ''determined by the Administrator'' as constituting a threat to the U.S. poultry industry instead of ''identified in documentation pursuant to Cooperative Agreements'' as constituting such a threat.

We are also proposing to remove from current § 53.2 the reference to the Secretary's authority to make other arrangements for the payment of expenses upon finding that an extraordinary emergency exists. The specific reference is not necessary because the proposed indemnity provisions for the destruction of animals and materials would apply both to cooperative compensation programs as well as in the case of an extraordinary emergency. The basis for the payments of compensation for animals or materials destroyed under a cooperative

program or in the case of an extraordinary emergency would be the fair market value. We would clarify in proposed § 53.2(a)(2) that when the Secretary determines that an extraordinary emergency exists, the Administrator would pay, subject to the availability of funding, 100 percent of the costs (i.e., the fair market value) for the purchase, destruction, and disposition of animals and materials. Payment of 100 percent of the costs for animals and materials in the case of an extraordinary emergency would apply to all diseases covered by the regulations. However, any payment by the Administrator could not exceed the difference between the compensation received from a State or other source and the fair market value of the animals or materials.

As discussed previously, current § 53.2(a) and (b), revised as described above, would become new § 53.2(a). We would then add a new paragraph (b) to § 53.2. Proposed § 53.2(b) would provide the basis for determining that animals are affected by disease or that materials are contaminated by or exposed to a disease agent. Under proposed § 53.2(b)(1), the determination that animals are affected by disease would be made by either a Federal veterinarian or a State veterinarian who has completed the APHIS course on foreign animal disease diagnosis. This particular course is currently offered at APHIS' Foreign Animal Disease Diagnostic Laboratory, located at Plum Island, NY.

The determination that animals are affected by disease would be based on factors such as clinical evidence of the disease (signs, necropsy lesions, and history of the occurrence of the disease), diagnostic tests for the disease based on protocols approved by the National Veterinary Services Laboratories, or epidemiological evidence. By epidemiological evidence, we mean evaluation of the clinical evidence and the degree of risk posed by the potential spread of the disease based on the disease's virulence, its known means of transmission, and the particular species involved. A copy of the protocols for diagnostic tests of diseases covered by part 53 would be available by writing Emergency Programs, Veterinary Services, Animal and Plant Health Inspection Service, USDA, 4700 River Road Unit 41, Riverdale, MD 20737–1231.

Under proposed § 53.2(b)(2), the APHIS representative or State representative, with the guidance of a Federal veterinarian or a State veterinarian, would be authorized to determine whether materials are contaminated by or exposed to a disease agent.

*Payments for Animals and Materials, Other Compensation, Request for Review*

Current § 53.3 covers the appraisal of animals or materials eligible for indemnification. Paragraph (a) of current § 53.3 provides that animals affected by or exposed to disease, as well as materials required to be destroyed because of being contaminated by or exposed to disease, shall be appraised jointly by an APHIS employee and a State representative, or, if the State authorities approve, by an APHIS employee alone.

Paragraph (b) of current § 53.3 states that the appraisal of animals shall be based on the animal's fair market value according to its meat, egg production, dairy, or breeding value. Paragraph (b) also provides that animals may be appraised in groups, provided the animals are of the same species and type. Paragraph (b) states that when appraisal is ''by the head,'' each animal in the group will be valued at that same value per head and when appraisal is ''by the pound,'' each animal in the group will be valued at that same per-pound value.

Paragraph (c) of current § 53.3 provides that appraisals of animals shall be reported on forms furnished by APHIS that show the number of animals of each species and the value per head or the weight and value per pound. Paragraph (d) of current § 53.3 provides that appraisals of materials shall be reported on forms furnished by APHIS that show, when practicable, the number, size or quantity, unit price, and total value of each kind of material appraised.

We are proposing to make a number of changes to current § 53.3 both in terms of organization and content. We would change the section heading of current § 53.3 from ''Appraisal of animals or materials'' to ''Payments for animals and materials; other compensation; request for review.'' We would make this change to be consistent with our proposal, as discussed below, of providing means other than appraisal for determining the value of animals and materials in the case of FMD.

Under proposed § 53.3, paragraph (a) would cover the valuation of animals, paragraph (b) would cover the valuation of materials, paragraph (c) would cover other compensation allowed by the regulations (i.e., costs for cleaning and disinfection), and paragraph (d) would cover the process for a claimant to request a review of the valuation of animals or materials, or the amount of payment relating to costs of cleaning and disinfection.

Proposed § 53.3(a) would include much of the information that already appears in the regulations for the valuation of animals, but with certain important changes. Instead of referring to animals ''affected by or exposed to disease,'' we would refer to animals ''affected by disease'' for the reasons discussed previously. Proposed § 53.3(a) would now also apply to the valuation of official vaccinates in the case of FMD. Proposed § 53.3(a) would provide that the value of animals affected by disease and subject to destruction would be the fair market value based on appraisal of the animals, subject to an exception related to FMD as explained below. We would remove the reference that the fair market value be based on the ''meat, egg production, dairy or breeding value of such animals'' since fair market value may also reflect other factors as well.

We are proposing that, in the case of FMD, if the Administrator determines that appraisal is impracticable or would otherwise compromise efforts to effectively control and eradicate the disease, the Administrator may determine the fair market value of animals by a fixed-rate method in lieu of appraisal. We would make this change because the virulence and potential magnitude of FMD may make appraisal impracticable, and actually compromise our ability to control and eradicate the disease due to the time, personnel, and other resources that would be required to conduct appraisals. In addition, the weighing of animals subject to destruction would not likely be an option in the case of FMD because of time limitations and movement restrictions. The use of a fixed-rate method instead of appraisal would entail less contact with affected animals and fewer visits to affected premises by APHIS representatives and State representatives, thereby lowering the risk in the transmission of FMD. Having in place a mechanism for establishing fixed rates without the need for additional rulemaking at the time of an FMD occurrence would also facilitate quicker compensation to affected claimants, thus bolstering the cooperation of affected parties and contributing to the overall effectiveness of the eradication program.

Proposed § 53.3(a)(1) would contain the requirements for determining the fair market value of animals based on the appraisal method. We would continue to require that the appraisal be conducted jointly by an APHIS representative and a State representative, or, if the State authorities approve, by an APHIS

representative alone. We would also continue to provide that animals may be appraised in groups, provided that they are of the same species and type and provided that, where appraisal is by the head, each animal in the group would be the same value per head, or where appraisal is by the pound, each animal in the group would be the same value per pound.

Proposed § 53.3(a)(2) would set forth the basic criteria for determining the fair market value of animals under a fixed-rate method, if authorized by the Administrator in the case of FMD. Rates would be established on a per-head basis for beef and dairy cattle, swine, and sheep. This group of animals would likely represent the vast majority of animals that would be affected by FMD and subject to depopulation. Rates may be established for other animals for which the Administrator finds sufficient information publicly available to make a calculation of the animal's fair market value in accordance with the procedures provided in proposed § 53.3(a)(2). Otherwise, the value of other animals affected by disease would be determined by appraisal as provided in proposed § 53.3(a)(1). We invite your comments and suggestions on the fixed-rate method, including your comments and suggestions for setting fixed rates for animals susceptible to FMD other than beef and dairy cattle, swine, and sheep. We have not proposed fixed rates for goats at this time because we have not developed rate criteria that we believe suitably encompasses the different market and breeding classifications for goats. Similarly, we have not included the means for establishing fixed rates for nontraditional animals susceptible to FMD such as llamas, farmed cervids (deer and elk), and buffalo. We invite your comments and suggestions for establishing fixed rates for these animals.

In establishing fixed rates, we would set a uniform rate for each of the proposed animal classifications. We would do this, in part, because we would use price data that generally reflect national rather than regional conditions. We are also proposing a system of national uniform rates to facilitate implementation of an FMD eradication program. In proposing a system of national uniform rates, we realize there is a potential of overlooking regional market disparities. We invite your comments on the use of a national uniform fixed rate for each of the animal classifications, as well as your suggestions on alternative approaches to using national uniform fixed rates.

Proposed § 53.3(a)(2)(i) sets forth how we would classify animals for purposes of setting rates. Animals would first be classified as either market animals or breeding animals. Market animals would include those animals raised for the primary purpose of slaughter for meat or, in the case of dairy animals, the production of milk, or, in the case of certain sheep, the production of wool. Breeding animals would include those animals that are raised for the primary purpose of producing market animals or other breeding animals and that, in the case of females, have donated embryos or been bred, and in the case of males, are sexually intact and have reached the age of sexual maturity. For example, a registered dairy bull that is sexually immature would not be considered a breeding animal for purposes of compensation.

We would establish additional classifications for both market animals and breeding animals. For each classification, we would establish a single per-head rate to be paid to all animals within that classification. Market animals would be further classified according to their production phase, including whether or not the animals are weaned and whether or not the animals are on finishing rations ( *i.e.,* at a feedlot or finishing barn). We are proposing to establish rates for market animals for each of the following classifications:

• *Cattle.*

Beef cattle: Preweaned calves; non-feedlot, but weaned (stocker) animals; and feedlot animals.

Dairy cattle: Commercial dairy cows (female dairy cows that are or have been in milk), non-bred heifer replacements and sexually immature bulls, and bred heifer replacements.

• *Swine:* Grower-finisher pigs, nursery pigs, and preweaned piglets.

• *Sheep:* Preweaned lambs, weaned feeder lambs, slaughter lambs, and wethers raised for wool production.

Breeding animals would be further classified, based on whether they are commercial breeding animals, or are registered animals, part of a seedstock herd or flock, or donor animals. We would set up these classifications to recognize the generally higher value of registered or seedstock animals, as well as animals that have donated embryos or semen, in comparison to commercial breeding animals. We are proposing to establish rates for breeding animals for each of the following classifications:

• *Cattle.*

Beef cattle: Beef cows (commercial herds); bred replacement heifers (commercial herds); beef bulls (commercial herds); and registered animals, animals in a seedstock herd, and donor animals.

Dairy cattle: Dairy bulls; and registered animals, animals in a seedstock herd, and donor animals.

• *Swine:* Sows and boars (commercial herds) and registered animals, animals in a seedstock herd, and donor animals.

• *Sheep:* Ewes and rams (commercial flocks) and registered animals, animals in a seedstock flock, and donor animals.

We have attempted to select commonly-used animal classifications with logical breakpoints that would be easily understandable to the livestock industry as well as to APHIS and State representatives. We are restricted in providing more extensive classifications based on an animal's weight since it is unlikely that we would be able to individually weigh animals in the event of an FMD occurrence. We believe, however, that use of these proposed classifications will allow claimants to receive fair market value for animals destroyed. We invite your comments regarding the above classifications for setting fixed rates, including your suggestions for alternative approaches to classifying animals for purposes of establishing rates.

Proposed § 53.3(a)(2)(ii) would provide the procedures for establishing fixed rates for different classifications of market animals. As discussed previously, we are proposing to define a market animal as any animal being raised for the primary purpose of slaughter for meat, or, in the case of dairy animals, the production of milk, or, in the case of certain sheep, the production of wool.

In proposed § 53.3(a)(2)(ii)(A), we provide that the rates for different classifications of beef cattle (preweaned calves; non-feedlot, but weaned (stocker) animals; and feedlot animals) would be based on prices from applicable futures contracts traded on the Chicago Mercantile Exchange. The rates for preweaned calves and stocker animals would be based on the feeder cattle futures contract, while the rate for feedlot animals would be based on the live cattle futures contract. The rates for each of these market animal classifications would be calculated by multiplying the applicable futures price by the estimated weight set by APHIS. It is necessary to multiply the futures price by an assigned compensation weight because futures prices are reported as a price per hundredweight (cwt) instead of a price per head. A hundredweight is a unit of weight equal to 100 pounds. We would use an estimated weight for each animal classification instead of the animal's actual weight since we do not expect it

to be practicable to individually weigh animals in the event of an FMD occurrence.

The advantage of basing rates on futures contract prices, when available, is that traditional livestock pricing is disappearing. Most buyers and sellers now participate in the futures markets. Therefore, futures prices would best represent national market conditions, as well as provide the most current price information. Further, there is a greater lag factor in obtaining similar price data from other publicly-available sources. When using futures contracts, we would select contracts that most closely parallel the production phase of the animal classification for which we are establishing rates. We invite your comments as to the appropriateness of using futures prices for determining fixed rates, and specifically futures contracts traded on the Chicago Mercantile Exchange.

Proposed § 53.3(a)(2)(ii)(A)( *1*) provides that, in using futures prices as a basis for establishing rates for beef cattle, we would take the simple average of the most recently available daily futures prices over a 3-month period immediately prior to the date of the disease outbreak using the futures contract month that corresponds to the month of the disease outbreak, or the next succeeding contract month if there is not an applicable futures contract for the month that corresponds to the month of the disease outbreak. In taking futures prices over a 3-month period, we would go back from the time of the disease outbreak. So if an outbreak was reported by USDA on August 15, we would go back 3-months in time from that date. In the case of preweaned calves, however, the applicable futures price would be the simple average of the most recently available daily future prices for that animal over a 3-month period using the futures contract month that corresponds to the month the claimant has historically weaned their calves, or the next succeeding contract month if there is not an applicable futures contract for the month that corresponds to the month of planned weaning. We would make this one exception in the case of preweaned calves since the estimated weight would be based on the average weaning weight for these animals.

Because markets and pricing mechanisms could be seriously disrupted as a result of FMD, establishing fixed rates based on market activity prior to the disease outbreak would likely be most appropriate. In our proposed standards for setting rates, we generally establish compensation rates based on price averages over a 3-month time period going back from the time of the disease outbreak. By using a 3-month time period, we could take into account any possible anomalies, distortions, or other unique events that may have occurred in the marketplace in the weeks prior to the outbreak of FMD. We invite your comments on establishing rates based on a 3-month average of prices.

Under proposed § 53.3(a)(2)(ii)(A)(*2*), the estimated weight set for different classifications of beef cattle would be the average weight of animals in that production phase based on the most recently available information from USDA's National Agricultural Statistics Service (NASS) and National Animal Health Monitoring System (NAHMS). We would also use NASS and NAHMS information in determining the estimated weights for other animal classifications, as discussed below. Publicly-available data compiled by NASS and NAHMS on a national basis would provide a sufficient basis for determining representative estimated weights for different animal classifications. We invite your comments on using NASS and NAHMS data for this purpose, as well as your suggestions on the use of other information sources in establishing the estimated weights for different animal classifications.

Proposed § 53.3(a)(2)(ii)(A)(*3*) provides that, if the estimated weight for a particular classification of animal is outside the specified weight range of the animals covered by the selected futures contract, then an upward or downward adjustment in the average futures price would be made to reflect this weight difference and to account for the fact that the price per cwt varies with the total weight of the animal. The adjustment would be calculated by multiplying the price-weight adjustment factor, as determined by the Livestock Marketing Information Center, by the difference between the average weight of the animal covered by the futures contract and the estimated weight set by APHIS.

The formula for calculating the price-weight adjustment, sometimes referred to as a slide adjustment, is a common industry practice. Price-weight adjustment factors or ''slide factors'' are not published, but can be readily determined from a variety of livestock industry sources. We are proposing to use price-weight adjustment factors determined by the Livestock Marketing Information Center. The Livestock Marketing Information Center (LMIC) develops and produces materials for the livestock industry, including electronic market updates, newsletters, and other economic information. The LMIC also maintains a comprehensive database on price, production, consumption, trade, and other livestock industry data. The LMIC is funded by State land grant universities, USDA, and livestock industry associations whose missions include supporting and conducting education and research. We invite your comments on the appropriateness of using price-weight adjustment factors, as well as using the LMIC as our source for obtaining this information. The application of price-weight adjustments in connection with the establishment of fixed rates is illustrated further in the example provided under the heading ''Appendix—Establishing Fixed Rates.''

Proposed § 53.3(a)(2)(ii)(B) would set forth the criteria for establishing rates for dairy cattle under the market animal classification. This would include commercial dairy cows, non-bred heifer replacements and sexually immature bulls, and bred heifer replacements. Bred heifer replacements would be classified as market animals on the assumption that they will become milk cows. However, if the bred heifer replacements are registered animals, or are part of a seedstock herd, or have donated at least two embryos that have been sold to another producer or transferred to a separate herd, their rate will be determined based on their classification as breeding animals.

There are no suitable futures contract prices for valuing dairy cattle. Therefore, we would look to other sources for price information. NASS reports quarterly prices received by producers for cows sold for milking purposes. We are proposing to use this price series as the basis for determining the value of dairy cattle. Rates for commercial dairy cows would be based on the most recent quarterly price per head reported by NASS. The rate for non-bred heifer replacements and sexually immature bulls would be 70 percent of the rate determined for commercial dairy cows. The lower rate for non-bred heifer replacements and sexually immature bulls would reflect the fact that these are younger animals with lower paid-in costs. The rate for bred heifer replacements would be 120 percent of the rate determined for commercial dairy cows. The higher rate for bred heifer replacements would reflect the value of their milk and breeding potential. We invite your comments for establishing rates for dairy cattle, including the proposed percentages that would be used in determining the rates for non-bred heifer replacements and sexually immature bulls, as well as for bred heifer replacements.

Proposed § 53.3(a)(2)(ii)(C) would set forth the standards for establishing rates for the different market animal classifications covering swine. These would include grower-finisher pigs, nursery pigs, and preweaned piglets. Proposed § 53.3(a)(2)(ii)(C)(*1*) would base the rate for grower-finisher pigs on the lean hogs futures contract that is traded on the Chicago Mercantile Exchange. The rate would be calculated by multiplying the applicable futures price by the estimated weight set by APHIS for grower-finisher pigs. The applicable futures price for grower-finisher pigs would be the simple average of the most recently available daily futures prices over a 3-month period immediately prior to the date of the disease outbreak using the futures contract month that corresponds to the month of the disease outbreak, or the next succeeding contract month if there is not an applicable futures contract for the month that corresponds to the month of the disease outbreak, and multiplying that simple average by 74 percent. We would multiply the average futures price by 74 percent because the lean hogs futures contract price is based on the slaughter (carcass) price and not on live animals. A hog carcass weighs approximately 74 percent of a live hog. The weight difference is due to dressing. The estimated weight set by APHIS would be the average weight of grower-finisher pigs based on the most recently available information from NASS and NAHMS.

In the case of nursery pigs, we do not believe that existing futures contract prices for hogs would provide a suitable means for valuing pigs in this early phase of production. Under proposed § 53.3(a)(2)(ii)(C)(*2*), we would instead use the national feeder pig (40 lb) price that is reported weekly by USDA's Agricultural Marketing Service (AMS). We believe that this AMS price series would provide a better measure of the fair market value for young pigs in this particular production phase. In establishing the rate for nursery pigs, we would take the simple average of the most recently available national feeder pig prices reported by AMS over a 3-month period immediately prior to the date of the disease outbreak. The AMS price is reported on a per-head basis, so it would not be necessary to estimate the weight for this classification of swine.

Similar to nursery pigs, we do not believe that the existing futures contracts would be a good means of a fair market value rate for preweaned piglets. Under proposed § 53.3(a)(2)(ii)(C)(*3*), we would use the national early weaned pig (10 lb) price reported by AMS on a weekly basis. In establishing the rate for preweaned piglets, we would take the simple average of the most recently available prices reported by AMS over a 3-month period immediately prior to the date of the disease outbreak.

Proposed § 53.3(a)(2)(ii)(D) would set forth the standards for setting rates for the different market animal classifications for sheep. These would include preweaned lambs, weaned feeder lambs, slaughter lambs, and wethers raised for wool production. There are no suitable futures contracts to use to set rates for these different classifications of sheep. So we would instead use the national lamb carcass price that is reported by AMS on a weekly basis to establish them. Rates would be determined by multiplying the average AMS price by the estimated weight set by APHIS for that classification of animal. The average AMS price would be the simple average of the most recently available national lamb carcass prices reported by AMS over a 3-month period immediately prior to the date of the disease outbreak, multiplied by the AMS reported dressing percentage. We would multiply the average AMS price by the dressing percentage because this particular AMS price is a carcass price and not based on the live animal. If AMS does not report a dressing percentage, then 49.5 percent would be used. The dressing percentage, when reported, typically averages between 49 and 50 percent.

The estimated weight set by APHIS for preweaned lambs, weaned feeder lambs, and slaughter lambs would be the average weight of animals in that production phase based on the most recently available information from NASS and NAHMS. The estimated weight set by APHIS for wethers raised for wool production would be the same as that set by APHIS for slaughter lambs. In addition, for preweaned lambs and weaned feeder lambs, an upward or downward percentage adjustment in the average AMS price would be made to reflect the difference in weight between preweaned lambs or weaned feeder lambs and slaughter lambs. The price-weight adjustment would be supplied by LMIC. This price-weight adjustment will generally be positive, except during periods of high feed costs.

We invite your comments on our proposed standards for the establishment of rates for market animals, as just discussed, including your suggestions for alternative approaches for the valuation of market animals. The process for establishing rates for different classifications of market animals is also illustrated in the example provided under the heading ''Appendix—Establishing Fixed Rates.''

Proposed § 53.3(a)(2)(iii) would contain the standards for establishing fixed rates for different classifications of breeding animals. As discussed previously, we are proposing to define a breeding animal as any animal that is raised for the purpose of producing market animals or other breeding animals and that, in the case of a female, has donated embryos or been bred, and in the case of a male, is sexually intact and has reached the age of sexual maturity.

Proposed § 53.3(a)(2)(iii)(A) would provide that the rates for breeding animals would be determined based on the rates of other market or breeding animals, and then adjusted to include any premium that reflects the animals' breeding value. For example, the rate for commercial sows or boars would be determined by taking the rate for a grower-finisher pig and then adding a percentage premium to reflect its breeding value. To mirror their higher value in the marketplace, breeding animals that are registered animals, are part of a seedstock herd, or have donated germ plasm that has been sold to another producer or transferred to a separate herd or flock, would receive a higher premium than commercial breeding animals. Proposed paragraphs (a)(2)(iii)(B) through (E) of § 53.3 would provide further information on establishing breeding animal rates for different classifications of beef and dairy cattle, swine, and sheep. The process for establishing rates for different classifications of breeding animals is also illustrated in the example provided under the heading ''Appendix—Establishing Fixed Rates.''

The valuation of breeding animals, including the assignment of certain premiums, is based on our best estimates from available data and our observations of the livestock marketplace. In establishing rates for breeding animals, we looked at price information from auction markets, breed associations, and similar sources, when available. We also conferred with agricultural economists and other livestock specialists within USDA. However, we recognize that publicly-available price information on breeding animals is not as extensive as that on market animals. We, therefore, solicit your comments and suggestions on this issue, including alternative approaches for the valuation of breeding animals.

We also realize that, particularly in the case of breeding animals, there is a greater potential for variations in value within the same category or classification of animals in comparison

to market animals. As discussed below under proposed § 53.3(d), claimants who disagree with the valuation of their animals would have the opportunity to submit a written request for review to the Administrator, explaining why the valuation of their animals should be different than the value determined under the fixed-rate method. The claimant would have the opportunity to submit any documentation on the animals' breeding value that would support a valuation different from the one determined through application of the fixed-rate method.

Proposed § 53.3(a)(2)(iii)(B) would contain the standards for setting rates for beef cattle that qualify as breeding animals. This includes beef cows (commercial herds); bred replacement heifers (commercial herds); beef bulls (commercial herds); and registered animals, animals in a seedstock herd, and donor animals.

The rate established for beef cows would be based on the same formula used to calculate the rate for beef cattle that are feedlot animals. A comparison of fed beef cattle prices and prices for bred young females and middle age cows (*Drovers' Journal*) found that bred cow prices were 83 percent of fed beef cattle prices. Though the premium for breeding purposes is not readily known, we note that by providing the same compensation rate ($/cwt) for commercial breeding beef cows as is used for feedlot beef cattle would provide some measure of the value given for breeding purposes. In calculating the rate for beef cows, we would use the same average futures price ($/cwt) as used for feedlot animals, and multiply the applicable futures price ($/cwt) by the estimated weight set by APHIS for beef cows. The estimated weight set by APHIS would be the average weight of beef cows based on the most recently available information from NASS and NAHMS.

For bred replacement heifers within the beef cattle category, we propose establishing a rate that would be 120 percent of the rate established for beef cows. The higher rate for bred heifers in comparison to beef cows would reflect the value of their breeding potential. We are also proposing that the rate for beef bulls would be 250 percent of the rate established for beef cows. We invite your comments on the proposed percentage premiums for these animals.

Beef cows or bred replacement heifers that are breeding animals and are registered animals, part of a seedstock herd, or donor animals, would receive a rate equal to 250 percent of the rate established for commercial beef cows. Beef bulls that qualify as breeding animals and are registered animals, part of a seedstock herd, or donor animals would receive a rate equal to 300 percent of the rate established for commercial beef cows. We invite your comments on the proposed percentage premiums for these animals. We are proposing higher rates for registered animals, animals that are part of a seedstock herd, and donor animals to reflect their higher value in the marketplace in comparison to commercial breeding animals. Our proposed procedures for establishing rates for other breeding animals would also follow this same policy.

Proposed § 53.3(a)(2)(iii)(C) would contain the standards for setting rates for dairy cattle that are breeding animals. We would have a rate classification for dairy breeding bulls. We are proposing that the rate for dairy bulls would be 250 percent of the rate established for commercial dairy cows. We would also have a separate rate classification for dairy cows and bred replacement heifers that are registered animals, part of a seedstock herd, or donor animals. The rate for these particular animals would be 250 percent of the rate established for commercial dairy cows. In the case of dairy breeding bulls that are also registered animals, part of a seedstock herd, or donor animals, we would set a rate that is 300 percent of the rate established for commercial dairy cows. We invite your comments on the proposed percentage premiums for these animals.

Proposed § 53.3(a)(2)(iii)(D) would contain the standards for establishing rates for swine that are considered breeding animals. We would have a rate classification for commercial sows and boars. We are proposing that the rate for commercial sows and boars would be 200 percent of the rate established for grower-finisher pigs. We would also have a second rate classification for breeding swine that are registered animals, part of a seedstock herd, or donor animals. Sows and boars in this second rate classification would receive a rate that would be 300 percent of the rate established for grower-finisher pigs. We invite your comments on the proposed percentage premiums for these animals.

We considered whether a separate rate classification should be established for swine breeding animals that are considered foundation stock or part of a grandparent or great-grandparent herd. While the number of animals that would qualify for this classification would be relatively small, such animals could merit a higher valuation in comparison to other seedstock animals. However, we could not determine a general rate criteria to cover this situation. So owners that believe their swine breeding animals merit a higher valuation under these circumstance could submit a written request for review to the Administrator, as discussed in proposed § 53.3(d). We invite your comments on this issue, including your suggestions for alternative approaches for the valuation of swine breeding animals.

Proposed § 53.3(a)(2)(iii)(E) would provide the standards for establishing rates for sheep that qualify as breeding animals. This would include ewes and rams (commercial flocks), as well as registered animals, animals in a seedstock flock, and donor animals.

We are proposing that rates for commercial ewes and rams would be based on the same formula used to calculate the rate for slaughter lambs. The slaughter lamb price is greater than the cull ewe slaughter price or the cull ram slaughter price. By providing the higher lamb slaughter price for breeding ewes and rams and applying the breeding animal weight, we recognize a premium that these breeding animals might receive. We would take the average AMS price ($/cwt) determined for slaughter lambs, as discussed previously in proposed § 53.3(a)(2)(ii)(D), and multiply that average price by the estimated weight set by APHIS for commercial ewes and rams. The estimated weight set by APHIS for commercial breeding ewes and rams would be the average weight of those animals based on the most recently available information from NASS and NAHMS.

Breeding ewes that are also registered animals, part of a seedstock flock, or donor animals, would receive a rate equal to 200 percent of the rate established for commercial breeding ewes. Similarly, breeding rams that are also registered animals, part of a seedstock flock, or donor animals, would receive a rate equal to 200 percent of the rate set for commercial breeding rams. We invite your comments on the proposed percentage premiums for these animals.

We realize that there may be unique situations where the valuation of animals by the fixed-rate method would be unsuitable. As provided in proposed § 53.3(a)(2)(iv), an owner of animals subject to valuation by the fixed-rate method may submit a written request to the Administrator asking that the animals affected by disease and subject to destruction be valued by appraisal instead of by fixed-rate method. The owner would have to include in the request the reasons why valuation by the fixed-rate method would be unsuitable. In determining whether to

grant the request, the Administrator would take into account whether providing the time and personnel to conduct an appraisal would compromise efforts to effectively control and eradicate the disease. The decision by the Administrator regarding the owner's request for appraisal would be final. A denial of a request for an appraisal under proposed § 53.3(a)(2)(iv) would not affect the owner's right to request a review of the actual valuation made, as discussed below under proposed § 53.3(d).

We invite your comments on our proposed standards for the establishment of rates for breeding animals, as just discussed. We also welcome your suggestions for alternative approaches for the valuation of breeding animals.

Proposed § 53.3(b) covers the requirements for the valuation of materials to be destroyed because of being contaminated by or exposed to a disease agent. The regulations currently do not address the valuation of materials except to require that the materials be appraised by an APHIS employee and a State representative, or, alternatively, by an APHIS employee alone, and that the information on the appraised value must be reported on forms furnished by APHIS showing, when practicable, the number, size, or quantity, unit price, and total value of each kind of material appraised.

In proposed § 53.3(b), we would clarify that the value of materials destroyed because of contamination by or exposure to a disease agent would be the material's fair market value based on an appraisal. The appraisal of materials would be conducted jointly by an APHIS representative and a State representative, or, if the State authorities approve, by an APHIS representative alone. However, in the case of FMD only, we are proposing that if the Administrator determines that appraisal would be impracticable, or would otherwise compromise efforts to effectively control and eradicate the disease, the Administrator may authorize the value of materials to be determined by other means, such as through records or other documentation maintained by the claimant indicating the value of the materials destroyed.

As in the case of animals, requiring the appraisal of contaminated materials prior to their destruction could prove to be impracticable, and actually compromise our ability to control and eradicate the occurrence of FMD. Contaminated materials subject to destruction would have to be disposed of promptly. Depending on the number of sites that would have to be visited by appraisers, there may not be a sufficient number of trained personnel in the area to carry out these activities in a timely manner. In such cases, the Administrator would have to determine whether requiring appraisal would undermine efforts to control and eradicate the disease.

We would add a new paragraph, to appear at § 53.3(c), that would cover other compensation allowed by the regulations (i.e., costs for cleaning and disinfection). In proposed § 53.3(c)(1), we would provide that compensation for cleaning and disinfection costs would be based on receipts or other documentation maintained by the claimant that verify the expenditures made for cleaning and disinfection activities authorized under part 53. We are proposing that compensation be based on proof of expenditures. We realize, however, that there would be cases where claimants would wish to carry out any cleaning and disinfection activities on their own without hiring others to do the work. Our proposal does not currently provide a means for compensating such ''sweat equity,'' but we invite your comments and suggestions that would address compensating cleaning and disinfection work performed directly by the claimant.

We are also proposing to add a new paragraph, to appear at § 53.3(d), that would cover a claimant's right to request a review. A claimant who disagrees with the valuation in total of all animals or all materials or the amount of other compensation determined under § 53.3 may submit a written request for review to the Administrator. We are proposing that the request for review take into account all animals or materials covered under the valuation since we want to consider the totality of circumstances. Particularly in the case of animals, the valuation may be based on the entire herd of a particular class of animals. For example, in applying a fixed rate to a herd of animals, some individual animals in the herd may be worth more than the average price paid per animal, others may be worth less. If a producer could challenge the per animal payment of only selected animals, the compensation claim could be more than the total value of the herd. Our goal is to make the producer whole, but not to exceed that. Thus, the claimant would have to include in the request the reasons, including any supporting documentation, that the total valuation of all animals or all materials or the amount of other compensation should be different from the valuation or amount determined by appraisal, fixed-rate method, or other means provided for in proposed § 53.3. The decision by the Administrator regarding the valuation of animals or materials or the amount of other compensation would be final.

We would remove without replacement the information that appears in paragraphs (c) and (d) of current § 53.3 on the submission of claim forms seeking compensation for animals or materials destroyed. This subject would be covered under the section on presentation of claims, to appear at proposed § 53.7.

*Destruction of Animals*

Current § 53.4 covers the destruction of animals affected by or exposed to disease, as well as the manner of their disposition. Paragraph (a) of current § 53.4 provides that animals affected by or exposed to disease shall be killed promptly after appraisal and disposed of by burial or burning, unless otherwise specifically provided by the Administrator, at his or her discretion. Section 53.4, paragraph (a), also provides that in the case of animals depopulated due to infectious salmon anemia, salvageable fish may be sold for rendering, processing, or any other purpose approved by the Administrator. If fish retain salvage value, the proceeds gained from the sale of the fish will be subtracted from any indemnity payment from APHIS for which the producer is eligible under § 53.2(b).

We are proposing to make several changes to current § 53.4(a). First, we would amend the term ''animals affected by or exposed to disease'' to read ''animals affected by disease'' for purposes of consistency, as discussed previously. We would use the word ''valuation'' in place of ''appraisal'' since the valuation of animals in the case of FMD may not always be based on appraisal. The word ''destroyed'' would be used in place of ''killed'' to be consistent with similar references in other sections of the regulations. We would also clarify that the requirement that animals affected by disease be destroyed promptly following valuation would not apply to official vaccinates. We would also strike the language that provides for the disposition of animals by means other than burial or burning if ''specifically provided by the Administrator, at his or her discretion.'' We would instead provide that the animals would be ''disposed of by burial, burning, or other manner approved by the Administrator as not contributing to the spread of the disease.''

Paragraph (b) of current § 53.4 provides that the killing of animals and

the burial, burning, or other disposition of carcasses shall be supervised by an APHIS employee who shall prepare and transmit to the Administrator a report identifying the animals and showing their disposition. We would substitute ''APHIS representative'' for ''APHIS employee'' based on our previously-discussed proposal of using the term ''APHIS representative'' in place of ''APHIS employee'' throughout the regulations. Similarly, we would substitute the word ''destroyed'' for ''killed'' for purposes of consistency, as discussed above. We would also amend current § 53.4(b) to provide that the destruction and disposition of animals could also take place under the supervision of a State representative. This change would allow us greater flexibility in deploying personnel without compromising our ability to ensure that animal depopulation is carried out under qualified supervision. We would substitute the word ''must'' in place of ''shall'' in the phrase ''shall be supervised'' for stylistic reasons. Finally, we would make a minor change in sentence construction by amending the statement ''who shall prepare and transmit to the Administrator a report identifying the animals and showing the disposition thereof'' to instead state ''who will prepare and transmit to the Administrator a report identifying the animals destroyed and the manner of their disposition.''

Subject to certain exceptions that may include exotic or rare animals or endangered or threatened species, as discussed below, vaccinated animals would be destroyed as part of an FMD eradication program. However, nonvaccinated animals affected with FMD would be destroyed first. Thus, it may be necessary for vaccinated animals to be held on a premises for an indeterminate length of time prior to destruction. To clarify the different treatment that may be afforded official vaccinates compared to other animals affected by disease, we would provide in proposed § 53.4(c) that official vaccinates would be destroyed or otherwise handled in a manner as directed by the Administrator to prevent the dissemination of the disease. We would further add that official vaccinates not subject to destruction may include, at the discretion of the Administrator, exotic animals, rare animals, or animals belonging to an endangered or threatened species. This policy of protecting from destruction certain exotic or rare animals, or animals belonging to an endangered or threatened species might arise, for example, in the case of official vaccinates housed in a zoo.

We would also provide in proposed § 53.4(c) that if official vaccinates are allowed to move to a slaughtering or rendering facility in lieu of destruction or disposition by other means, then any proceeds gained from the sale of the animals to the slaughtering or rendering facility will be subtracted from any indemnity payment from APHIS for which the producer is eligible under proposed § 53.2(a)(2). Allowing animals to move to a slaughtering or rendering facility in lieu of destruction and disposition by other means would apply only to those animals officially vaccinated for FMD. Our policy for the control and eradication of disease calls for all other animals affected by disease to be destroyed and disposed of by burial, burning, other manner approved by the Administrator.

The information regarding salvageable fish being sold for rendering, processing, or other purpose, which now appears in § 53.4(a), would be moved without change to proposed § 53.4(d).

*Disinfection and Destruction of Materials*

Current § 53.5 provides for the disinfection or destruction of materials contaminated by or exposed to disease. Paragraph (a) of current § 53.5 states that such materials shall be disinfected and, if the cost of disinfection exceeds the value of the materials or disinfection would be impracticable, the materials shall be destroyed after appraisal as provided in § 53.3. Paragraph (b) of current § 53.5 provides that the disinfection or destruction of materials under § 53.5 shall take place under the supervision of an APHIS employee who shall prepare and transmit to the Administrator a certificate identifying all materials that are destroyed, showing the disposition thereof.

Current § 53.7 covers the disinfection of premises, conveyances, and materials, providing that all premises, including barns, corrals, stockyards and pens, and all cars, vessels, aircraft, and other conveyances, and the materials thereon, shall be cleaned and disinfected under the supervision of an APHIS employee whenever necessary for the control and eradication of disease. Expenses incurred in connection with such cleaning and disinfection shall be shared according to the agreement reached with the State.

The information contained in current §§ 53.5 and 53.7 overlap in certain respects. To eliminate this redundancy, we are proposing to include the information that appears in both these sections under § 53.5 alone. In making these changes, we would refer to materials that have been ''contaminated by or exposed to a disease agent'' instead of materials that have been contaminated by or exposed to disease for purposes of consistency with similar proposed references elsewhere in part 53. We would substitute the term ''value'' for ''appraisal'' since the valuation of materials may not always be based on appraisal, as discussed previously in our proposed changes to § 53.3. We would also use ''APHIS representative'' in place of ''APHIS employee'' for the reasons discussed previously. We would also provide that the disinfection or destruction of materials could also take place under the supervision of a ''State representative'' to allow us greater flexibility in deploying personnel without compromising our ability to ensure that the disinfection or destruction of materials is carried out under qualified supervision. We would substitute the word ''must'' in place of ''shall'' in the phrase ''shall be supervised'' for stylistic reasons. We would use the word ''report'' in place of ''certificate'' in describing the document that the APHIS representative or State representative would submit to the Administrator listing all materials destroyed. We would also strike out the last sentence in current § 53.7 that provides that cleaning and disinfection expenses shall be shared according to the agreement reached under § 53.2. As explained earlier, this topic would be covered in proposed § 53.2.

As revised, proposed § 53.5 would provide that all materials that have been contaminated by or exposed to a disease agent would have to be cleaned and disinfected under the supervision of an APHIS representative or a State representative. However, if the cost of cleaning and disinfection of materials would exceed the materials' value or if the cleaning and disinfection of materials would be impracticable, the materials will be destroyed under the supervision of an APHIS representative or State representative, upon determination of their value as provided in proposed § 53.3. The APHIS representative or State representative would prepare and transmit to the Administrator a report identifying all materials destroyed and the manner of their disposition.

As part of these proposed changes to combine §§ 53.5 and 53.7, current § 53.7 would be removed in its entirety and current § 53.8 would be redesignated as § 53.7.

*Cleaning and Disinfection of Animals*

Current § 53.6 provides that animals of species not susceptible to the disease for which a quarantine has been established, but which have been exposed to the disease, shall be disinfected when necessary by such methods as the Administrator shall prescribe from time to time. We would amend § 53.6 to instead provide that such animals must be cleaned and disinfected, as directed by, and under the supervision of, an APHIS representative or a State representative. We would insert a reference to the APHIS or State representative in place of the Administrator since the oversight of this activity would be performed by an APHIS or State representative. We would also make a change in the section heading and text by referring to this activity as ''cleaning and disinfection'' instead of ''disinfection'' to be consistent with other such references in the regulations.

The regulations currently do not provide for the compensation of costs relating to the cleaning and disinfection of nonsusceptible animals as is done for materials that are contaminated by or exposed to a disease agent. However, we are seriously considering whether these costs should be eligible for compensation in the case of FMD to further ensure the willingness of affected parties to take part in an FMD eradication campaign. Should paying for this activity be a responsibility of the producer or of the Federal Government through the payment of compensation?

Typically, the first mitigation strategy involving nonsusceptible animals is to restrict their movement from the affected area, farm, or other premises. However, another mitigation measure is to clean and disinfect such animals. This may simply entail applying a bleach or similar solution to the hooves or paws of the animals. We believe the cleaning and disinfection of nonsusceptible animals, when necessary, will be vital in the case of FMD, since nonsusceptible animals could spread FMD even though they themselves would not become infected. Therefore, we seek your comments on whether the regulations should authorize compensation for costs relating to the cleaning and disinfection of nonsusceptible animals to further ensure that all means of spreading the virus are eliminated. We also invite your comments on the types of costs and the amount of expenditures that might be incurred in the cleaning and disinfection of nonsusceptible animals.

We would consider nonsusceptible animals to include animals that are not susceptible to the disease for which a quarantine has been established but that are capable of transmitting the disease agent as a mechanical vector if exposed to it. By ''mechanical vector,'' we mean an animal or inanimate object that carries a microorganism with no replication occurring.

In addition to providing compensation for costs of cleaning and disinfection of nonsusceptible animals in the event of FMD, we are also considering whether the Administrator should be authorized to provide compensation for the destruction of nonsusceptible animals in the event the costs of cleaning and disinfection would exceed the animals' value, or, alternatively, if cleaning and disinfection of the animals would be impracticable. This situation could arise if both the nonsusceptible animals and the structure they are housed in have to be cleaned and disinfected as a result of their proximity to infected animals. In the case of certain nonsusceptible animals such as poultry, it may not be economically feasible to adequately clean and disinfect the poultry given their market value, or it may be otherwise impracticable to clean and disinfect the animals. Animals subject to destruction under such circumstances would be valued, for purposes of indemnification, in accordance with proposed § 53.3 and destroyed and disposed of in accordance with proposed § 53.4. We expect that this situation would arise only in limited situations. Under most circumstances, animal confinement during the disease occurrence, or cleaning and disinfection, or some combination of these measures, should obviate any need to destroy nonsusceptible animals exposed to FMD. However, we still seek your comments on whether the regulations should provide the Administrator with the authority to compensate the owners of nonsusceptible animals under this limited situation in the case of FMD.

*Presentation of Claims*

Current § 53.8 provides that claims for compensation for the value of animals, the cost of burial, burning or other disposition of animals, the value of material destroyed, and the expenses of destruction, shall each be presented, through the inspector in charge, to APHIS on separate vouchers.

With the proposed removal of current § 53.7, current § 53.8 covering presentation of claims would become § 53.7. We are proposing to revise this provision without changing its substantive meaning by simply providing in new paragraph (a) that claims for compensation under this part must each be presented by the claimant to an APHIS representative on forms approved by APHIS. The basis for seeking compensation in part 53 would be covered in proposed § 53.2. We would add that claims for animals or materials destroyed must be presented by the owner or the owner's designated representative. We would also add that the claimant shall provide any available supporting documents that will assist the Administrator, or that are requested by the Administrator, in verifying the quantity and value of animals or materials destroyed and the costs of their disposition, the costs of cleaning and disinfection, and any other costs incurred under this part for which compensation is sought. Examples of supporting documentation could include production records, purchase and sales records, breeding records, registration papers, and receipts.

We are also proposing to move the information on mortgages against animals or materials that is currently covered under § 53.9 to proposed § 53.7(b). Current § 53.9 provides that any claim for indemnity for animals or materials destroyed pursuant to the regulations shall be presented by the owner of the animals or materials on forms furnished by APHIS. The owner shall indicate on the forms whether or not the applicable animals or materials are subject to a mortgage. If the animals or materials are subject to a mortgage, then the owner and each person holding a mortgage on the applicable animals or materials shall sign the forms to indicate their consent to the payment of any indemnity to the person specified on the form.

We would make certain changes to the provision on mortgages that would appear in proposed § 53.7(b). We would substitute the phrase ''on forms approved by APHIS'' in place of ''on forms furnished by APHIS'' to allow for the possibility that someone other than APHIS may distribute the forms. We would also amend the second sentence which begins, ''If the owner states there is a mortgage * * *'' to instead read ''If there is a mortgage * * *'' to clarify that the applicability of this provision would be triggered by the existence of a mortgage, regardless of whether the owner asserts its existence. We would make several other modifications in sentence construction and eliminate the use of the words ''thereby'' and ''thereon'' to make the provision easier to understand. We are also proposing to remove, for reasons of redundancy, the word ''allowed'' that appears in the phrase ''consenting to the payment of any indemnity allowed,'' as well as

change the phrase ''pursuant to the requirements contained in this part'' to read ''pursuant to this part.'' As amended, proposed § 53(b) would provide that when animals or materials have been destroyed pursuant to part 53, the owner of the animals or materials would have to certify on the claim for compensation whether or not the applicable animals or materials are subject to any mortgage. If there is a mortgage, the owner and each person holding a mortgage on the animals or materials would have to sign forms approved by APHIS indicating they consent to the payment of any indemnity to the person specified on the forms.

In covering mortgages against animals or materials in proposed § 53.7(b), we would remove current § 53.9 in its entirety from the regulations.

*Claims Not Allowed*

Current § 53.10 lists certain situations where claims for compensation will not be allowed. With the removal of current §§ 53.7 and 53.9, current § 53.10 would become § 53.8. We would also make certain other changes to this section.

Paragraph (a) of current § 53.10 provides that the Department will not allow claims arising under part 53 if the payee has not complied ''with all quarantine requirements.'' Under proposed § 53.8(a), we would elaborate on this requirement by providing that the payee must comply ''with all Federal quarantine requirements or State quarantine requirements consistent with Federal law or regulations in effect for the control and eradication of disease.''

In current § 53.10(b), we provide that expenses for the care and feeding of animals held for destruction will not be paid by the Department unless the payment of such expenses is specifically authorized or approved by the Administrator. In proposed § 53.8(b), we would make a stylistic change by substituting the words ''costs'' and ''cost'' in place of ''expenses'' and ''expense.''

Paragraph (c) of current § 53.10 states that we will not allow claims arising out of the destruction of animals or materials unless the animals or materials have been ''appraised'' as prescribed in the regulations and the owners have executed a written agreement to the appraisals. Since we are proposing that animals or materials could be valued by means other than appraisal in certain circumstances, we would instead provide that the Department will not allow claims arising out of the destruction of animals or materials unless the animals or materials have been ''valued'' as prescribed in the regulations. Under proposed § 53.8(c), we would also not include the condition that owners must execute a written agreement to the appraisals. We do not believe such a provision is necessary since we are would provide claimants the option of requesting a review by the Administrator if they believe the valuation of animals or materials is inadequate. (See previous discussion under ''Payments for Animals and Materials, Other Compensation, Request for Review.'')

In current § 53.10(d), we provide that the Department will not allow claims arising out of the destruction of animals or materials which have been moved or handled by ''the owner * * * or its officer, employee, or agent acting within the scope of his or its office, employment or agency, in violation of a law or regulation administered by the Secretary for the prevention of the introduction into or the dissemination within the United States of any communicable disease of livestock or poultry for which the animal or material was destroyed, or in violation of a law or regulation for the enforcement of which the Secretary enters or has entered into a cooperative agreement for the control and eradication of such disease.''

Under proposed § 53.8(d), we would provide that the Department will not allow claims arising out of the destruction of animals or materials in violation of any ''Federal law or regulation, or any State law or regulation consistent with a Federal law or regulation,'' that is administered to prevent the introduction or dissemination of any ''contagious or infectious animal disease or any communicable livestock or poultry disease'' for which the animal or material was destroyed. A cooperative program for the control and eradication of disease may be carried out largely under State laws and regulations. By not allowing claims for violations of either Federal laws or regulations, or State laws or regulations that are consistent with Federal laws or regulations, we would encourage public compliance and thereby enhance the effectiveness of the cooperative program to control and eradicate disease. We would amend the reference to ''communicable livestock or poultry disease'' to state ''any contagious or infectious animal disease or any communicable livestock or poultry disease'' to be consistent with our earlier proposed change to the definition of disease. We would also delete the specific reference to not allowing claims on the basis of ''violation of any related cooperative agreement,'' and just rely on the violation of the applicable law or regulation as the basis for not allowing a claim.

A key element in the successful eradication of a disease that spreads as quickly as FMD is the earliest possible detection and reporting of potentially diseased animals. A primary purpose for this rulemaking is to remove possible sources of delay so that any outbreak of FMD can be eradicated quickly. Prompt reporting could save the economy billions of dollars, as well as prevent significant disruptions to the economy. Prompt detection and reporting require knowledge and vigilance on the part of producers, industry, and State, local, and Federal governments, working cooperatively. Although the subject of reporting of animal diseases is not specifically addressed in this proposal, we invite public comment on ways to encourage timely reporting of potentially diseased animals, including, but not limited to, adjustments to compensation.

We would make certain other changes to proposed § 53.8(d) to make it easier to understand without changing its substantive meaning. We would remove the reference to an ''officer, employee, or agent acting within the scope of his or her office, employment, or agency'' and instead use the phrase ''the owner's representative acting on behalf of the owner.'' We would also remove the word ''thereof'' and the phrase ''within the United States,'' as well as make several other minor changes in sentence construction and word usage to make the provision easier to understand.

*Miscellaneous*

The regulations, immediately below the table of contents and the authority citation, provide a cross reference that states, ''For non-applicability of part 53 with respect to certain claims for indemnity, see § 51.10 of this chapter.'' Section 51.10 appears in the regulations in 9 CFR part 51 for animals destroyed because of brucellosis. Section 51.10 provides that no claim for indemnity for animals destroyed under 9 CFR part 51 shall be paid under the regulations in part 53. The regulations covering animals destroyed because of tuberculosis in 9 CFR part 50 also contain a provision at § 50.15 that provides that no claim for indemnity for cattle or bison destroyed because of tuberculosis shall be paid pursuant to the regulations in part 53. We are proposing to amend the cross reference that appears below the table of contents and authority citation in part 53 by inserting a reference to § 50.15. We

would also make a technical correction to the authority citation immediately below the table of contents by adding a reference to 21 U.S.C. 134a–134h.

**Executive Order 12866 and Regulatory Flexibility Act**

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this proposed rule. It provides a cost-benefit analysis as required by Executive Order 12866, as well as an initial regulatory flexibility analysis, which considers the potential economic effects of this proposed rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** Please refer to Docket No. 01–069–1 when requesting copies. The full analysis is also available on the Internet at *http://www.aphis.usda.gov/ppd/rad/fmdanalysis.pdf.* The economic analysis is also available for review in our reading room (information on the location and hours of the reading room is listed under the heading **ADDRESSES** at the beginning of this document).

We do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the numbers and kinds of small entities that may incur benefits or costs from the implementation of this proposed rule.

In accordance with 21 U.S.C. 111, 114, 114a, and 134a–134h, the Secretary of Agriculture has the authority to promulgate regulations and take measures to prevent the introduction into the United States and the interstate dissemination within the United States of any communicable diseases of livestock and poultry, as well as any contagious or infectious diseases of animals that in the opinion of the Secretary constitute an emergency and threaten the livestock or poultry of the United States, and to pay claims growing out of the destruction of animals and materials. Animal health regulations promulgated by the Department under this authority include those regarding payment of claims in 9 CFR part 53.

*Summary of the Cost-Benefit Analysis*

Our analysis examines the potential economic effects of proposed changes affecting indemnification and other compensation paid for losses due to the occurrence of FMD in the United States. Recent occurrences of FMD in a number of formerly FMD-free regions have demonstrated both the speed with which an FMD outbreak can spread and the magnitude of its consequences.

An FMD occurrence in the United States could be devastating, given the Nation's extensive livestock holdings. Besides the direct economic effects on ruminant and swine producers, consequences of the disease would ripple through the economy, causing indirect costs in sectors beyond agriculture. International movement of many commodities would be disrupted by restrictions imposed by trading partners. Costs of an FMD occurrence to the Nation's economy could reach to billions of dollars, if not quickly controlled. The Department is engaged in a number of planning and operational activities expected to reduce the likelihood of an FMD occurrence and, if FMD is introduced, to prevent impacts from reaching catastrophic levels. Nonetheless, the risk of an FMD introduction into the United States is ever present, given today's highly mobile environment and global agricultural economy.

The regulations currently provide that upon agreement of the State, the Administrator is authorized to pay 50 percent (and in the case of infectious salmon anemia up to 60 percent, and in the case of exotic Newcastle disease or highly avian influenza up to 100 percent) of the expenses of the purchase, destruction, and disposition of animals and materials required to be destroyed because of being contaminated by or exposed to disease. The Administrator is also authorized to pay up to 100 percent of the purchase, destruction, and disposition of animals exposed to such disease prior to or during interstate movement that are not eligible to receive indemnity from any State. The Secretary of Agriculture may authorize other arrangements in the case of an extraordinary emergency.

Under the current regulations, animals and materials subject to destruction are valued based on an appraisal. The regulations currently do not expressly provide for compensation for official vaccinates. In addition to compensation for destroyed property, the Administrator is authorized to indemnify for cleaning and disinfection costs in accordance with the cost sharing agreement with the State.

A rapid, coordinated response by the public and private sectors in the early stages of an FMD occurrence is imperative, if devastating losses are to be prevented. The purpose of this proposed rule is to remove possible sources of delay in achieving FMD eradication. Under the existing regulations, delays may occur because of certain producers' perceptions, as well as eradication program requirements. In the first instance, delays can derive from livestock owners' uncertainty of being fully compensated for the fair market value of destroyed animals, products, and materials, including livestock vaccinated as part of an eradication program (official vaccinates). Owners of affected herds may also be uncertain that they will receive full compensation for cleaning and disinfection costs. In the second instance, delays may be caused by having to rely on appraisal for the valuation of livestock when an insufficient number of appraisers or other constraints would prevent timely destruction of infected and exposed animals.

The proposed rule sets forth regulatory changes to address these possible sources of delay in the event of an outbreak of FMD. First, the Department would pay 100 percent of the costs for the purchase, destruction, and disposition of animals affected by FMD, including official vaccinates. The Department would also pay 100 percent of the costs for cleaning and disinfection of materials that are contaminated by or exposed to FMD. If the costs of cleaning and disinfection exceed the value of the materials, or cleaning and disinfection would be impracticable, then the Department would pay 100 percent of the purchase, destruction, and disposition of such materials. These changes are intended to allay any concerns on the part of affected entities that States would be unable to fund their shares of compensation payments.

Second, livestock valuation based on a set of fixed rates would be made available as an alternative to appraisal. Fixed compensation rates would potentially enable FMD-affected herds to be compensated more quickly with less risk of disease spread.

A third change would provide that in the case of FMD only, if an appraisal of materials to be destroyed is found to be impracticable, or would otherwise compromise efforts to effectively control and eradicate the disease, the Department may authorize the material's fair market value to be determined by other means, such as through records or other documentation maintained by the claimant indicating

the value of the materials destroyed. This option could eliminate another potential source of delay in determining the value of materials subject to destruction.

The Department would respond to an FMD occurrence by entering into a cooperative control and eradication program with States or others, or alternatively, in the case of an extraordinary emergency, take action upon determination that the State is not taking adequate measures in regard to the control and eradication of disease. In the full analysis, we use a cooperative program under the auspices of the current regulations and an extraordinary emergency determination as baselines for measuring the effects of the proposed rule, if implemented.

The regulations currently authorize the Department to pay 50 percent of the cost of purchase, destruction, and disposition of animals and materials required to be destroyed under a cooperative program for most diseases, including FMD. Affected States would be expected to fund the remaining 50 percent of compensation. Compensation for costs of cleaning and disinfection of products or materials that have been contaminated by or exposed to FMD would be shared by the Department and State, in accordance with the agreement reached by the two parties. The regulations currently do not expressly provide for owners of official vaccinates to be compensated for their destruction. In the case of an FMD emergency, a rule would probably be quickly promulgated that would allow compensation for official vaccinates.

In the case of an extraordinary emergency, the Department would be authorized to seize, quarantine, and dispose of any affected or exposed animals, carcasses, products, or articles. Under an extraordinary emergency, the Department is statutorily required to pay compensation for any animal or material destroyed based on its fair market value, and such compensation cannot exceed the difference between any compensation received from a State or other source and such fair market value. The Department's compensation responsibilities and costs and eradication program costs in general are likely to be larger in the case of an extraordinary emergency than they would be under a cooperative program, and States' responsibilities and costs will be correspondingly smaller.

Comparing the proposed rule to the existing regulations in the context of a cooperative program, the major impacts for the Department would be a significantly larger budgetary obligation and an eradication program less subject to possible sources of delay. Assumption of States' 50 percent share of compensation payments under the proposed rule would reduce livestock owners' uncertainty about being fully compensated for losses. Less uncertainty is expected to lead to improved levels of participation and cooperation in the eradication effort. Provision of fixed rates as an alternative to appraisal for valuing compensated livestock will also remove possible eradication delays. Other potential benefits of using fixed rates will be a reduced risk of mechanical transmission of FMD, and lower operational costs.

For States, the budgetary impact of the proposed rule in the case of an extraordinary emergency will be just the opposite. Department funding of all compensation payments will provide significant financial savings to States in the event of an FMD occurrence. However, States may still face numerous direct and indirect FMD costs and some share of eradication program costs in the event of a serious FMD outbreak.

For affected industries and livestock owners, the main impact of the proposed rule as applied in a cooperative program will be increased confidence that affected parties will receive full fair market value when compensated for destroyed animals and materials. This reassurance will encourage the private sector's participation and cooperation in the eradication program. In the end, fewer livestock operations may be directly affected because the higher level of cooperation will lessen the possibility of eradication program delays. In addition, the more quickly eradication is accomplished, the smaller will be industry losses due to quarantines and international trade restrictions.

Affected entities will still bear uncompensated costs, from lost income because of downtime, to restocking difficulties and market restrictions. Trade losses and other industry-wide impacts will also still occur.

In comparing the proposed rule versus the current regulations in the case of an extraordinary emergency, the total amount of compensation paid by the Department would be much the same in both cases.

While affected industries and livestock owners would be fully compensated by the Department for destroyed livestock and materials both in an extraordinary emergency and under the proposed rule, they would still face uncompensated costs such as lost income and fixed costs.

Compensation costs incurred by the Department in the event of an FMD occurrence would depend on the characteristics of the outbreak and mitigation strategy. Two hypothetical examples of FMD occurrences and resulting livestock compensation are presented, to demonstrate the main compensation funding impacts of the proposed rule for the Department and affected States, in comparison to cooperative conditions. (A comparison of compensation funding with the proposed rule to funding under extraordinary emergency conditions is pointless, since the Department would pay 100 percent of compensation in both instances.)

The first example assumes a 7 percent loss of U.S. livestock, which was the percentage of the United Kingdom's livestock destroyed in 2001 because of FMD. After adjusting for differences in the relative percentages of cattle, swine, and sheep in the United States compared to those in the United Kingdom, and applying a set of fixed rates calculated using procedures set forth in the analysis, payments for destroyed animals were found to total $7.3 billion. Related analyses, given assumed numbers of FMD-affected premises, yield compensation payments for cleaning and disinfection of premises that total $279 million.

Under this first example, and based on the compensation provisions in the current regulations, we estimate the Department and affected States would each bear compensation payments of about $3.8 billion in a cooperative program. Under the proposed rule, the Department's compensation payments would increase to about $7.6 billion. The impact would be for Department compensation payments to increase by $3.8 billion (the States' 50 percent share of compensation for destroyed animals and cleaning and disinfection costs). Most likely, total Department compensation payments would be some lesser amount if eradication delays that would otherwise occur (because of producers' uncertainties about State funding or reliance solely on appraisal for the valuation of livestock and materials) were avoided. While affected States would not be obliged to pay compensation, they would still bear other costs of the disease and its eradication.

The second hypothetical example assumes a smaller FMD occurrence, and shows the same pattern of compensation payments with and without the proposed rule. Without the rule, the Department and affected States would each pay about $216 million, that is, one-half of compensation for destroyed animals and cleaning and disinfection costs. Under the proposed rule, the Department's compensation in a

cooperative program with States and other cooperators would increase to $432 million, that is, 100 percent of compensation. The overall impact would be for the Department's compensation burden to increase by $216 million (the States' 50 percent share of compensation for destroyed animals and cleaning and disinfection costs). Again, these costs may be overstated, since there could be savings through the avoidance of eradication delays. Also, States would not pay compensation under the proposed rule, but would face other costs relating to the control and eradication of disease.

The two examples illustrate the proposed rule's shift in compensation payments from affected States to the Department in the case of a cooperative program. However, as noted above, States and the private sector would face other costs including a portion of FMD eradication program costs, income losses and fixed costs for livestock and related industries, and economy-wide indirect impacts. Because these other costs remain uncompensated under the proposed rule, States and livestock owners will still have strong incentives to remain vigilant for the first signs of disease, and to cooperate fully with the Department if there is an FMD occurrence.

FMD eradication and compensation costs will depend on the scale of the occurrence of the disease, which in turn will depend on how quickly and effectively the Department, States, and private entities can respond. States and the private sector will be positively affected by eradication efforts less prone to delay: Fewer livestock and wildlife populations will be directly affected, producers and exporters will be able to reestablish their operations sooner, and business losses for input suppliers, transporters, and other indirectly affected businesses will be smaller. Conversely, a protracted eradication effort will mean heightened losses and larger eradication costs.

The benefits of this proposed rule are several. Payment of 100 percent compensation for animals and materials destroyed in the event of FMD, as well as related cleaning and disinfection costs, should eliminate uncertainty on the part of livestock owners about States' ability to fund their share of FMD compensation. It should encourage fully committed participation by affected parties. Otherwise, such uncertainty could cause delays in an FMD eradication campaign.

The option of using fixed rates in place of appraisal in valuing livestock should also remove possible eradication delays in those situations where appraisal is impracticable or would otherwise compromise eradication efforts. The use of fixed rates should result in program savings, since their application would require fewer resources than appraisal. Fixed rates should also lower risks of mechanical disease transmission, since there would be less human contact with infected animals.

In sum, the changes in this proposed rule would strengthen programs for the control and eradication of FMD by broadening the Departmental's options. The changes would be particularly important in lessening the chances that FMD's eradication will be delayed.

As alternatives to the proposed rule, the current regulations as applied to cooperative programs and extraordinary emergencies have shortcomings. The current regulations under a cooperative program contain possible sources of eradication program delay.

Under an extraordinary emergency, USDA compensation for animals and materials destroyed would be the same under the current regulations and proposed rule. However, under the current regulations appraisal would be the only method of valuation, and costs to USDA of conducting an FMD eradication campaign would be higher (and costs to States correspondingly lower). Policy changes would need to be planned and implemented immediately.

*Summary of Initial Regulatory Flexibility Analysis*

Agencies are required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) to evaluate the potential economic effects of proposed rules on small entities. We do not have enough information to fully evaluate the potential effect of this proposed rule on small entities. As such, we are inviting comments addressing this issue. In particular, we are interested in determining the number and kinds of small entities that may incur benefits or costs from implementation of this proposed rule, and if there are any special issues relating to the business practices of these small entities that would make them particularly different from larger firms in their ability to comply with this proposed rule. However, we have made some initial conclusions.

The changes in this proposed rule would directly affect ruminant or swine operations whose herds or flocks are affected by FMD. Other businesses that sell or deal with animal products and byproducts could also be affected by the proposed rule if their commodities were destroyed as part of an eradication program. For purposes of illustration, our analysis focuses on an occurrence of FMD. Therefore, entities directly affected by the proposed rule in the case of an FMD occurrence would be ruminant and swine operations whose herds or flocks are affected by the disease, as well as other businesses that sell or deal with susceptible animal products and byproducts that would have to be destroyed as part of an eradication program. Our analysis focuses on livestock producers, while recognizing that similar economic effects could be expected for other types of establishments eligible for compensation.

The Small Business Administration (SBA) has established guidelines for determining which types of firms are to be considered small under the Regulatory Flexibility Act. An establishment engaged in dairy animal and milk production, cattle ranching and farming, hog and pig farming, sheep farming, or goat farming is considered small if it has annual sales of less than $750,000. In 1997, at least 92 percent (79,155 of 86,022) of dairy farms, 99 percent (651,542 of 656,181) of cattle farms, 87 percent (40,185 of 46,353) of hog and pig farms, and 99 percent (29,790 of 29,938) of sheep and goat farms were considered small.

Cattle feedlots are considered small if their annual sales are $1.5 million or less. Over 97 percent of feedlots (95,000 of 97,091) have capacities of less than 1,000 head, and average annual sales of about 420 head. Assuming each head sold for $1,000, these less-than-1,000 head capacity feedlots would generate, on average, $420,000 in sales. Clearly, most feedlots and other livestock operations are small entities.

Benefits for small entities will be the same as those described in the cost benefit analysis, which are that small entities essentially will have greater confidence that they will receive full fair market value when compensated for destroyed animals and materials. This reassurance will encourage small entities to participate fully in FMD's eradication. In the end, fewer small entities will be directly affected because the higher levels of cooperation will reduce the delays in eradicating FMD.

Small entities that own livestock selected for vaccination as part of the eradication process will also be more willing to cooperate, with the knowledge that they will be compensated for the fair market value of their animals. They will be encouraged to feed and care for the official vaccinates humanely, confident that these expenses will be compensated as well.

Full compensation by the Department for cleaning and disinfection of affected products and materials, will likewise enhance small entities' willingness to take part in an FMD eradication campaign.

Even with the changes in the proposed rule are implemented, affected small entities will still bear uncompensated costs, from lost income because of downtime, to high restocking prices and market restrictions. If FMD does occur, small entities can be expected to benefit directly and indirectly from the of elimination of possible sources of eradication delay.

In sum, the vast majority of livestock operations are small entities. While the course an occurrence of FMD would take cannot be predicted, it is reasonable to expect that small entities would be among the beneficiaries of the proposed rule directly as compensated parties and indirectly through rule changes that would lessen the chances that FMD's eradication will be delayed.

This proposed rule would entail information collection requirements. These requirements are described in this document under the heading ''Paperwork Reduction Act.''

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**Executive Order 12988**

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

**Paperwork Reduction Act**

This proposed rule would require the submission of claims for compensation in the event of a future occurrence of FMD. In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 01–069–1. Please send a copy of your comments to: (1) Docket No. 01–069–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

Providing affected herd owners and other claimants with appropriate compensation would entail the use of VS Form 1–23, also known as an Appraisal and & Indemnity Claim Form. Affected herd owners and other claimants would also be expected to provide any supporting documentation that will assist the Administrator, or that is requested by the Administrator, to verify the quantity and value of animals or materials destroyed and the costs of their disposition, and the costs of cleaning and disinfection. We are therefore asking OMB to approve, for 3 years, our use of this information collection.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

**Note:** Our estimate below shows a minimal burden of 1 hour total because we believe an FMD outbreak is unlikely. Therefore, we currently are not collecting information and do not plan to collect information unless an outbreak does occur. In the event of an FMD outbreak, we will revise the estimated number of respondents and estimated burden accordingly at that time based on the number of expected respondents.

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average 1.0 hour per response.

*Respondents:* Owners of animals and materials destroyed, other claimants incurring costs under this part for which compensation is sought, as well as program support personnel including accredited veterinarians, State animal health employees, and local authorities who would be providing assistance in the event of a national animal disease emergency.

*Estimated annual number of respondents:* 1.

*Estimated annual number of responses per respondent:* 1.

*Estimated annual number of responses:* 1.

*Estimated total annual burden on respondents:* 1 hour.

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

**Appendix—Establishing Fixed Rates**

To illustrate how we would establish rates for certain animal species under a fixed-rate method, as discussed previously in our proposed changes to § 53.3, we have provided an example based on a hypothetical outbreak of FMD in early April of 2001. In this example, we would establish fixed rates for cattle (beef and dairy animals), swine, and sheep. This group of animals would represent the vast majority of animals that would be affected by FMD.

Representative ''slide factors'' for calculating the price-weight adjustment for different animal categories throughout this example were based on information provided by the LMIC.

The valuation of breeding animals, including the assignment of certain premiums, is based on our best estimates from available data and our observations of the livestock market. We realize that particularly in the case of breeding animals, there is a greater potential for variations in value within the same category or classification of animals in comparison to market animals. However, as discussed previously, owners would have the right to request an appraisal of their animals if they believed the fixed-rate method would be unsuitable in their particular situation. In addition, claimants who disagree with the valuation of their animals under the fixed-rate method would have the opportunity to submit a written request for review to the Administrator, explaining why the valuation of their animals should be different than the value determined by using fixed rates.

In terms of organization, we first provide a summary of the fixed rates

that would be paid in this example based on a hypothetical outbreak of FMD in early April of 2001. We then provide a more expanded discussion of how these rates would be determined.

The summary of rates that would be paid for beef and dairy cattle, swine, and sheep are as follows. Estimated weights used to calculate the payment per head are noted in parenthesis where applicable.

| | Payment per head |
|---|---|
| Market animals: | |
| Beef Cattle: | |
| Preweaned calves (500 lb) | $496.25 |
| Non-feedlot, but weaned (stocker) animals (650 lb) | 601.51 |
| Feedlot animals (1,100 lb) | 814.11 |
| Dairy Cattle: | |
| Commercial dairy cows (female dairy cows that are\have been in milk) | 1,320.00 |
| Non-bred heifer replacements and sexually immature bulls | 924.00 |
| Bred heifer replacements | 1,584.00 |
| Swine: | |
| Grower-finisher pigs (200 lb) | 98.04 |
| Nursery pigs | 51.70 |
| Preweaned piglets | 32.72 |
| Sheep: | |
| Slaughter lambs and wethers raised for wool production (130 lb) | 99.76 |
| Preweaned lambs (70 lb) | 57.48 |
| Weaned feeder lambs (85 lb) | 69.13 |
| Breeding animals: | |
| Beef Cattle: | |
| Beef cows (commercial herds) (1,000 lb) | 740.10 |
| Bred replacement heifers (commercial herds) | 888.12 |
| Beef bulls (commercial herds) | 1,850.25 |
| Registered animals, animals in a seedstock herd, and donor animals: | |
| Cows and bred replacement heifers | 1,850.25 |
| Bulls | 2,220.30 |
| Dairy Cattle: | |
| Dairy bulls | 3,300.00 |
| Registered animals, animals in a seedstock herd, and donor animals: | |
| Cows and bred replacement heifers | 3,300.00 |
| Dairy bulls | 3,960.00 |
| Swine: | |
| Sows and boars (commercial herds) | 196.08 |
| Registered animals, animals in a seedstock herd, and donor animals | 294.12 |
| Sheep: | |
| Commercial ewes (160 lb) | 122.78 |
| Commercial rams (200 lb) | 153.48 |
| Registered animals, animals in a seedstock flock, and donor animals: | |
| Ewes | 245.56 |
| Rams | 306.96 |

A more expanded discussion of how these rates were determined for each of the animal categories follows:

## Market Animals

### Beef Cattle

*Preweaned Calves*

*Estimated weight:* 500 lb.

*Average futures price (adjusted):* 99.25 per cwt.

*Compensation rate:* $496.25 per head.

We determined the compensation rate for preweaned calves by taking the simple average of the most recently available daily futures prices over a 3-month period immediately prior to the date of the disease outbreak, and multiplying it by the estimated weight. For preweaned calves, we looked to the feeder cattle futures contract traded on the Chicago Mercantile Exchange, using the contract month that corresponded to the month of planned weaning. We used the planned weaning month instead of the month of the FMD outbreak since the estimated weight would be based on the average weaning weight for these animals.

We determined that the estimated weight for preweaned calves was 500 lb, which is the average weaning weight according to data from NAHMS. Since the estimated weight for preweaned calves was less than the specified weight range of the feeder cattle futures contract (700–849 lb), we adjusted the average futures price upwards. We calculated the price-weight adjustment by taking the slide factor determined by LMIC (in this case $4/cwt), and multiplying this factor by the difference between the futures contract weight and the estimated weight (775 lb − 500 lb = 275 lb).

Assuming an early April 2001 disease outbreak and a weaning month of October, the average futures price was $88.25 per cwt. It is important to note that per/cwt prices are generally higher for smaller animals than for larger animals. We then adjusted the average futures price upwards based on a price-weight adjustment of $11 per cwt. We calculated the $11 per-cwt adjustment by selecting a slide factor of $4 per cwt and multiplying it by 275 lb. So the average futures price for determining the compensation rate for preweaned calves was adjusted upward to $99.25 per cwt ($88.25/cwt + $11/cwt). We then determined the compensation rate of $496.25 per head by multiplying the adjusted average futures price of $99.25 per cwt by the estimated weight of 500 lb ($99.25/cwt × 5.0 cwt = $496.25 per head).

*Non-Feedlot, but Weaned (Stocker) Animals*

*Estimated weight:* 650 lb.

*Average futures price (adjusted):* $92.54 per cwt.

*Compensation rate:* $601.51 per head.

We determined the compensation rate for stocker animals by taking the simple average of the most recently available daily futures prices over a 3-month period immediately prior to the date of the outbreak for the feeder cattle contract traded on the Chicago Mercantile Exchange, and by then multiplying the simple average by the estimated weight for stocker animals. In taking a 3-month average, we used the contract month that corresponded to the month of the FMD outbreak. Based on an early April 2001 outbreak, the average futures price was $87.54 per cwt.

We set an estimated weight of 650 lb for stocker animals based on the following set of assumptions. The average feedlot placement weight of stocker animals was 700 lb according to NASS statistics. Since calves are weaned at 500 lb, this meant a 200 lb non-feedlot gain for stocker cattle. We took into account a set portion of this non-feedlot weight gain by adding 150 lb to the weaned weight of 500 lb to arrive at the estimated total weight of 650 lb for stocker animals.

Since the estimated weight for stocker animals was less than the specified weight range of the feeder cattle futures contract (700–849 lb), we adjusted the average futures price upwards by $5.00 per cwt by taking the slide factor determined by LMIC (in this case $4.00/cwt) and multiplying this factor by the difference between the futures contract weight and the estimated weight (775 lb − 650 lb = 125 lb or 1.25 cwt). So the adjusted average futures price equaled $92.54 per cwt ($87.54/cwt + $5.00/cwt). We then arrived at a compensation weight of $601.51 per head by multiplying the adjusted average futures price of $92.54 per cwt by the estimated weight of 650 lb ($92.54/cwt × 6.50 cwt = $601.51 per head).

*Feedlot Animals*

*Estimated weight:* 1,100 lb.

*Average futures price:* $74.01 per cwt.

*Compensation rate:* $814.11 per head.

We determined the compensation rate for feedlot animals by taking the simple average of the most recently available daily futures prices over a 3-month period immediately prior to the disease outbreak and multiplying it by the estimated weight for feedlot animals. We looked to the live cattle futures contract traded on the Chicago Mercantile Exchange, using the contract month that corresponded to the month of the FMD outbreak.

The estimated weight for feedlot beef cattle was set at 1,100 lb, based on the following assumptions. The average slaughter weight of steers and heifers in 1999 and 2000 was 1,262 lb according to NASS statistics. With an average placement weight in 2000 of 700 lb, we determined that the average weight gain while in feedlot was 562 lb. We took into account a set portion of this feedlot weight gain by adding 400 lb to the average placement weight of 700 lb to arrive at the estimated total weight of 1,100 lb for feedlot cattle. There is no need for a price-weight adjustment for feedlot beef cattle.

Based on an early April 2001 outbreak, we determined the compensation rate for feedlot beef cattle to be $814.11 per head based on an average futures price of $74.01 per cwt and an estimated weight of 1,100 lb ($74.01/cwt × 11.0 cwt = $814.11 per head).

**Dairy Cattle**

*Commercial Dairy Cows (Female Cows That Are In Milk or Have Been in Milk)*

*Compensation rate:* $1,320 per head.

In its publication *Agricultural Prices,* NASS reports quarterly prices received by producers for cows sold for milking purposes in the top dairy States and a national price average. In theory, a female dairy cow reaches maximum value when she first starts to produce milk. The dairy cow price reported by NASS covers animals already in milk production and thus below their maximum value. Cows ready to be culled (nearing the end of their last lactation) are greatly discounted as the value of culled cows is much lower than that of cows that are milked another lactation. We believe the NASS price reasonably reflects the value of the milking string. Prices are reported by NASS for the months of January, April, July, and October and are available at the end of the following month. January's price would be used if the FMD outbreak occurred in the months of April, May, or June; April's price would be used if the outbreak occurred in the months of July, August, or September; July's price would be used if the outbreak occurred in the months of October, November, and December; and October's price would be used if the outbreak occurred in the months of January, February, or March.

Based on an early April 2001 outbreak, we determined the compensation rate for commercial dairy cows was $1,320 per head. This rate came from the most recently reported quarterly price per head for commercial dairy cows from NASS.

*Non-Bred Heifer Replacements and Sexually Immature Bulls*

*Compensation rate:* $924 per head.

The rate for non-bred heifer replacements and sexually immature bulls equals 70 percent of the rate determined for commercial dairy cows. The lower percentage rate for non-bred replacements and sexually immature bulls reflects that these are younger animals with lower paid-in costs. For an early April 2001 outbreak, we determined the compensation rate was $924 per head ($1,320 × 70 percent).

*Bred Heifer Replacements*

*Compensation rate:* $1,584 per head.

The rate for bred heifer replacements equals 120 percent of the rate determined for commercial dairy cows. We provide this higher value over commercial dairy cows to reflect that bred heifers are at the start of their productive life. For an early April 2001 outbreak, we determined that the rate bred heifer replacements was $1,584 per head ($1,320 × 120 percent).

**Swine**

*Grower-Finisher Pigs*

*Estimated weight:* 200 lb.

*Average futures price (adjusted):* $49.02 per cwt.

*Compensation rate:* $98.04 per head.

We calculated the compensation rate for grower-finisher pigs by taking the simple average of the most recently available daily futures prices over a 3-month period immediately prior to the disease outbreak, and multiplying it by the estimated weight for grower-finisher pigs. We relied on the lean hogs contract traded on the Chicago Mercantile Exchange, using the contract month that corresponded to the month of the FMD outbreak.

We determined that the estimated weight of grower-finisher pigs was 200 lb based on the following assumptions. We assumed that pigs were 50 lb when entering the grower-finisher phase and were slaughtered at 255 lb, which was the average slaughter weight for 1999 and 2000 according to NASS data (*Livestock Slaughter,* January 2001). This represented an average weight gain of 205 lb. We took into account a set portion of this weight gain by adding 150 lb to the average weight of 50 lb for pigs entering the grower-finisher phase to arrive at the estimated total weight of 200 lb for grower-finisher pigs.

It was necessary to adjust the average futures price since the futures contract

price is based on the slaughter (carcass) price and not on live animals. A hog carcass weighs approximately 74 percent of a live hog. The weight difference represents dressing. We arrived at an adjusted average futures price of $49.02/cwt, which we then multiplied by the estimated weight of 200 lb to get a compensation rate of $98.04 per head ($49.02/cwt × 2.00 cwt).

*Nursery Pigs*

*Compensation rate:* $51.70 per head.

We determined the rate for nursery pigs by taking the simple average of the most recently available national feeder pig (40 lb) prices reported by AMS. These prices are reported on a weekly basis. We took the simple average over a 3-month period immediately prior to the date of the disease outbreak. The AMS prices for these animals are reported on a per-head basis, so it is not necessary to determine the compensation weight. The average feeder pig price over this 3-month period was $51.70 per head.

*Preweaned Piglets*

*Compensation rate:* $32.72 per head.

We determined the rate for preweaned piglets by taking the simple average of the most recently available national early weaned pig (10 lb) prices, as reported by AMS. These prices are reported on a weekly basis. We took the simple average over a 3-month period immediately prior to the date of the disease outbreak. The AMS prices for these animals are also reported on a per-head basis, so it is not necessary to determine the compensation weight. The average national early weaned pig price over this 3-month period was $32.72 per head.

**Sheep**

*Slaughter Lambs and Wethers Raised for Wool Production*

*Estimated weight:* 130 lb.

*Price:* $76.74 per cwt.

*Compensation rate:* $99.76 per head.

We determined the compensation rate for slaughter lambs by multiplying the calculated price for slaughter lambs by the estimated weight for this classification of animal.

We calculated the price for slaughter lambs by taking the simple average of the most recently available national lamb carcass prices, as reported by AMS. These prices are reported on a weekly basis. We normally take the simple average over a 3-month period immediately prior to the date of the disease outbreak, which we would then multiply by a dressing percentage of 49.5 percent. However, this is a new AMS price series, and there was less than 3 months of available price data.

Based on NAHMS data, the average slaughter weight of lambs is 145 lb and the average feedlot placement weight is 85 lb. Therefore, we determined the average weight gain of lambs during the feedlot or finishing phase to be 60 lb. We took into account a set portion of this weight gain by adding 45 lb to the average placement weight of 85 lb to arrive at the estimated total weight of 130 lb for slaughter lambs. We then calculated the compensation rate to be $99.76 per head by multiplying the average AMS lamb carcass price by the dressing percentage by the compensation weight ($155.03/cwt × 49.5 percent × 1.30 cwt = $99.76 per head). The compensation rate determined for slaughter lambs would also apply to wethers raised for wool production.

*Preweaned Lambs*

*Estimated weight:* 70 lb.

*Adjusted price:* $82.11 per cwt.

*Compensation rate:* $57.48 per head.

We determined the compensation rate for preweaned lambs by taking the price calculated for slaughter lambs ($76.74/cwt) and adding a price-weight adjustment of 7 percent or $5.37/cwt based on the weight differential between slaughter lambs and preweaned lambs. We then multiplied the adjusted price of $82.11/cwt by the assigned estimated weight of 70 lb, which is the average weaning weight of these animals according to 2001 NAHMS data, to get a compensation rate of $57.48 per head (($76.74/cwt + $5.37/cwt) × .70 cwt).

*Weaned Feeder Lambs*

*Estimated weight:* 85 lb.

*Adjusted price:* $81.34 per cwt.

*Compensation rate:* $69.13 per head.

We used 85 lb as the estimated weight for weaned feeder lambs, which corresponds to the average weight of lambs entering a feedlot or finishing stage prior to slaughter. We then calculated the compensation rate for weaned feeder lambs by taking the price calculated for slaughter lambs ($76.74/cwt) and adding a price-weight adjustment of 6 percent or $4.60/cwt based on the weight differential between slaughter lambs and weaned feeder lambs. This price-weight adjustment is generally positive, except during periods of high feed costs. We then multiplied the adjusted average price of $81.34/cwt by the assigned estimated weight of 85 lb for weaned feeder lambs to get a compensation rate of $69.13 per head (($76.74/cwt + $4.60/cwt) × .85 cwt).

**Breeding Animals**

**Beef Cattle**

*Beef Cows (Commercial Herds)*

*Estimated weight:* 1,000 lb.

*Price:* $74.01 per cwt (same price per cwt paid for feedlot beef cattle).

*Compensation rate:* $740.10 per head.

The average weight of a beef cow is 1,016 lb according to NAHMS data (*Beef,* 1997). Therefore, we used 1,000 lb as the estimated weight for commercial beef cows. A comparison of fed beef cattle prices and prices for bred young females and middle age cows (*Drovers' Journal*) found that bred cow prices were 83 percent of fed beef cattle prices. Though the premium for breeding purposes is not readily known, we note that by providing the same compensation rate ($/cwt) for commercial breeding beef cows as is used for feedlot beef cattle would provide some measure of the value given for breeding purposes. Therefore, we calculated the compensation rate for beef cows by taking the applicable futures price ($/cwt) calculated for feedlot beef cattle ($74.01/cwt), and multiplying that average price by the estimated weight of 1,000 lb for beef cows. For an early April 2001 outbreak, we determined the compensation rate for beef cows (commercial herds) was $740.10 per head ($74.01 × 10.0 cwt = $740.01 per head).

*Bred Replacement Heifers (Commercial Herds)*

*Compensation rate:* $888.12 per head.

To reflect that bred heifers are at the start of their productive life, these animals were valued at 120 percent of the compensation rate for beef cows (commercial herds). For an early April 2001 outbreak, we determined the rate for bred replacement heifers to be $888.12 per head ($740.10 per head × 120 percent).

*Beef Bulls (Commercial Herds)*

*Compensation rate:* $1,850.25 per head.

The rate for beef bulls (commercial herds) equals 250 percent of the rate established for beef cows (commercial herds). For an early April 2001 outbreak, we determined that the rate for beef bulls was $1,850.25 per head ($740.10 × 250 percent).

*Registered animals, animals in a seedstock herd, and donor animals:*

**Beef Cows and Bred Replacement Heifers**

*Compensation rate:* $1,850.25 per head.

Beef cows and bred replacement heifers that are breeding animals and are

also registered animals, part of a seedstock herd, or donor animals receive 250 percent of the compensation rate established for beef cows (commercial herds). For an early April 2001 outbreak, we determined the rate was $1,850.25 per head ($740.10 × 250 percent).

**Beef Bulls**

*Compensation rate:* $2,220.30 per head.

Beef bulls that are breeding animals and are also registered animals, part of a seedstock herd, or donor animals receive 300 percent of the compensation rate established for beef cows (commercial herds). For an early April 2001 outbreak, we determined the rate for these animals was $2,220.30 per head ($740.10 × 300 percent).

**Dairy Cattle**

*Dairy Bulls*

*Compensation rate:* $3,300 per head.

Using the same bull-cow relationship as with beef animals, the rate for breeding dairy bulls equals 250 percent of the rate determined for commercial dairy cows. For an early April 2001 outbreak, we determined the rate was $3,300 per head ($1,320 250 percent).

*Registered animals, animals in a seedstock herd, and donor animals:*

**Dairy Cows and Bred Replacement Heifers**

*Compensation rate:* $3,300 per head.

The rate for dairy cows and bred replacement heifers that are breeding animals and are also registered animals, part of a seedstock herd, or donor animals equals 250 percent of the rate established for commercial dairy cows. For an early April 2001 outbreak, we determined the rate for cows and bred replacement heifers was $3,300 per head ($1,320 × 250 percent).

**Dairy Bulls**

*Compensation rate:* $3,960 per head.

The rate for dairy bulls that are breeding animals and are also registered animals, part of a seedstock herd, or donor animals equals 300 percent of the rate established for commercial dairy cows. For an early April 2001 outbreak, we determined the compensation rate for bulls was $3,960 per head ($1,320 × 300 percent).

**Swine**

*Sows and Boars (Commercial Herds)*

*Compensation rate:* $196.08 per head.

The rate for commercial sows and boars equals 200 percent of the rate established for grower-finisher pigs. For an early April 2001 outbreak, we determined the rate was $196.08 per head ($98.04 per head (grower-finisher rate) × 200 percent).

*Registered animals, animals in a seedstock herd, and donor animals:*

*Compensation rate:* $294.12 per head.

The rate for pigs that are breeding animals and are also registered animals, part of a seedstock herd, or donor animals equals 300 percent of the rate established for grower-finisher pigs. The value of seedstock boars would be the same as seedstock sows. For an early April 2001 outbreak, we determined the rate for seedstock sows and boars to be $294.12 per head ($98.04 per head (grower-finisher rate) × 300 percent).

**Sheep**

*Commercial Ewes*

*Estimated weight:* 160 lb.

*Price:* $76.74 per cwt (same adjusted price per cwt used for slaughter lambs).

*Compensation rate:* $122.78 per head.

In determining the compensation rate for commercial ewes, we would use the average AMS price ($76.74/cwt) calculated for slaughter lambs, and multiply this average price by the estimated weight for commercial ewes. The slaughter lamb price is greater than the cull ewe slaughter price. By providing the higher slaughter lamb price for breeding ewes and applying the breeding animal weight, we recognize a premium that these breeding animals might receive. We also determined the estimated weight of commercial ewes to be 160 lb. Therefore, for an early April 2001 outbreak, we determined the rate for commercial ewes was $122.78 per head ($76.74/cwt × 160 lb).

*Commercial Rams*

*Estimated weight:* 200 lb.

*Price:* $76.74 per cwt.

*Compensation rate:* $153.48 per head.

In determining the compensation rate for commercial rams, we would use the average AMS price ($76.74/cwt) calculated for slaughter lambs, and multiply this average price by the estimated weight for commercial rams. The slaughter lamb price is greater than the cull ram slaughter price. By providing the higher lamb slaughter price for breeding rams and applying the breeding animal weight, we recognize a premium that these breeding animals might receive. We also determined the estimated weight of commercial rams to be 200 lb. Therefore, for an early April 2001 outbreak, we determined the rate for commercial breeding rams was $153.48 per head ($76.74/cwt × 200 lb).

*Registered animals, animals in a seedstock flock, and donor animals:*

*Compensation rate for breeding ewes:* $245.56 per head.

*Compensation rate for breeding rams:* $306.96 per head.

The rate for ewes or rams that are breeding animals and are also registered animals, part of a seedstock flock, or donor animals equals 200 percent of the rate established for commercial breeding ewes and rams. For an early April 2001 outbreak, we determined the rate for ewes was $245.56 per head ($122.78 per head × 200 percent) and the rate for rams was $306.96 per head ($153.48 per head × 200 percent).

**List of Subjects in 9 CFR Part 53**

Animal diseases, Indemnity payments, Livestock, Poultry and poultry products.

Accordingly, we propose to revise 9 CFR part 53 to read as follows:

## PART 53—FOOT-AND-MOUTH DISEASE, PLEUROPNEUMONIA, RINDERPEST, AND CERTAIN OTHER COMMUNICABLE DISEASES OF LIVESTOCK OR POULTRY

Sec.
53.1 Definitions.
53.2 Disease control and eradication; payments authorized; determination of disease.
53.3 Payments for animals and materials; other compensation; request for review.
53.4 Destruction of animals.
53.5 Disinfection or destruction of materials.
53.6 Cleaning and disinfection of animals.
53.7 Presentation of claims.
53.8 Claims not allowed.

**Authority:** 21 U.S.C. 111, 114, 114a, and 134a–134h; 7 CFR 2.22, 2.80, and 371.4.

Cross Reference: For nonapplicability of part 53 with respect to certain claims for indemnity, see §§ 50.15 and 51.10 of this chapter.

### § 53.1 Definitions.

*Accredited veterinarian.* A veterinarian approved by the Administrator in accordance with part 161 of this chapter to perform functions specified in parts 1, 2, 3, and 11 of subchapter A of this chapter and subchapters B, C, and D of this chapter, and to perform functions required by cooperative State-Federal disease control and eradication programs.

*Administrator.* The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

*Animal and Plant Health Inspection Service (APHIS).* The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

*Animals.* Livestock, poultry, and all other members of the animal kingdom, including birds whether domesticated or wild, but not including man.

*Animals affected by disease.* Animals determined to be infected with, infested with, or exposed to, a disease covered by this part, including official vaccinates.

*APHIS representative.* Any individual employed by or acting as an agent on behalf of the Animal and Plant Health Inspection Service who is authorized by the Administrator to perform the services required by this part.

*Bird.* Any member of the class *aves* other than poultry.

*Breeding animal.* Any animal being raised for the purpose of producing market animals or other breeding animals and, in the case of a female, has donated embryos or been bred, and in the case of a male, is sexually intact and has reached the age of sexual maturity.

*Commercial breeding animal.* Any breeding animal other than a registered animal, an animal that is part of a seedstock herd or flock, or a donor animal.

*Department.* The United States Department of Agriculture.

*Disease.* Any communicable disease of livestock or poultry for which indemnity is not provided elsewhere in this subchapter, and contagious or infectious animal diseases, such as foot-and-mouth disease, rinderpest, contagious pleuropneumonia, exotic Newcastle disease, highly pathogenic avian influenza, and infectious salmon anemia that, in the opinion of the Secretary, constitute an emergency or an extraordinary emergency and threaten the livestock or poultry of the United States.

*Disease outbreak.* The initial occurrence of the disease, as determined and reported by the United States Department of Agriculture.

*Donor animal.* Any animal, other than a registered animal or an animal that is part of a seedstock herd, that has donated at least two embryos, in the case of females, or at least 100 units of semen, in the case of males, for sale to another producer or transfer to a separate herd or flock.

*Endangered or threatened species.* Those species defined as endangered species or threatened species in the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated thereunder and as they may be subsequently amended.

*Exotic animal.* Any animal that is native to a foreign country or of foreign origin or character, or is not native to the United States.

*Exotic Newcastle disease (END).* Any velogenic Newcastle disease. Exotic Newcastle disease is an acute, rapidly spreading, and usually fatal viral disease of birds and poultry.

*Federal veterinarian.* A veterinarian employed and authorized by the Federal Government to perform the services required by this part.

*Highly pathogenic avian influenza.*

(1) Any influenza virus that kills at least 75 percent of eight 4- to 6-week-old susceptible chickens within 10 days following intravenous inoculation with 0.2 ml of a 1:10 dilution of a bacteria-free, infectious allantoic fluid;

(2) Any H5 or H7 virus that does not meet the criteria in paragraph (1) of this definition, but has an amino acid sequence at the hemagglutinin cleavage site that is compatible with highly pathogenic avian influenza viruses; or

(3) Any influenza virus that is not an H5 or H7 subtype and that kills one to five chickens in the test described in paragraph (1) of this definition and grows in cell culture in the absence of trypsin.

*ISA Program Veterinarian.* The APHIS veterinarian assigned to manage the infectious salmon anemia program for APHIS in the State of Maine and who reports to the area veterinarian in charge.

*Livestock Marketing Information Center.* The organization, funded cooperatively by the United States Department of Agriculture, State land grant universities, and livestock industry associations, that develops, disseminates, and maintains economic and market data relating to the livestock industry.

*Market animal.* Any animal being raised for the primary purpose of slaughter for meat, or, in the case of dairy animals, the production of milk, or, in the case of certain sheep, the production of wool.

*Materials.* Barns or other structures; straw, hay, and other feed and bedding for animals; agricultural products and byproducts; conveyances; equipment; clothing; and any other article.

*National Veterinary Services Laboratories.* The organizational unit within the Animal and Plant Health Inspection Service delegated responsibility for providing services for the diagnosis of domestic and foreign animal diseases, diagnostic support for disease control and eradication programs, import and export testing of animals, training, and laboratory certification for selected diseases.

*Official vaccinate.* Any animal that has been:

(1) Vaccinated with an official vaccine for foot-and-mouth disease under the supervision of a State or Federal veterinarian;

(2) Identified by an eartag specifically approved by APHIS for identification of animals officially vaccinated for foot-and-mouth disease; and

(3) Reported to the Administrator as an official vaccinate for foot-and-mouth disease promptly after vaccination by the State or Federal veterinarian supervising the vaccination.

*Person.* Any individual, corporation, company, association, firm, partnership, society, joint stock company, or other legal entity.

*Poultry.* Chickens, ducks, geese, swans, turkeys, pigeons, doves, pheasants, grouse, partridges, quail, guinea fowl, and pea fowl.

*Rare animal.* An animal that is extremely uncommon in the United States and that is neither an exotic animal nor a member of an endangered or threatened species.

*Registered animal.* An animal of a particular breed for which individual records of ancestry are maintained, and for which individual registration certificates are issued and recorded by a recognized breed association whose purpose is the improvement of the breed.

*Secretary.* The Secretary of Agriculture of the United States or any officer or employee of the Department authorized to act for the Secretary.

*Seedstock herd or flock.* In the case of cattle and sheep, a herd or flock in which, during the previous 5 years, at least 25 percent of the animals born to the herd or flock have, for breeding purposes, been sold to another producer or transferred to a separate herd or flock, or, in the case of swine, a herd in which at least 50 percent of the gilts produced have, for breeding purposes, been sold to another producer or transferred to a separate herd.

*State.* Each of the States of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

*State representative.* An individual employed by a State or a political subdivision to perform the specified functions agreed to by the Department and the State.

*State veterinarian.* A veterinarian employed and authorized by a State or its political subdivision to perform the services required by this part.

**§ 53.2 Disease control and eradication; payments authorized; determination of disease.**

(a) *Disease control and eradication.* (1) The Administrator may cooperate

with States, political subdivisions, farmers' associations and similar organizations, and individuals to control and eradicate disease. Upon agreement of the States, political subdivisions, farmers' associations and similar organizations, or individuals to cooperate with the Administrator in the control and eradication of disease, the Administrator may pay, subject to the availability of funding, the costs of activities listed in paragraphs (a)(1)(i) through (a)(1)(iii) of this section, as provided in paragraphs (a)(2), (a)(3), and (a)(4) of this section:

(i) Purchase, destruction, and disposition of animals affected by disease;

(ii) Purchase, destruction, and disposition of materials contaminated by or exposed to a disease agent when the cost of cleaning and disinfection would exceed the value of the materials or cleaning and disinfection would be impracticable; and

(iii) Cleaning and disinfection of materials that are contaminated by or exposed to a disease agent.

(2) The Administrator is authorized to pay 50 percent of the costs under paragraphs (a)(1)(i) and (a)(1)(ii) of this section; except that for infectious salmon anemia the Administrator may pay up to 60 percent of the costs under paragraphs (a)(1)(i) and (a)(1)(ii) of this section; and except that for exotic Newcastle disease or highly pathogenic avian influenza, or any other case where the animals were affected by a disease prior to or during interstate movement and are not eligible to receive indemnity from any State, the Administrator may pay up to 100 percent of the costs under paragraphs (a)(1)(i) and (a)(1)(ii) of this section; and except that for foot-and-mouth disease, the Administrator will pay 100 percent of the costs under paragraphs (a)(1)(i) and (a)(1)(ii) of this section: *Provided, however,* That when the Secretary determines an extraordinary emergency exists, the Administrator will pay 100 percent of the costs (i.e., the fair market value) under paragraphs (a)(1)(i) and (a)(1)(ii) of this section, subject to the availability of funding: *Provided, further,* That any compensation paid will not exceed the difference between the compensation received from a State or other source and the fair market value of the animals or materials.

(3) Costs incurred under paragraph (a)(1)(iii) of this section will be shared by the Department and the State as agreed to by the Department and the State in which the work is done: *Provided, however,* That in the case of foot-and-mouth disease, the Administrator will pay 100 percent of the fair and reasonable costs incurred under paragraph (a)(1)(iii) of this section.

(4) A cooperative program for the purchase, destruction, and disposition of birds will be limited to birds determined by the Administrator to constitute a threat to the poultry industry of the United States.

(b) *Determination of disease.*

(1) The determination that animals are affected by disease will be made by either a Federal veterinarian or a State veterinarian who has completed the APHIS course on foreign animal disease diagnosis.[1] The determination that animals are affected by disease will be based on such factors as clinical evidence of the disease (signs, necropsy lesions, and history of the occurrence of the disease), diagnostic tests for the disease based on National Veterinary Services Laboratories-approved protocols,[2] or epidemiological evidence (evaluation of clinical evidence and the degree of risk posed by the potential spread of the disease based on the virulence of the disease, its known means of transmission, and the particular species involved).

(2) The determination that materials are contaminated by or exposed to a disease agent shall be made by an APHIS representative or a State representative, based on the guidance of a Federal veterinarian or a State veterinarian.

**§ 53.3 Payments for animals and materials; other compensation; request for review.**

(a) *Valuation of animals.* The value of animals affected by disease and subject to destruction will be the fair market value based on an appraisal of the animals: *Provided, that,* In the case of foot-and-mouth disease only, if the Administrator determines that appraisal of animals affected by disease would be impracticable, or would otherwise compromise efforts to effectively control and eradicate the disease, the Administrator may determine the fair market value of certain animals by a fixed-rate method, as provided in paragraph (a)(2) of this section.

(1) *Appraisal.* Appraisals will be conducted jointly by an APHIS representative and a State representative, or, if the State authorities approve, by an APHIS representative alone. Animals may be appraised in groups provided they are the same species and type and provided that, where appraisal is by the head, each animal in the group is the same value per head, or where appraisal is by the pound, each animal in the group is the same value per pound.

(2) *Fixed-rate method.* The Administrator will establish rates based on the value per head for cattle (beef and dairy cattle), swine, and sheep as provided in paragraphs (a)(2)(i) through (a)(2)(iii) of this section. Rates may be established for other animals for which the Administrator finds sufficient information publicly available to make a calculation of the animal's fair market value in accordance with the procedures provided in paragraph (a)(2) of this section.

(i) *Classification.*

(A) Animals within each species will be classified as market animals or breeding animals.

(B) Market animals will be further classified according to their production phase, including whether or not the animals are weaned and whether or not the animals are on finishing rations (i.e., at a feedlot or finishing barn) as follows:

(*1*) *Beef cattle.* Preweaned calves; non-feedlot, but weaned (stocker) animals; and feedlot animals.

(*2*) *Dairy cattle.* Commercial dairy cows (female dairy cows that are/have been in milk), non-bred heifer replacements and sexually immature bulls, and bred heifer replacements.

(*3*) *Swine.* Grower-finisher pigs, nursery pigs, and preweaned piglets.

(*4*) *Sheep.* Preweaned lambs, weaned feeder lambs, slaughter lambs, and wethers raised for wool production.

(C) Breeding animals will be further classified based on whether they are commercial breeding animals, or are registered animals, part of a seedstock herd or flock, or donor animals as follows:

(*1*) *Beef cattle.* Beef cows (commercial herds); bred replacement heifers (commercial herds); beef bulls (commercial herds); and registered animals, animals in a seedstock herd, and donor animals.

(*2*) *Dairy cattle.* Dairy bulls; and registered animals, animals in a seedstock herd, and donor animals.

(*3*) *Swine.* Sows and boars (commercial herds); and registered animals, animals in a seedstock herd, and donor animals.

(*4*) *Sheep.* Ewes and rams (commercial flocks); and registered

[1] The locations of qualified Federal veterinarians and State veterinarians may be obtained by writing to Emergency Programs, Veterinary Services, Animal and Plant Health Inspection Service, USDA, 4700 River Road, Unit 41, Riverdale, MD 20737–1231, or by referring to the local telephone book.

[2] A copy of the protocols for diagnostic tests of diseases covered by this part may be obtained by writing to Emergency Programs, Veterinary Services, Animal and Plant Health Inspection Service, USDA, 4700 River Road Unit 41, Riverdale, MD 20737–1231.

animals, animals in a seedstock flock, and donor animals.

(ii) *Rates for market animals.*—(A) *Beef cattle.* The rates established for different classifications of beef cattle will be based on prices from applicable futures contracts traded on the Chicago Mercantile Exchange. The rates for preweaned calves and stocker animals will be based on the feeder cattle futures contract. The rate for feedlot animals will be based on the live cattle futures contract. The rate will be determined by multiplying the applicable futures price ($/cwt) by the estimated weight set by APHIS for that classification of animal.

*(1)* The applicable futures price ($/cwt) will be the simple average of the most recently available daily futures prices over a 3-month period immediately prior to the date of the disease outbreak using the futures contract month that corresponds to the month of the disease outbreak, or the next succeeding contract month if there is not an applicable futures contract for the month that corresponds to the month of the disease outbreak: Provided, however, In the case of preweaned beef calves, the applicable futures price will be the simple average of the most recently available daily futures prices for that animal over a 3-month period using the futures contract month that corresponds to the month the claimant has historically weaned their calves, or the next succeeding contract month if there is not an applicable futures contract for the month that corresponds to the month of planned weaning.

(*2*) The estimated weight set by APHIS for different classifications of beef cattle will be the average weight of animals in that production phase based on the most recently available information from the Department's National Agricultural Statistics Service (NASS) and National Animal Health Monitoring System (NAHMS).

(*3*) If the estimated weight for a particular classification of animal does not fall within the weight range of the animal covered by the futures contract, an upward or downward adjustment in the average futures price will be made to reflect this difference in weight and to account for the fact that the price per cwt varies with the total weight of the animal. The adjustment will be calculated by multiplying the price-weight adjustment factor, as determined by the Livestock Marketing Information Center, by the difference between the average weight of the animal covered by the futures contract and the estimated weight set by APHIS for that classification of animal.

(B) *Dairy cattle.* The rate established for commercial dairy cows will be based on the most recent quarterly price per head reported by NASS. The rate for non-bred heifer replacements and sexually immature bulls will be 70 percent of the rate determined for commercial dairy cows. The rate for bred heifer replacements will be 120 percent of the rate determined for commercial dairy cows.

(C) *Swine.*—(*1*) *Grower-finisher pigs.* The rate established for grower-finisher pigs will be based on the lean hogs futures contract traded on the Chicago Mercantile Exchange. The rate will be determined by multiplying the applicable futures price ($/cwt) by the estimated weight set by APHIS for grower-finisher pigs.

(*i*) The applicable futures price ($/cwt) for grower-finisher pigs will be the simple average of the most recently available daily futures prices over a 3-month period immediately prior to the date of the disease outbreak using the futures contract month that corresponds to the month of the disease outbreak, or the next succeeding contract month if there is not an applicable futures contract for the month that corresponds to the month of the disease outbreak, multiplied by 74 percent.

(*ii*) The estimated weight set by APHIS for grower-finisher pigs will be the average weight of grower-finisher pigs based on the most recently available information from NASS and NAHMS.

(*2*) *Nursery pigs.* The rate established for nursery pigs will be based on the simple average of the most recently available national feeder pig (40 lb) prices reported by the Department's Agricultural Marketing Service (AMS) over a 3-month period immediately prior to the date of the disease outbreak.

( *3*) *Preweaned piglets.* The rate established for preweaned piglets will be based on the simple average of the most recently available national early weaned pig (10 lb) prices reported by AMS over a 3-month period immediately prior to the date of the disease outbreak.

(D) *Sheep.* The rate established for preweaned lambs, weaned feeder lambs, slaughter lambs, and wethers raised for wool production will be based on the national lamb carcass price, as reported by AMS. The rate will be determined by multiplying the average AMS price ($/cwt) by the estimated weight set by APHIS for that classification of animal.

(*1*) The average AMS price ($/cwt) will be the simple average of the most recently available national lamb carcass prices reported by AMS over a 3-month period immediately prior to the date of the disease outbreak, multiplied by the AMS reported dressing percentage, or 49.5 percent if the dressing percentage is not reported.

(*2*) The estimated weight set by APHIS for preweaned lambs, weaned feeder lambs, slaughter lambs, and wethers raised for wool production will be the average weight of animals in that production phase based on the most recently available information from NASS and NAHMS.

(*3*) For preweaned lambs and weaned feeder lambs, an upward or downward percentage adjustment in the average AMS price will be made to reflect the difference in weight between preweaned lambs or weaned feeder lambs and slaughter lambs. The price-weight percentage adjustment will be supplied by the Livestock Marketing Information Center.

(iii) *Rates for breeding animals.*—(A) *Generally.* The rates for breeding animals will be determined based on the rates of other market or breeding animals, and then adjusted to include any premium that reflects the animals' breeding value. Breeding animals that are registered animals, animals in a seedstock herd or flock, or animals that have donated germ plasm that has been sold to other producers or transferred to separate herds or flocks, will receive a higher premium than commercial breeding animals.

(B) *Beef cattle.*—(*1*) *Beef cows (commercial herds).* (*i*) The rate established for beef cows (commercial herds) that are breeding animals will be determined by multiplying the applicable futures price ($/cwt) for feedlot animals, as described in paragraph (a)(2)(ii)(A)(*1*) of this section, by the estimated weight set by APHIS for beef cows.

(*ii*) The estimated weight set by APHIS for beef cows will be the average weight of beef cows based on the most recently available information from NASS and NAHMS.

(*2*) *Bred replacement heifers (commercial herds).* The rate established for bred replacement heifers (commercial herds) that are breeding animals will be 120 percent of the rate established for beef cows (commercial herds).

(*3*) *Beef bulls (commercial herds).* The rate established for beef bulls (commercial herds) that are breeding animals will be 250 percent of the rate established for beef cows (commercial herds).

(*4*) *Registered animals, animals in a seedstock herd, and donor animals.*— (*i*) The rate established for beef cows and bred replacement heifers that are breeding animals and are registered

animals, part of a seedstock herd, or donor animals, will be 250 percent of the rate established for beef cows (commercial herds).

(*ii*) The rate established for beef bulls that are breeding animals and are registered animals, part of a seedstock herd, or donor animals, will be 300 percent of the rate established for beef cows (commercial herds).

(C) *Dairy cattle.*—(*1*) *Dairy bulls.* The rate established for dairy bulls that are breeding animals will be 250 percent of the rate established for commercial dairy cows.

(*2*) *Registered animals, animals in a seedstock herd, and donor animals.*

(*i*) The rate established for dairy cows and bred replacement heifers that are breeding animals and are registered animals, part of a seedstock herd, or donor animals, will be 250 percent of the rate established for commercial dairy cows.

(*ii*) The rate established for dairy bulls that are breeding animals and are registered animals, part of a seedstock herd, or donor animals, will be 300 percent of the rate established for commercial dairy cows.

(D) *Swine.*—(*1*) *Sows and boars (commercial herds).* The rate established for commercial sows and boars that are breeding animals will be 200 percent of the rate established for grower-finisher pigs.

(*2*) *Registered animals, animals in a seedstock herd, and donor animals.*

(*i*) The rate established for sows that are breeding animals and are registered animals, part of a seedstock herd, or donor animals, will be 300 percent of the rate established for grower-finisher pigs.

( *ii*) The rate established for boars that are breeding animals and are registered animals, part of a seedstock herd, or donor animals, will be 300 percent of the rate established for grower-finisher pigs.

(E) *Sheep.*—(*1*) *Ewes and rams (commercial flocks).*

(*i*) The rate established for commercial ewes and rams that are breeding animals will be determined by multiplying the average AMS price ($/cwt) for slaughter lambs, as described in paragraph (a)(2)(ii)(D)(*1*) of this section, by the estimated weight set by APHIS for commercial ewes and rams.

(*ii*) The estimated weight set by APHIS for commercial ewes and rams will be the average weight of those animals based on the most recently available information from NASS and NAHMS.

(*2*) *Registered animals, animals in a seedstock flock, and donor animals.*

(*i*) The rate established for ewes that are breeding animals and are registered animals, part of a seedstock flock, or donor animals, will be 200 percent of the rate established for commercial breeding ewes.

(*ii*) The rate established for rams that are breeding animals and are registered animals, part of a seedstock flock, or donor animals, will be 200 percent of the rate established for commercial breeding rams.

(iv) *Request for appraisal.* An owner of animals subject to valuation by the fixed-rate method may submit a written request to the Administrator asking that the animals affected by disease be valued by appraisal instead of by fixed-rate method. The owner must include in the request the reasons why valuation by the fixed-rate method would be unsuitable. In determining whether to grant the request, the Administrator will take into account whether allowing the appraisal would compromise efforts to effectively control and eradicate the disease. The decision by the Administrator regarding the owner's request for appraisal is final. A denial of a request for appraisal under this paragraph does not affect the owner's right to request a review of the valuation under paragraph (d) of this section.

(b) *Valuation of materials.* The value of materials destroyed because of contamination or exposure to a disease agent will be the material's fair market value based on an appraisal: *Provided, that,* In the case of foot-and-mouth disease only, if an appraisal is found to be impracticable, or would otherwise compromise efforts to effectively control and eradicate the disease, the Administrator may authorize the value to be determined by other means, such as through records or other documentation maintained by the claimant indicating the value of the materials destroyed. The appraisal of materials will be conducted jointly by an APHIS representative and a State representative, or, if the State authorities approve, by an APHIS representative alone.

(c) *Other compensation.*—(1) *Costs for cleaning and disinfection.* Compensation for cleaning and disinfection will be based on receipts or other documentation maintained by the claimant verifying expenditures for cleaning and disinfection activities authorized by this part.

(2) [*Reserved*]

(d) *Request for review.* A claimant who disagrees with the valuation in total of all animals or all materials or the amount of other compensation, as determined in this section, may submit a written request for review to the Administrator. The claimant must include in the request the reasons, including any supporting documentation, that the valuation in total of all animals or all materials or the amount of other compensation should be different from the valuation or amount determined by appraisal, fixed-rate method, or other means provided for in this section. The decision by the Administrator regarding the valuation of animals or materials or the amount of other compensation is final.

**§ 53.4 Destruction of animals.**

(a) With the exception of official vaccinates, animals affected by disease must be destroyed promptly after valuation and disposed of by burial, burning, or other manner approved by the Administrator as not contributing to the spread of the disease.

(b) The destruction of animals and the burial, burning, or other disposal of carcasses of animals under this part must be under the supervision of an APHIS representative or a State representative who will prepare and transmit to the Administrator a report identifying the animals destroyed and the manner of their disposition.

(c) Official vaccinates will be destroyed or otherwise handled in a manner as directed by the Administrator to prevent the dissemination of the disease. Official vaccinates not subject to destruction may include, at the discretion of the Administrator, exotic animals, rare animals, or animals belonging to an endangered or threatened species. If official vaccinates are allowed to move to a slaughtering or rendering facility in lieu of destruction or disposition by other means, then any proceeds gained from the sale of the animals to the slaughtering or rendering facility will be subtracted from any indemnity payment from APHIS for which the producer is eligible under § 53.2(a)(2) of this part.

(d) In the case of animals depopulated due to infectious salmon anemia, salvageable fish may be sold for rendering, processing, or any other purpose approved by the Administrator. If fish retail salvage value, the proceeds gained from the sale of the fish will be subtracted from any indemnity payment from APHIS for which the producer is eligible under § 53.2(a)(2).

**§ 53.5 Disinfection or destruction of materials.**

All materials that have been contaminated by or exposed to a disease agent must be cleaned and disinfected under the supervision of an APHIS representative or a State representative: *Provided, however,* That in cases in

which the cost of cleaning and disinfecting materials would exceed the materials' value or cleaning and disinfecting the materials would be impracticable, the materials shall be destroyed under the supervision of an APHIS representative or a State representative, upon determination of their value as provided in § 53.3. The APHIS representative or State representative will prepare and transmit to the Administrator a report identifying all materials destroyed and the manner of their disposition.

**§ 53.6 Cleaning and disinfection of animals.**

Animals of species not susceptible to the disease for which a quarantine has been established, but which have been exposed to the disease, must be cleaned and disinfected, as directed by, and under the supervision of, an APHIS representative or a State representative.

**§ 53.7 Presentation of claims.**

(a) Claims for compensation under this part must each be presented by the claimant to an APHIS representative on forms approved by APHIS. Claims for animals or materials destroyed must be presented by the owner or the owner's designated representative. The claimant shall provide any available supporting documents that will assist the Administrator, or that are requested by the Administrator, in verifying the quantity and value of animals or materials destroyed and the costs of their disposition, the costs of cleaning and disinfection, and any other costs incurred under this part for which compensation is sought. Examples of supporting documentation include, but are not limited to production records, purchase and sales records, breeding records, registration papers, and receipts.

(b) When animals or materials have been destroyed pursuant to this part, the owner of the animals or materials must certify on the claim whether or not the applicable animals or materials are subject to any mortgage. If there is a mortgage, the owner and each person holding a mortgage on the animals or materials must sign forms approved by APHIS indicating they consent to the payment of any indemnity to the person specified on the forms.

**§ 53.8 Claims not allowed.**

(a) The Department will not allow claims arising under this part if the payee has not complied with all Federal quarantine requirements or State quarantine requirements consistent with Federal law or regulations in effect for the control and eradication of the disease.

(b) Costs for the care and feeding of animals held for destruction will not be paid by the Department, unless the payment of such cost is specifically authorized or approved by the Administrator.

(c) The Department will not allow claims arising out of the destruction of animals or materials unless the animals or materials have been valued as prescribed in this part.

(d) The Department will not allow claims arising out of the destruction of animals or materials that have been moved or handled by the owner, or by the owner's representative acting on behalf of the owner, in violation of any Federal law or regulation, or any State law or regulation consistent with a Federal law or regulation, administered to prevent the introduction or dissemination of any contagious or infectious animal disease or any communicable livestock or poultry disease for which the animal or material was destroyed.

(e) The Department will not allow claims arising out of the destruction of fish due to infectious salmon anemia (ISA) unless the claimants have agreed in writing to participate fully in the cooperative ISA control program administered by APHIS and the State of Maine.

Participants in the ISA control program must:

(1) Establish and maintain a veterinary client-patient relationship with an APHIS accredited veterinarian and inform the ISA Program Veterinarian in writing of the name of their accredited veterinarian at the time the participant enrolls in the ISA program and within 15 days of any change in accredited veterinarians.

(2) Cooperate with and assist in periodic on-site disease surveillance, testing, and reporting activities for ISA, which will be conducted by their APHIS accredited veterinarian or a State or Federal official as directed by the ISA Program Veterinarian.

(3) Develop and implement biosecurity protocols for use at all participant-leased finfish sites and participant-operated vessels engaged in aquaculture operations throughout Maine. A copy of these protocols shall be submitted to the ISA Program Veterinarian at the time the participant enrolls in the ISA program and within 15 days of any change in the protocols.

(4) Develop, with the involvement of the participant's accredited veterinarian and the fish site health manager, a site-specific ISA action plan for the control and management of ISA. A copy of the action plan shall be submitted to APHIS for review at the time the participant enrolls in the ISA program and within 15 days of any change in the action plan.

(5) Participate in the State of Maine's integrated pest management (IPM) program for the control of sea lice on salmonids. A copy of the management plan developed by the participant for the State IPM program shall be submitted to APHIS for review at the time the participant enrolls in the ISA program and within 15 days of any change in the management plan.

(6) Submit to the ISA Program Veterinarian at the time the participant enrolls in the ISA program a complete and current fish inventory information for each participant-leased finfish site with site and cage identifiers. Fish inventory information must include the numbers, age, date of saltwater transfer, vaccination status, and previous therapeutant history for all fish in each participant-leased finfish site.

(7) Maintain, and make available to the ISA Program Veterinarian upon request, mortality data for each participant-leased finfish site and pen in production.

(8) Cooperate with and assist APHIS in the completion of biosecurity audits at all participant-leased finfish sites and participant-operated vessels involved in salmonid aquaculture.

(Approved by the Office of Management and Budget under control number 0579–0192)

Done in Washington, DC, this 26th day of April 2002.

**Bill Hawks,**

*Under Secretary for Marketing and Regulatory Programs.*

[FR Doc. 02–10724 Filed 4–30–02; 8:45 am]

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Federal Register

Wednesday,
May 1, 2002

# Part VII

# Department of Commerce

## Bureau of the Census

## Qualifying Urban Areas for Census 2000; Notice

## DEPARTMENT OF COMMERCE

### Bureau of the Census

**[Docket Number 010209034–2084–04]**

### Qualifying Urban Areas for Census 2000

**AGENCY:** Bureau of the Census, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** This Notice provides the list of urbanized areas[1] that qualified based on the results of the 2000 Census of Population and Housing for the United States, Puerto Rico, and the Island Areas.[2] The Bureau of the Census (Census Bureau) determined these urbanized areas using the urban area criteria published in the **Federal Register** on March 15, 2002 (67 FR 11663).[3] In addition, this Notice alerts data users to the future availability of lists of (1) urban clusters and (2) major airports evaluated for inclusion in qualifying urbanized areas and urban clusters.[4]

**EFFECTIVE DATE:** This Notice is effective immediately.

**FOR FURTHER INFORMATION CONTACT:** Robert Marx, Chief, Geography Division, U.S. Census Bureau, 4700 Silver Hill Road-Stop 7400, Washington, DC 20233–7400; telephone (301) 457–2131; e-mail at: *ua@geo.census.gov.*

**SUPPLEMENTARY INFORMATION:** The Census Bureau identifies and tabulates data for the urban and rural populations and their associated areas solely for the presentation and comparison of census statistical data. The Census Bureau does not take into account or attempt to anticipate any nonstatistical uses that may be made of these areas or their associated data, nor does it attempt to meet the requirements of such nonstatistical program uses. Nonetheless, the Census Bureau recognizes that some federal and state agencies are required by law to use Census Bureau-defined urban and rural classifications for allocating program funds, setting program standards, and implementing aspects of their programs. The agencies that make such nonstatistical uses of the areas and data should be aware that the changes to the urban and rural criteria for Census 2000 might affect the implementation of their programs.

If a federal, state, local, or tribal agency voluntarily uses these urban and rural criteria in a nonstatistical program, it is that agency's responsibility to ensure that the criteria are appropriate for such use. In considering the appropriateness of such nonstatistical program uses, the Census Bureau urges each agency to consider permitting appropriate modifications of the results of implementing the urban and rural criteria specifically for the purposes of its program. When a program permits such modifications, the Census Bureau urges each agency to use descriptive terminology that clearly identifies the different criteria being applied so as to avoid confusion with the Census Bureau's official urban and rural classifications.

The Census Bureau examined the use of nonresidential land-use data (other than major airports) to better define urban areas, but it could not find a consistent national database that identifies such areas. This was documented in the final criteria published in the **Federal Register** on March 15, 2002 (67 FR 11663). As a result, many nonresidential areas that would be perceived as clearly part of the urban framework (for example, industrial, commercial, and other types of developed areas with employment) do not qualify for inclusion in a Census 2000 urban area. The Census Bureau is continuing research to determine if there are objective and consistent ways to address issues involving inclusion of nonresidential urban land uses in urban areas in future censuses. For this reason, the Census Bureau stresses the need for users of this urban area information for purposes other than statistical comparison of Census Bureau data to examine the applicability of the areas defined and allow for modifications for nonstatistical purposes.

### Executive Order 12866

This Notice is not significant for purposes of Executive Order 12866.

### Regulatory Flexibility Act

Because a Notice and opportunity for public comment are not required by 5 U.S.C. 553, or any other law, for lists of urbanized areas, this Notice is not subject to the analytical requirements of the Regulatory Flexibility Act. Thus, a Regulatory Flexibility Analysis is not required and none has been prepared (5 U.S.C. 603[a]).

### Paperwork Reduction Act

This Notice does not represent a collection of information subject to the requirements of the Paperwork Reduction Act, Title 44, U.S.C., Chapter 35.

### Urbanized Areas, Urban Clusters, and Major Airports

This section of the Notice provides lists of the Census 2000 urbanized areas. It also refers to the location of listings of urban clusters and major airports.

As a result of Census 2000, there are 453 urbanized areas in the United States, 11 urbanized areas in Puerto Rico, one urbanized area in Guam, and one urbanized area in the Commonwealth of the Northern Mariana Islands, for a total of 466 urbanized areas. This represents a net increase of 61 urbanized areas from the 405 urbanized areas defined based on 1990 census results—396 in the United States and 9 in Puerto Rico. The increase consists of 76 entirely new urbanized areas, plus an additional 15 urbanized areas created from splitting existing areas, minus 29 areas lost through combination and one 1990 urbanized area failing to qualify.

As noted, the Census Bureau defined the Census 2000 urbanized areas using the criteria published in the **Federal Register** on March 15, 2002 (67 FR 11663), but in four cases—Hagåtña GU; St. Charles, MD; Saipan, MP; and The Woodlands, TX—it departed from the criteria when it created a title for an urbanized area. For St. Charles and The Woodlands, an incorporated place with a population of at least 2,500 did exist within the urbanized area, but a well-known, locally identifiable census designated place with more than ten times the population of the incorporated place also existed within the urbanized area. In order to make the areas more identifiable, the Census Bureau decided to use the name of the larger census designated place in the title.

The urbanized areas defined for the first time in the Island Areas—Hagåtña, GU, and Saipan, MP—were named for the designated capitals of Guam and the Commonwealth of the Northern Mariana Islands, respectively, to identify more clearly the most important centers within each urbanized area.

*A. Significant Urbanized Area Changes*

There have been significant changes in the Census 2000 universe of urbanized areas from those defined, based on the 1990 census and criteria.

[1] An urbanized area consists of densely settled territory that contains 50,000 or more people.

[2] The Island Areas are American Samoa, Guam, the Northern Mariana Islands, and the Virgin Islands of the United States.

[3] An urbanized area delineated as a result of a special census conducted by the Census Bureau during this decade (an intercensal urbanized area), at the request and expense of local governments, will be qualified using these criteria and the population counts reported in that special census.

[4] An urban cluster consists of densely settled territory that contains at least 2,500 people, but fewer than 50,000 people. Major airports adjoining qualifying urbanized areas and urban clusters are those airports that, according to 2000 Federal Aviation Administration statistics, had an annual enplanement of at least 10,000 people, and thus qualified as a primary airport in that year.

These changes include new areas, areas formed by splits or mergers, name changes, and areas with significant boundary changes.

1. There are 76 urbanized areas newly qualified for Census 2000; these were not part of any 1990 census urbanized area (UA):

Ames, IA
Atascadero—El Paso de Robles (Paso Robles), CA
Avondale, AZ
Bend, OR
Blacksburg, VA
Bowling Green, KY
Carson City, NV
Cleveland, TN
Coeur d'Alene, ID
Columbus, IN
Corvallis, OR
Dalton, GA
Danville, IL [5]
DeKalb, IL
El Centro, CA
Fairbanks, AK
Fajardo, PR
Farmington, NM
Flagstaff, AZ [6]
Florida—Barceloneta—Bajadero, PR
Fond du Lac, WI
Gainesville, GA
Guayama, PR
Hagåtña, GU
Harrisonburg, VA
Hazleton, PA
Hightstown, NJ
Hinesville, GA
Hot Springs, AR
Jefferson City, MO
Jonesboro, AR
Juana Díaz, PR
Kingston, NY
Lady Lake, FL
Lafayette—Louisville, CO
Lake Jackson—Angleton, TX
Lebanon, PA
Leesburg—Eustis, FL
Lewiston, ID—WA
McKinney, TX
Madera, CA
Mandeville—Covington, LA
Manteca, CA
Michigan City, IN–MI
Middletown, NY
Monroe, MI
Morgantown, WV
Morristown, TN
Mount Vernon, WA
Murfreesboro, TN
Nampa, ID
Petaluma, CA
Porterville, CA
Prescott, AZ
Radcliff—Elizabethtown, KY
St. Augustine, FL
St. Charles, MD
St. George, UT
Saipan, MP
Salisbury, MD—DE
Sandusky, OH
San Germán—Cabo Rojo—Sabana Grande, PR
Saratoga Springs, NY
South Lyon—Howell—Brighton, MI
Temecula—Murrieta, CA
The Woodlands, TX
Tracy, CA
Turlock, CA
Uniontown—Connellsville, PA
Valdosta, GA
Wenatchee, WA
Westminster, MD
Wildwood—North Wildwood—Cape May, NJ
Winchester, VA
Yauco, PR
Zephyrhills, FL

2. There are 17 urbanized areas formed by merging 46 of the 1990 census urbanized areas:

Baltimore, MD (Annapolis, MD and Baltimore, MD)
Boston, MA–NH—RI (Boston, MA; Brockton, MA; Lawrence—Haverhill, MA–NH; Lowell, MA–NH; and Taunton, MA)
Bridgeport—Stamford, CT–NY (Bridgeport—Milford, CT; Norwalk, CT; and Stamford, CT–NY)
Chicago, IL–IN (Aurora, IL; Chicago, IL–Northwestern Indiana; Crystal Lake, IL; Elgin, IL; and Joliet, IL)
Cincinnati OH–KY–IN (Cincinnati, OH–KY and Hamilton, OH)
Denton—Lewisville, TX (Denton, TX and Lewisville, TX)
Hartford, CT (Bristol, CT; Hartford—Middletown, CT; and New Britain, CT)
Indio—Cathedral City—Palm Springs, CA (Indio—Coachella, CA and Palm Springs, CA)
Miami, FL (Fort Lauderdale—Hollywood—Pompano Beach, FL; Miami—Hialeah, FL; and West Palm Beach—Boca Raton—Delray Beach, FL)
Philadelphia, PA–NJ–DE–MD (Philadelphia, PA–NJ, and Wilmington, DE–NJ–MD–PA)
Port St. Lucie, FL (Fort Pierce, FL and Stuart, FL)
Poughkeepsie—Newburgh, NY (Newburgh, NY and Poughkeepsie, NY)
Providence, RI–MA (Fall River, MA–RI; Newport, RI; and Providence—Pawtucket, RI–MA)
Richmond, VA (Petersburg, VA and Richmond, VA)
San Juan, PR (Caguas, PR; Cayey, PR; Humacao, PR; and Vega Baja—Manatí, PR)
Seattle, WA (Seattle, WA and Tacoma, WA)
Youngstown, OH–PA (Sharon, PA–OH and Youngstown, OH)

3. There are 25 urbanized areas formed from splitting ten of the 1990 census urbanized areas:

Aberdeen—Havre de Grace—Bel Air, MD and Baltimore, MD (Baltimore, MD)
Camarillo, CA; Oxnard, CA; and Thousand Oaks, CA (Oxnard—Ventura, CA)
Concord, CA; Livermore, CA; San Francisco—Oakland, CA; San Rafael—Novato, CA; and Vallejo, CA (San Francisco—Oakland, CA)
Dover—Rochester, NH–ME and Portsmouth, NH–ME (Portsmouth—Dover—Rochester, NH–ME)
Gilroy—Morgan Hill, CA, and San Jose, CA (San Jose, CA)
Greenville, SC and Mauldin—Simpsonville, SC (Greenville, SC)
Kansas City, MO–KS and Lee's Summit, MO (Kansas City, MO–KS)
Los Angeles—Long Beach—Santa Ana, CA; Mission Viejo, CA; and Santa Clarita, CA (Los Angeles, CA)
Marysville, WA and Seattle, WA (Seattle, WA)
Norman, OK and Oklahoma City, OK (Oklahoma City, OK)

4. One 1990 census urbanized area failed to qualify as a Census 2000 urbanized area:

Cumberland, MD–WV

5. There are 44 urbanized areas with other significant changes (unrelated to splits and mergers) to their 1990 census boundaries:

Akron, OH: does not include a part of the 1990 census urbanized area (UA), which was transferred to the Census 2000 Cleveland, OH UA.
Anchorage, AK: does not include the separate Northwest Anchorage, AK urban cluster (UC), which was defined from part of the 1990 census UA.
Beloit, WI–IL: does not include a part of the 1990 census UA, which was transferred to the Census 2000 Rockford, IL UA.
Bridgeport—Stamford, CT–NY: contains part of the 1990 census New York, NY–Northeastern New Jersey UA.
Charlotte, NC–SC: contains part of the 1990 census Rock Hill, SC UA.
Cincinnati, OH–KY–IN: contains part of the 1990 census Middletown, OH UA.
Cleveland, OH: contains parts of the 1990 census Akron, OH and Lorain—Elyria, OH UAs.

[5] Danville, IL qualified as an urbanized area as a result of the 1980 census but failed to qualify as an urbanized area for the 1990 census, and therefore is treated as a new urbanized area.

[6] Flagstaff, AZ did not qualify as an urbanized area as a result of the 1990 census but was qualified as an urbanized area in 1996 based on the results of a special census taken in 1995.

Dayton, OH: contains part of the 1990 census Middletown, OH–UA.
Decatur, AL: does not include the separate Hartselle, AL UC, which was defined from part of the 1990 census UA.
Fairfield, CA: does not include the separate Fairfield Southwest, CA UC, which was defined from part of the 1990 census UA.
Gadsden, AL: does not include significant portions of the 1990 census UA, which did not qualify for inclusion in the Census 2000 UA.
Houston, TX: contains part of the 1990 census Texas City, TX UA.
Jackson, MS: does not include the separate Langford, MS, and Richland, MS UCs, which were defined from parts of the 1990 census UA.
Kissimmee, FL: contains part of the 1990 census Orlando, FL UA.
Lewiston, ME: does not include the separate Lisbon Falls, ME UC, which was defined from part of the 1990 census UA, and additional significant portions of the 1990 census UA, which did not qualify for inclusion in the Census 2000 UA.
Lorain—Elyria, OH: does not include part of the 1990 census UA, which was transferred to the Census 2000 Cleveland, OH UA.
Miami, FL: does not include the separate Key Biscayne, FL UC, which was defined from part of the 1990 census UA.
Middletown, OH: does not include parts of the 1990 census UA, which were transferred to the Census 2000 Cincinnati, OH–KY–IN, and Dayton, OH UAs.
Monessen, PA: does not include the separate California, PA UC, which was defined from part of the 1990 census UA.
Montgomery, AL: does not include the separate Prattville, AL UC, which was defined from part of the 1990 census UA.
New York—Newark, NY–NJ–CT: does not include a part of the 1990 census UA, which was transferred to the Census 2000 Bridgeport—Stamford, CT–NY UA.
Odessa, TX: does not include significant portions of the 1990 census UA, which did not qualify for inclusion in the Census 2000 UA.
Ogden—Layton, UT: contains part of the 1990 census Salt Lake City, UT UA.
Orlando, FL: does not include a part of the 1990 census UA, which was transferred to the Census 2000 Kissimmee, FL UA.
Pascagoula, MS: does not include significant portions of the 1990 census UA, which did not qualify for inclusion in the Census 2000 UA.
Philadelphia, PA–NJ–DE–MD: contains part (entire Pennsylvania portion) of the 1990 census Trenton, NJ—PA UA.
Ponce, PR: does not include a part of the 1990 census UA, which was transferred to the Census 2000 Yauco, PR UA.
Rockford, IL: contains part of the 1990 census Beloit, WI—IL UA.
Rock Hill, SC: does not include a part of the 1990 census UA, which was transferred to the Census 2000 Charlotte, NC—SC UA.
Salt Lake City, UT: does not include a part of the 1990 census UA, which was transferred to the Census 2000 Ogden—Layton, UT UA.
San Francisco—Oakland, CA: contains part of the 1990 census San Jose, CA UA.
San Jose, CA: does not include a part of the 1990 census UA, which was transferred to the Census 2000 San Francisco—Oakland, CA UA.
Savannah, GA: does not include the separate Pooler, GA UC, which was defined from part of the 1990 census UA.
Simi Valley, CA: does not include a part of the 1990 census UA, which was transferred to the Census 2000 Thousand Oaks, CA UA.
Texas City, TX: does not include a part of the 1990 census UA, which was transferred to the Census 2000 Houston, TX UA.
Thousand Oaks, CA: contains part of the 1990 census Simi Valley, CA UA.
Trenton, NJ: does not include a part (entire Pennsylvania portion) of the 1990 census UA, which was transferred to the Census 2000 Philadelphia, PA–NJ–DE–MD UA.
Tucson, AZ: does not include the separate Tucson South (Arizona State Prison Complex) AZ and Tucson Southeast, AZ UCs, which were defined from part of the 1990 census UA.
Utica, NY: does not include the separate Rome, NY UC, which was defined from part of the 1990 census UA (Utica—Rome, NY).
Vineland, NJ: does not include the separate Laurel Lake, NJ UC, which was defined from part of the 1990 census UA.
Virginia Beach, VA: does not include the separate Suffolk, VA UC, which was defined from part of the 1990 census UA (Norfolk—Virginia Beach—Newport News, VA).
Yauco, PR: contains part of the 1990 census Ponce, PR UA.

6. There are 72 urbanized areas with changes to their 1990 census names (unrelated to mergers or splits):

Aguadilla—Isabela—San Sebastian, PR, was Aguadilla, PR.
Albany, NY, was Albany—Schenectady—Troy, NY.
Allentown—Bethlehem, PA–NJ, was Allentown—Bethlehem—Easton, PA–NJ.
Antioch, CA, was Antioch—Pittsburg, CA.
Appleton, WI, was Appleton—Neenah, WI.
Athens-Clarke County, GA, was Athens, GA.
Auburn, AL, was Auburn—Opelika, AL.
Augusta-Richmond County, GA–SC, was Augusta, GA–SC.
Barnstable Town, MA, was Hyannis, MA.
Benton Harbor—St. Joseph, MI, was Benton Harbor, MI.
Binghamton, NY–PA, was Binghamton, NY.
Bonita Springs—Naples, FL, was Naples, FL.
Brooksville, FL, was Spring Hill, FL.
Buffalo, NY, was Buffalo—Niagara Falls, NY.
Cape Coral, FL, was Fort Myers—Cape Coral, FL.
Champaign, IL, was Champaign—Urbana, IL.
Charleston—North Charleston, SC, was Charleston, SC.
Charlotte, NC–SC, was Charlotte, NC.
Chicago, IL–IN, was Chicago, IL–Northwestern Indiana.
Cincinnati, OH–KY–IN, was Cincinnati, OH–KY.
College Station–Bryan, TX, was Bryan–College Station, TX.
Concord, NC, was Kannapolis, NC.
Dallas–Fort Worth–Arlington, TX, was Dallas–Fort Worth, TX.
Davenport, IA–IL, was Davenport–Rock Island–Moline, IA–IL.
Daytona Beach–Port Orange, FL, was Daytona Beach, FL.
Denver–Aurora, CO, was Denver, CO.
Dubuque, IA–IL, was erroneously shown in 1990 census electronic files and some 1990 census reports as Dubuque, IA–IL–WI. (The UA was not in Wisconsin.)
Eugene, OR, was Eugene–Springfield, OR.
Fargo, ND–MN, was Fargo–Moorhead, ND–MN.
Gulfport–Biloxi, MS, was Biloxi–Gulfport, MS.
Hagerstown, MD–WV–PA, was Hagerstown, MD–PA–WV.
Hemet, CA, was Hemet–San Jacinto, CA.
Huntington, WV–KY–OH, was Huntington–Ashland, WV–KY–OH.
Kailua (Honolulu County)–Kaneohe, HI, was Kailua, HI.
Kennewick–Richland, WA, was Richland–Kennewick, WA.
Lafayette, IN, was Lafayette–West Lafayette, IN.
Lansing, MI, was Lansing–East Lansing, MI.

Leominster–Fitchburg, MA, was Fitchburg–Leominster, MA.
Lewiston, ME, was Lewiston–Auburn, ME.
Little Rock, AR, was Little Rock–North Little Rock, AR.
Los Angeles–Long Beach–Santa Ana, CA, was Los Angeles, CA.
McAllen, TX, was McAllen–Edinburg–Mission, TX.
Memphis, TN–MS–AR, was Memphis, TN–AR–MS.
Miami, FL, was Miami–Hialeah, FL.
Nashua, NH–MA, was Nashua, NH.
Nashville-Davidson, TN, was Nashville, TN.
New Haven, CT, was New Haven–Meriden, CT.
New York–Newark, NY–NJ–CT, was New York, NY–Northeastern New Jersey.
North Port–Punta Gorda, FL, was Punta Gorda, FL.
Norwich–New London, CT, was New London–Norwich, CT.
Ogden–Layton, UT, was Ogden, UT.
Olympia–Lacey, WA, was Olympia, WA.
Palm Bay–Melbourne, FL, was Melbourne–Palm Bay, FL.
Pensacola, FL–AL, was Pensacola, FL.
Portland, OR–WA, was Portland–Vancouver, OR–WA.
Port St. Lucie, FL, was Fort Pierce, FL.
Providence, RI–MA, was Providence–Pawtucket, RI–MA.
Round Lake Beach–McHenry–Grayslake, IL–WI, was Round Lake Beach–McHenry, IL–WI.
Scranton, PA, was Scranton–Wilkes-Barre, PA.
Seaside–Monterey–Marina, CA, was Seaside–Monterey, CA.
Sherman, TX, was Sherman–Denison, TX.
South Bend, IN–MI, was South Bend–Mishawaka, IN–MI.
Spokane, WA–ID, was Spokane, WA.
Tampa–St. Petersburg, FL, was Tampa–St. Petersburg–Clearwater, FL.
Trenton, NJ, was Trenton, NJ–PA.
Utica, NY, was Utica–Rome, NY.
Vero Beach–Sebastian, FL, was Vero Beach, FL.
Victorville–Hesperia–Apple Valley, CA, was Hesperia–Apple Valley–Victorville, CA.
Virginia Beach, VA, was Norfolk–Virginia Beach–Newport News, VA.
Washington, DC–VA–MD, was Washington, DC–MD–VA.
Waterloo, IA, was Waterloo–Cedar Falls, IA.
Weirton, WV–Steubenville, OH–PA, was Steubenville–Weirton, OH–WV–PA.

*B. List of Urbanized Areas*

An alphabetical list of all qualifying urbanized areas follows. The population counts relate to data reported for Census 2000.

| Urbanized area | Population |
|---|---|
| Aberdeen—Havre de Grace—Bel Air, MD | 174,598 |
| Abilene, TX | 107,041 |
| Aguadilla—Isabela—San Sebastián, PR | 299,086 |
| Akron, OH | 570,215 |
| Albany, GA | 95,450 |
| Albany, NY | 558,947 |
| Albuquerque, NM | 598,191 |
| Alexandria, LA | 78,504 |
| Allentown—Bethlehem, PA–NJ | 576,408 |
| Alton, IL | 84,655 |
| Altoona, PA | 82,520 |
| Amarillo, TX | 179,312 |
| Ames, IA | 50,726 |
| Anchorage, AK | 225,744 |
| Anderson, IN | 97,038 |
| Anderson, SC | 70,436 |
| Ann Arbor, MI | 283,904 |
| Anniston, AL | 75,840 |
| Antioch, CA | 217,591 |
| Appleton, WI | 187,683 |
| Arecibo, PR | 145,643 |
| Asheville, NC | 221,570 |
| Atascadero—El Paso de Robles (Paso Robles), CA | 54,762 |
| Athens-Clarke County, GA | 106,482 |
| Atlanta, GA | 3,499,840 |
| Atlantic City, NJ | 227,180 |
| Auburn, AL | 60,137 |
| Augusta-Richmond County, GA–SC | 335,630 |
| Austin, TX | 901,920 |
| Avondale, AZ | 67,875 |
| Bakersfield, CA | 396,125 |
| Baltimore, MD | 2,076,354 |
| Bangor, ME | 58,983 |
| Barnstable Town, MA | 243,667 |
| Baton Rouge, LA | 479,019 |
| Battle Creek, MI | 79,135 |
| Bay City, MI | 74,048 |
| Beaumont, TX | 139,304 |
| Bellingham, WA | 84,324 |
| Beloit, WI–IL | 56,462 |
| Bend, OR | 57,525 |
| Benton Harbor—St. Joseph, MI | 61,745 |
| Billings, MT | 100,317 |
| Binghamton, NY–PA | 158,884 |
| Birmingham, AL | 663,615 |
| Bismarck, ND | 74,991 |
| Blacksburg, VA | 57,236 |
| Bloomington, IN | 92,456 |
| Bloomington—Normal, IL | 112,415 |
| Boise City, ID | 272,625 |
| Bonita Springs—Naples, FL | 221,251 |
| Boston, MA–NH–RI | 4,032,484 |
| Boulder, CO | 112,299 |
| Bowling Green, KY | 58,314 |
| Bremerton, WA | 178,369 |
| Bridgeport—Stamford, CT–NY | 888,890 |
| Bristol, TN—Bristol, VA | 58,472 |
| Brooksville, FL | 102,193 |
| Brownsville, TX | 165,776 |
| Brunswick, GA | 51,653 |
| Buffalo, NY | 976,703 |
| Burlington, NC | 94,248 |
| Burlington, VT | 105,365 |
| Camarillo, CA | 62,798 |
| Canton, OH | 266,595 |
| Cape Coral, FL | 329,757 |
| Carson City, NV | 58,263 |
| Casper, WY | 57,719 |
| Cedar Rapids, IA | 155,334 |
| Champaign, IL | 123,938 |
| Charleston, WV | 182,991 |
| Charleston—North Charleston, SC | 423,410 |
| Charlotte, NC–SC | 758,927 |
| Charlottesville, VA | 81,449 |
| Chattanooga, TN–GA | 343,509 |
| Cheyenne, WY | 68,202 |
| Chicago, IL–IN | 8,307,904 |
| Chico, CA | 89,221 |
| Cincinnati, OH–KY–IN | 1,503,262 |
| Clarksville, TN–KY | 121,775 |
| Cleveland, OH | 1,786,647 |
| Cleveland, TN | 58,192 |
| Coeur d'Alene, ID | 74,800 |
| College Station—Bryan, TX | 132,500 |
| Colorado Springs, CO | 466,122 |
| Columbia, MO | 98,779 |
| Columbia, SC | 420,537 |
| Columbus, GA–AL | 242,324 |
| Columbus, IN | 50,227 |
| Columbus, OH | 1,133,193 |
| Concord, CA | 552,624 |
| Concord, NC | 115,057 |
| Corpus Christi, TX | 293,925 |
| Corvallis, OR | 58,229 |
| Dallas—Fort Worth—Arlington, TX | 4,145,659 |
| Dalton, GA | 57,666 |
| Danbury, CT–NY | 154,455 |
| Danville, IL | 53,223 |
| Danville, VA | 50,902 |
| Davenport, IA–IL | 270,626 |
| Davis, CA | 66,022 |
| Dayton, OH | 703,444 |
| Daytona Beach—Port Orange, FL | 255,353 |
| Decatur, AL | 52,315 |
| Decatur, IL | 96,454 |
| DeKalb, IL | 55,805 |
| Deltona, FL | 147,713 |
| Denton—Lewisville, TX | 299,823 |
| Denver—Aurora, CO | 1,984,887 |
| Des Moines, IA | 370,505 |
| Detroit, MI | 3,903,377 |
| Dothan, AL | 60,792 |
| Dover, DE | 65,044 |
| Dover—Rochester, NH–ME | 80,456 |
| Dubuque, IA–IL | 65,251 |
| Duluth, MN–WI | 118,265 |
| Durham, NC | 287,796 |
| Eau Claire, WI | 91,393 |
| El Centro, CA | 52,954 |
| Elkhart, IN–MI | 131,226 |
| Elmira, NY | 67,159 |
| El Paso, TX–NM | 674,801 |
| Erie, PA | 194,804 |
| Eugene, OR | 224,049 |
| Evansville, IN–KY | 211,989 |
| Fairbanks, AK | 51,926 |
| Fairfield, CA | 112,446 |
| Fajardo, PR | 78,595 |
| Fargo, ND–MN | 142,477 |
| Farmington, NM | 53,294 |
| Fayetteville, NC | 276,368 |
| Fayetteville—Springdale, AR | 172,585 |
| Flagstaff, AZ | 57,050 |
| Flint, MI | 365,096 |
| Florence, AL | 71,299 |
| Florence, SC | 67,314 |
| Florida—Barceloneta—Bajadero, PR | 68,811 |

| Urbanized area | Population |
|---|---|
| Fond du Lac, WI | 50,058 |
| Fort Collins, CO | 206,633 |
| Fort Smith, AR–OK | 106,470 |
| Fort Walton Beach, FL | 152,741 |
| Fort Wayne, IN | 287,759 |
| Frederick, MD | 119,144 |
| Fredericksburg, VA | 97,102 |
| Fresno, CA | 554,923 |
| Gadsden, AL | 61,709 |
| Gainesville, FL | 159,508 |
| Gainesville, GA | 88,680 |
| Galveston, TX | 54,770 |
| Gastonia, NC | 141,407 |
| Gilroy—Morgan Hill, CA | 84,620 |
| Glens Falls, NY | 57,627 |
| Goldsboro, NC | 57,915 |
| Grand Forks, ND–MN | 56,573 |
| Grand Junction, CO | 92,362 |
| Grand Rapids, MI | 539,080 |
| Great Falls, MT | 64,387 |
| Greeley, CO | 93,879 |
| Green Bay, WI | 187,316 |
| Greensboro, NC | 267,884 |
| Greenville, NC | 84,059 |
| Greenville, SC | 302,194 |
| Guayama, PR | 77,755 |
| Gulfport—Biloxi, MS | 205,754 |
| Hagåtña, GU | 132,241 |
| Hagerstown, MD–WV–PA | 120,326 |
| Harlingen, TX | 110,770 |
| Harrisburg, PA | 362,782 |
| Harrisonburg, VA | 52,647 |
| Hartford, CT | 851,535 |
| Hattiesburg, MS | 61,465 |
| Hazleton, PA | 51,746 |
| Hemet, CA | 117,200 |
| Hickory, NC | 187,808 |
| High Point, NC | 132,844 |
| Hightstown, NJ | 69,977 |
| Hinesville, GA | 50,360 |
| Holland, MI | 91,795 |
| Honolulu, HI | 718,182 |
| Hot Springs, AR | 51,763 |
| Houma, LA | 125,929 |
| Houston, TX | 3,822,509 |
| Huntington, WV–KY–OH | 177,550 |
| Huntsville, AL | 213,253 |
| Idaho Falls, ID | 66,973 |
| Indianapolis, IN | 1,218,919 |
| Indio—Cathedral City—Palm Springs, CA | 254,856 |
| Iowa City, IA | 85,247 |
| Ithaca, NY | 53,528 |
| Jackson, MI | 88,050 |
| Jackson, MS | 292,637 |
| Jackson, TN | 65,086 |
| Jacksonville, FL | 882,295 |
| Jacksonville, NC | 95,514 |
| Janesville, WI | 66,034 |
| Jefferson City, MO | 53,714 |
| Johnson City, TN | 102,456 |
| Johnstown, PA | 76,113 |
| Jonesboro, AR | 51,804 |
| Joplin, MO | 72,089 |
| Juana Diaz, PR | 54,835 |
| Kailua (Honolulu County)—Kaneohe, HI | 117,730 |
| Kalamazoo, MI | 187,961 |
| Kankakee, IL | 65,073 |
| Kansas City, MO–KS | 1,361,744 |
| Kennewick—Richland, WA | 153,851 |
| Kenosha, WI | 110,942 |
| Killeen, TX | 167,976 |
| Kingsport, TN–VA | 95,766 |
| Kingston, NY | 53,458 |
| Kissimmee, FL | 186,667 |
| Knoxville, TN | 419,830 |
| Kokomo, IN | 63,739 |
| La Crosse, WI–MN | 89,966 |
| Lady Lake, FL | 50,721 |
| Lafayette, IN | 125,738 |
| Lafayette, LA | 178,079 |
| Lafayette—Louisville, CO | 60,387 |
| Lake Charles, LA | 132,977 |
| Lake Jackson—Angleton, TX | 73,416 |
| Lakeland, FL | 199,487 |
| Lancaster, PA | 323,554 |
| Lancaster—Palmdale, CA | 263,532 |
| Lansing, MI | 300,032 |
| Laredo, TX | 175,586 |
| Las Cruces, NM | 104,186 |
| Las Vegas, NV | 1,314,357 |
| Lawrence, KS | 79,647 |
| Lawton, OK | 89,556 |
| Lebanon, PA | 63,681 |
| Leesburg—Eustis, FL | 97,497 |
| Lee's Summit, MO | 55,285 |
| Leominster—Fitchburg, MA | 112,943 |
| Lewiston, ID–WA | 50,317 |
| Lewiston, ME | 50,567 |
| Lexington-Fayette, KY | 250,994 |
| Lima, OH | 74,071 |
| Lincoln, NE | 226,582 |
| Little Rock, AR | 360,331 |
| Livermore, CA | 75,202 |
| Lodi, CA | 83,735 |
| Logan, UT | 76,187 |
| Lompoc, CA | 55,667 |
| Longmont, CO | 72,929 |
| Longview, TX | 78,070 |
| Longview, WA—OR | 60,443 |
| Lorain—Elyria, OH | 193,586 |
| Los Angeles—Long Beach—Santa Ana, CA | 11,789,487 |
| Louisville, KY–IN | 863,582 |
| Lubbock, TX | 202,225 |
| Lynchburg, VA | 98,714 |
| McAllen, TX | 523,144 |
| McKinney, TX | 54,525 |
| Macon, GA | 135,170 |
| Madera, CA | 58,027 |
| Madison, WI | 329,533 |
| Manchester, NH | 143,549 |
| Mandeville—Covington, LA | 62,866 |
| Mansfield, OH | 79,698 |
| Manteca, CA | 51,176 |
| Marysville, WA | 114,372 |
| Mauldin—Simpsonville, SC | 77,831 |
| Mayagüez, PR | 119,350 |
| Medford, OR | 128,780 |
| Memphis, TN–MS–AR | 972,091 |
| Merced, CA | 110,483 |
| Miami, FL | 4,919,036 |
| Michigan City, IN–MI | 66,199 |
| Middletown, NY | 50,071 |
| Middletown, OH | 94,355 |
| Midland, TX | 99,221 |
| Milwaukee, WI | 1,308,913 |
| Minneapolis—St. Paul, MN | 2,388,593 |
| Mission Viejo, CA | 533,015 |
| Missoula, MT | 69,491 |
| Mobile, AL | 317,605 |
| Modesto, CA | 310,945 |
| Monessen, PA | 56,508 |
| Monroe, LA | 113,818 |
| Monroe, MI | 53,153 |
| Montgomery, AL | 196,892 |
| Morgantown, WV | 55,997 |
| Morristown, TN | 54,368 |
| Mount Vernon, WA | 51,174 |
| Muncie, IN | 90,673 |
| Murfreesboro, TN | 135,855 |
| Muskegon, MI | 154,729 |
| Myrtle Beach, SC | 122,984 |
| Nampa, ID | 95,909 |
| Napa, CA | 79,867 |
| Nashua, NH–MA | 197,155 |
| Nashville-Davidson, TN | 749,935 |
| Newark, OH | 70,001 |
| New Bedford, MA | 146,730 |
| New Haven, CT | 531,314 |
| New Orleans, LA | 1,009,283 |
| New York—Newark, NY–NJ–CT | 17,799,861 |
| Norman, OK | 86,478 |
| North Port—Punta Gorda, FL | 122,421 |
| Norwich—New London, CT | 173,160 |
| Ocala, FL | 106,542 |
| Odessa, TX | 111,395 |
| Ogden—Layton, UT | 417,933 |
| Oklahoma City, OK | 747,003 |
| Olympia—Lacey, WA | 143,826 |
| Omaha, NE–IA | 626,623 |
| Orlando, FL | 1,157,431 |
| Oshkosh, WI | 71,070 |
| Owensboro, KY | 67,665 |
| Oxnard, CA | 337,591 |
| Palm Bay—Melbourne, FL | 393,289 |
| Panama City, FL | 132,419 |
| Parkersburg, WV–OH | 85,605 |
| Pascagoula, MS | 54,190 |
| Pensacola, FL–AL | 323,783 |
| Peoria, IL | 247,172 |
| Petaluma, CA | 59,958 |
| Philadelphia, PA–NJ–DE–MD | 5,149,079 |
| Phoenix—Mesa, AZ | 2,907,049 |
| Pine Bluff, AR | 58,584 |
| Pittsburgh, PA | 1,753,136 |
| Pittsfield, MA | 52,772 |
| Pocatello, ID | 62,498 |
| Ponce, PR | 195,037 |
| Port Arthur, TX | 114,656 |
| Porterville, CA | 60,261 |
| Port Huron, MI | 86,486 |
| Portland, ME | 188,080 |
| Portland, OR–WA | 1,583,138 |
| Port St. Lucie, FL | 270,774 |
| Portsmouth, NH–ME | 50,912 |
| Pottstown, PA | 73,597 |
| Poughkeepsie-Newburgh, NY | 351,982 |
| Prescott, AZ | 61,909 |
| Providence, RI–MA | 1,174,548 |
| Provo—Orem, UT | 303,680 |
| Pueblo, CO | 123,351 |
| Racine, WI | 129,545 |
| Radcliff—Elizabethtown, KY | 64,504 |
| Raleigh, NC | 541,527 |
| Rapid City, SD | 66,780 |
| Reading, PA | 240,264 |
| Redding, CA | 105,267 |
| Reno, NV | 303,689 |
| Richmond, VA | 818,836 |
| Riverside—San Bernardino, CA | 1,506,816 |
| Roanoke, VA | 197,442 |
| Rochester, MN | 91,271 |
| Rochester, NY | 694,396 |
| Rockford, IL | 270,414 |
| Rock Hill, SC | 70,007 |
| Rocky Mount, NC | 61,657 |
| Rome, GA | 58,287 |
| Round Lake Beach—McHenry—Grayslake, IL–WI | 226,848 |

| Urbanized area | Population |
|---|---|
| Sacramento, CA | 1,393,498 |
| Saginaw, MI | 140,985 |
| St. Augustine, FL | 53,519 |
| St. Charles, MD | 74,765 |
| St. Cloud, MN | 91,305 |
| St. George, UT | 62,630 |
| St. Joseph, MO–KS | 77,231 |
| St. Louis, MO–IL | 2,077,662 |
| Saipan, MP | 61,695 |
| Salem, OR | 207,229 |
| Salinas, CA | 179,173 |
| Salisbury, MD–DE | 59,426 |
| Salt Lake City, UT | 887,650 |
| San Angelo, TX | 87,969 |
| San Antonio, TX | 1,327,554 |
| San Diego, CA | 2,674,436 |
| Sandusky, OH | 50,693 |
| San Francisco—Oakland, CA | 2,995,769 |
| San Germán—Cabo Rojo—Sabana Grande, PR | 112,939 |
| San Jose, CA | 1,538,312 |
| San Juan, PR | 2,216,616 |
| San Luis Obispo, CA | 53,498 |
| San Rafael—Novato, CA | 232,836 |
| Santa Barbara, CA | 196,263 |
| Santa Clarita, CA | 170,481 |
| Santa Cruz, CA | 157,348 |
| Santa Fe, NM | 80,337 |
| Santa Maria, CA | 120,297 |
| Santa Rosa, CA | 285,408 |
| Sarasota—Bradenton, FL | 559,229 |
| Saratoga Springs, NY | 51,172 |
| Savannah, GA | 208,886 |
| Scranton, PA | 385,237 |
| Seaside—Monterey—Marina, CA | 125,503 |
| Seattle, WA | 2,712,205 |
| Sheboygan, WI | 68,600 |
| Sherman, TX | 56,168 |
| Shreveport, LA | 275,213 |
| Simi Valley, CA | 112,345 |
| Sioux City, IA–NE–SD | 106,119 |
| Sioux Falls, SD | 124,269 |
| Slidell, LA | 79,926 |
| South Bend, IN–MI | 276,498 |
| South Lyon—Howell—Brighton, MI | 106,139 |
| Spartanburg, SC | 145,058 |
| Spokane, WA–ID | 334,858 |
| Springfield, IL | 153,516 |
| Springfield, MA–CT | 573,610 |
| Springfield, MO | 215,004 |
| Springfield, OH | 89,684 |
| State College, PA | 71,301 |
| Stockton, CA | 313,392 |
| Sumter, SC | 64,320 |
| Syracuse, NY | 402,267 |
| Tallahassee, FL | 204,260 |
| Tampa—St. Petersburg, FL | 2,062,339 |
| Temecula—Murrieta, CA | 229,810 |
| Temple, TX | 71,937 |
| Terre Haute, IN | 79,376 |
| Texarkana, TX—Texarkana, AR | 72,288 |
| Texas City, TX | 96,417 |
| The Woodlands, TX | 89,445 |
| Thousand Oaks, CA | 210,990 |
| Titusville, FL | 52,922 |
| Toledo, OH–MI | 503,008 |
| Topeka, KS | 142,411 |
| Tracy, CA | 59,020 |
| Trenton, NJ | 268,472 |
| Tucson, AZ | 720,425 |
| Tulsa, OK | 558,329 |
| Turlock, CA | 69,507 |
| Tuscaloosa, AL | 116,888 |
| Tyler, TX | 101,494 |
| Uniontown—Connellsville, PA | 58,442 |
| Utica, NY | 113,409 |
| Vacaville, CA | 90,264 |
| Valdosta, GA | 57,647 |
| Vallejo, CA | 158,967 |
| Vero Beach—Sebastian, FL | 120,962 |
| Victoria, TX | 61,529 |
| Victorville—Hesperia—Apple Valley, CA | 200,436 |
| Vineland, NJ | 88,724 |
| Virginia Beach, VA | 1,394,439 |
| Visalia, CA | 120,044 |
| Waco, TX | 153,198 |
| Warner Robins, GA | 90,838 |
| Washington, DC–VA–MD | 3,933,920 |
| Waterbury, CT | 189,026 |
| Waterloo, IA | 108,298 |
| Watsonville, CA | 66,500 |
| Wausau, WI | 68,221 |
| Weirton, WV—Steubenville, OH–PA | 73,710 |
| Wenatchee, WA | 55,425 |
| Westminster, MD | 65,034 |
| Wheeling, WV–OH | 87,613 |
| Wichita, KS | 422,301 |
| Wichita Falls, TX | 99,396 |
| Wildwood—North Wildwood—Cape May, NJ | 52,550 |
| Williamsport, PA | 58,693 |
| Wilmington, NC | 161,149 |
| Winchester, VA | 53,559 |
| Winston-Salem, NC | 299,290 |
| Winter Haven, FL | 153,924 |
| Worcester, MA–CT | 429,882 |
| Yakima, WA | 112,816 |
| Yauco, PR | 108,024 |
| York, PA | 192,903 |
| Youngstown, OH–PA | 417,437 |
| Yuba City, CA | 97,645 |
| Yuma, AZ–CA | 94,950 |
| Zephyrhills, FL | 53,979 |

*C. List of Urban Areas (Urbanized Areas and Urban Clusters)*

A complete list of the 3,638 qualifying urban areas, which includes both urbanized areas and urban clusters, and the list of central places will be available from the Census Bureau's Urban and Rural Classification Web page at: *http://www.census.gov/geo/www/ua/ua_2k.html.*

*D. List of Major Airports*

A list of major airports evaluated for inclusion in urbanized areas and urban clusters will be available from the Census Bureau's Urban and Rural Classification Web page at: *http://www.census.gov/geo/www/ua/ua_2k.html.*

*E. Geographic Products*

TIGER/Line® files that contain the boundaries, names, and codes of urbanized areas and urban clusters will be available from the Census Bureau's TIGER/Line® Web page at: http://*www.census.gov/geo/www/tiger/index.html.* Maps produced by the Census Bureau, showing the boundaries and component geographic entities of urbanized areas and urban clusters, will be available in late 2002. For information updates concerning the availability of maps, data users should monitor the Census Bureau's Urban and Rural Classification Web page at: *http://www.census.gov/geo/www/ua/ua_2k.html.*

Dated: April 26, 2002.

**Charles Louis Kincannon,**

*Director, Bureau of the Census.*

[FR Doc. 02–10805 Filed 4–30–02; 8:45 am]

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Federal Register

Wednesday,
May 1, 2002

# Part VIII

# Department of Housing and Urban Development

## Funding Availability for the HUD Urban Scholars Fellowship Program; Notice

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4724–N–01]**

## Notice of Funding Availability for the HUD Urban Scholars Fellowship Program

**AGENCY:** Office of Policy Development and Research, HUD.

**ACTION:** Notice of Funding Availability (NOFA).

**SUMMARY:** This NOFA announces the availability of approximately $550,000 in FY 2001 funds for the HUD Urban Scholars program for FY 2002.

*Purpose of the Program.* To provide encouragement to new scholars to undertake research now, and throughout their careers, on research topics of interest to HUD.

*Available Funds.* Approximately $550,000 in FY 2001 funding.

*Eligible Applicants:* Only Ph.D.s who have an academic appointment at an institution of higher education and have received their Ph.D. degrees no earlier than January 1, 1997.

*Application Deadline.* June 5, 2002.

*Match.* University support in terms of course load reductions, indirect costs waived, space, etc. are required.

### Additional Information

*Paperwork Reduction Act Statement*

The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget (OMB), under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2528–0175. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

### I. Application Due Date, Application Kits, Further Information, and Technical Assistance

*Application Due Date.* Your completed application must be received on or before June 5, 2002.

*Address for Submitting Applications.* Your completed application consists of an original signed application, which can be submitted in hard copy or electronically. Submit your completed application to the following address: The Fellowship Office/HUD TJ 2041, National Research Council, 2001 Wisconsin Avenue, NW, Washington, DC, 20007. Please mark on the envelope for your application that it is for the HUD Urban Scholars Fellowship Program.

HUD will accept only one application per applicant.

*For Application Kits.* An application kit can be obtained by calling or writing the Fellowship Office/HUD, TJ 2041, National Research Council, 2001 Wisconsin Avenue, NW, Washington, DC 20007. Telephone number 202–334–2872 and facsimile number 202–334–3419. The application kit can be downloaded from the Internet at: *http://national-academies.org/fellowships* or at *http://www.hud.gov./grants.*

*For Further Information and Technical Assistance.* You may call the above number. You may also write to the National Research Council (NRC) via email at infofell@nas.edu.

### II. Amount Allocated

Approximately $550,000 is being made available from the Department's Fiscal Year 2001 appropriation under this NOFA for the HUD Urban Scholars Fellowship Program.

The maximum grant period is 15 months. The performance period will commence on the effective date of the grant agreement.

The maximum amount to be requested by and awarded to an applicant is $55,000. In order to ensure research efforts are focused on specific Departmental priorities, HUD reserves the right to make awards for less than the maximum amount or less than the amount requested in your application.

### III. Program Description; Eligible Applicants; Eligible Activities

(A) *Program Description.* The purposes of the HUD Urban Scholars Program are to:

(1) Fund research relevant to HUD priorities and issues;

(2) Provide encouragement to new scholars to undertake research now, and for the rest of their careers, on research topics of interest to HUD; and

(3) Have an impact on the academic context in which these scholars work so that this kind of research becomes highly valued. The research priorities for the HUD Urban Scholars Program are designed to inform Federal problem-solving and policy-making relating to HUD's strategic goals for this year. Examples of topics addressing these priorities include but are not limited to:

• *Homeownership*

1. Homeownership

(a) Relative importance of factors in tenure decisions

(b) Estimation of private and social benefits and costs of homeownership

(c) Role in employment, household savings, and investment decisions

(d) Effects of demographics, macro-economic environment and government policies on homeownership

(e) Effects of homeownership on low- and moderate-income households

2. Housing Finance

(a) Institutional barriers to efficiency in the housing finance system

(b) Enabling the housing finance system to better serve low-income and minority borrowers more effectively

3. Home Equity Conversion Mortgages

• *Housing Market Conditions*

1. Housing Markets

(a) Factors affecting rents, home values, tenure, vacancy rates

(b) Market absorption of new units

(c) Construction activity

2. Housing Stock

(a) Durability of stock

(b) Energy efficiency

(c) Factors determining rehabilitation and remodeling

(d) Comparisons with stock in other developed countries

3. Availability of Affordable Housing

(a) Policy and program options in tight or ''soft'' markets

(b) Preservation of existing stock

• *Equal Opportunity and Access to Housing*

1. Effectiveness of different models (including local initiatives) for promoting Fair Housing objectives

2. Discrimination in housing and lending

(a) Methods to detect discrimination

(b) Systemic patterns and practices

• *Homelessness*

1. Strategies to combat homelessness

(a) Addressing chronic homelessness

(b) Causes of homelessness

(c) Helping families move from transitional to permanent housing

(d) Issues and responses to youth homelessness

• *Community and Economic Development*

1. Create or expand business

(a) Meet the needs of underserved inner city, older suburb, or rural areas

(b) Expansion of access to capital

(c) Joint ventures with faith-based or other community-based grassroots organizations

1. Development of inner cities

(a) Studies of reinvestment pressures

(b) Theories of capital/land/market failure that help to explain depopulation or disinvestment

(c) Government policies or market interventions that would alleviate these patterns

3. Regionalism and growth management

(a) The economic interdependence of cities and suburbs

(b) Rehabilitation and infill development

(c) Regional problem solving and coalition building

(d) Reinvestment in the urban core

(e) Impact of community economic development policies, programs, and initiatives

• Faith-based and Other Community-based Partnerships

1. Community development and community building

(a) Role of faith-based groups in low-income housing and community development efforts

(b) Faith-based and higher education community building efforts

2. Evaluation of college/community partnerships and institutionalizing these partnerships at colleges and universities

• Assisted Housing Programs

1. Housing needs of the elderly and persons with disabilities

(a) Availability

(b) Design and Quality, including Accessibility

(c) Affordability

(d) Linked services

2. Affordability of rental housing

(a) Innovative partnerships or finance tools

(b) Cost-benefit analyses of alternative methods for providing housing assistance

(c) Effectiveness of voucher programs

(d) Evaluations of existing programs

• Strategies for helping families in public and assisted housing make progress toward self-sufficiency and become homeowners

• Colonias

1. How current policies determine the kinds of housing available

2. The perception of ''community'' in colonias

3. Evaluation of existing housing programs in colonias

(B) *Eligible Applicants*. You must have your Ph.D. and meet the following conditions:

(1) You must have an academic appointment with an institution of higher education. This means that you must either be on a tenure track or be on a term (teaching or research) appointment that will extend beyond the 15-month duration of this fellowship;

(2) You must have received your Ph.D. no earlier than January 1, 1997;

(3) It is realistic to believe that your proposed research project can be completed within the 15-month fellowship period;

(4) You must have support from your institution as attested to in the letter described below in Section V (C); and

(5) You must provide appropriate written evidence that you are lawfully admitted for permanent residence in the United States, if you are not a citizen.

(C) *Eligible Activities*. Your grant must support costs related to completion of your research project. Eligible costs include, but are not limited to, your salary for two summers, graduate assistants to work on the project, up to $2,500 per course for the cost of employing a replacement for the course(s) your university releases you from teaching, computer software, survey development and administration, the purchase of data, travel expenses to collect data or to make presentations at meetings on your findings, transcription services, compensation for interviews, and no more than eight (8) percent of the university's indirect costs.

## IV. Application Selection Process

The competition and selection process for this program will be run on HUD's behalf by the National Research Council (NRC). NRC will conduct two types of reviews: A threshold review to determine your eligibility to apply; and a technical review to rate your application based on the rating factors in this section.

(A) *Threshold Factors for Funding Consideration*. Under this threshold review, your application can only be rated if the following standards are met:

(1) You are eligible to apply for this program, as defined in Section III(B) above, and have provided a letter from your department chair confirming this;

(2) You have obtained a mentor and have included a letter from this person confirming this and describing his/her role in your research; and

(3) Your institution has agreed to provide some support to you, above that provided by this funding, as part of this grant.

(B) *Ineligible Activities*. Your grant may not be used to pay for tuition, computer hardware, meals, relocation costs, or other costs not directly related to your research project. Fellowship funding cannot be used to substitute for university funding.

(C) *Other Requirements*.

(1) *Support from your university*. Support from your university is required. Institutions will be required to contribute, at a minimum, the following:

(a) Designating a faculty advisor to monitor your progress on your research project;

(b) Office space, computer usage, etc.; and

(c) Waived indirect costs above the eight percent (8%) allowed to be covered by this fellowship. In addition, your application will be viewed more favorably if your institution agrees to reduce your course load by at least one course per term or semester, but to continue paying you your full salary.

(2) *Progress reporting*. You will be required to submit a report, halfway through your fellowship, on the progress you have made towards completion of the research project and the likelihood that you will complete it on time.

(3) *Mentors*. You will be required to work with a mentor on your research project. The mentor, who can be someone in your institution or elsewhere, should be a well-respected scholar in the area of your research topic. The mentor will be expected to provide you with advice and direction on substantive research issues. The mentor and the faculty monitor described above can be, but do not have to be, the same person.

(4) *Compliance with Fair Housing and Civil Rights Laws*. All applicants and their subrecipients must comply with all Fair Housing and civil rights laws, statutes, regulations and executive orders as enumerated in 24 CFR 5.105(a). In addition, the applicant and any subrecipients must comply with Title IX of the Education Amendments Act of 1972 (20 U.S.C. 1681 et seq).

If you, the applicant—

(a) Have been charged with a systemic violation of the Fair Housing Act by the Secretary alleging ongoing discrimination;

(b) Are a defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination; or

(c) Have received a letter of noncompliance findings under Title VI, Section 504 or Section 109, NRC will not rate and rank your application under this NOFA if the charge, lawsuit or letter of findings has not been resolved to the satisfaction of the Department before the application deadline. HUD's decision whether a charge, lawsuit, or a letter of findings has been satisfactorily resolved will be based upon whether appropriate actions have been taken to address allegations of ongoing discrimination in the policies or practices involved in the charge, lawsuit or letter of findings.

(D) *Conflicts of Interest*. All individuals involved in rating and ranking this NOFA, including experts and consultants, must avoid conflicts of interest or the appearance of conflicts. Individuals involved in the rating and ranking of applications must disclose to HUD's General Counsel or HUD's Ethics Law Division the following information, if applicable: how the selection or non-selection of any applicant under this NOFA will affect the individual's financial interests, as provided in 18 U.S.C. 208; or, how the application process involves a party with whom the individual has a covered relationship under 5 CFR 2635.502. The individual must disclose this information prior to

participating in any matter regarding this NOFA. If you have questions regarding these provisions, or if you have questions concerning a conflict of interest. you may call the Office of General Counsel, Ethics Law Division, at 202–708–3815.

(E) *Factors for Award Used to Evaluate and Rate Applications.* The factors for rating and ranking applicants, and maximum points for each factor, are provided below. The maximum number of points for this program is 100.

Rating Factor 1: Capacity to do the Research (15 points). In reviewing this factor, NRC will determine the extent to which your training, past employment, and past written work, such as your dissertation, teaching, coursework, and previously completed research papers that were accepted for presentation or publication, lay a foundation for this proposed work.

Rating Factor 2: Need for the Research (20 points). In reviewing this factor, NRC will determine the extent to which your proposed project undertakes research on an area not covered by previous research or proposes to look at a previously studied research topic in a new and different way. Reviewers will look at the clarity and compellingness of the case the applicant makes for this project in the context of the existing literature and knowledge base for that topic.

Rating Factor 3: Approach (40 total points).

(a) Appropriateness of your Methodology and Approach to the Research Topic (25 points). In reviewing this factor, NRC will determine the extent to which your research design and methodology are likely to produce data and information that will successfully answer your research hypotheses. NRC will also evaluate the extent to which the methodology you propose to use is sound and generally accepted by the relevant research community. Reviewers will be looking at the extent to which you use standard methodological practices in line with research already completed or existing publications in the field related to your research questions.

(b) Plan for Timely Completion of Your Research Project (10 points). In reviewing this factor, NRC will determine the extent to which your research design and methodology and plan for completion of your research project can feasibly be completed within the 15-month fellowship period. Applications that propose extremely complex and time-consuming data collection efforts (e.g., major longitudinal studies or a very large number of site visits within the grant period) will be determined to be less feasible of completion within the allowed time frame. For example, if you propose a methodology based on information that may not be publicly available until after the end of the grant period (e.g., census information), or a data collection plan that will take longer than the time you have allowed for it, you will get a lower score than if you have presented a time line and methodology that show evidence that the research project can be completed within the grant period.

(c) Quality of the Mentoring Plan (5 points). In reviewing this factor, NRC will determine the appropriateness of the person chosen to be your mentor (in terms of his/her previous work (e.g., research, publications, presentations, standing in the research community, and availability) and the role the mentor has agreed to play in your project. The higher the time commitment the mentor makes to you, the higher the points you will receive.

Rating Factor 4: Commitment of the University (10 points). In reviewing this factor, NRC will determine the extent of the commitment of your university, beyond that required in Section IV (C)(1). The quality of your institution's commitment, in terms of its furthering your research project, will also be evaluated under this factor. For example, your university could propose to cover the cost of a graduate assistant to work on your research project in order to demonstrate its commitment beyond what is required of it. The larger the commitment, translated into dollar terms, the higher the points. Full points may only be received if your institution agrees to reduce your course load by one course a semester or term and continue paying you your full salary.

Rating Factor 5: Relevance of Your Research to HUD's Strategic Goals (15 points). In reviewing this factor, NRC will determine the extent to which your proposed research project will produce policy-relevant information that is directly related to one or more of the strategic goals listed above (i.e., the research could improve the effectiveness of HUD's programs and policies and the ability to achieve the stated goals). The less directly related to one of these goals your research project is, the fewer points you will receive. For example, a study of minorities' housing choice decisions would have high relevance to HUD's strategic goals; a study of transportation inequities would have medium relevance; and a study of the effects of global warming on urban development would have low relevance.

(F) *Selections.* HUD will fund applications in rank order, until it has awarded all available funds. However, as noted in Section II, HUD reserves the right to make awards for less than the amount requested in your application. After all application selections have been made, HUD may require that you participate in negotiations to determine the specific terms of the fellowship and the grant budget. In cases where HUD cannot successfully complete negotiations, or you fail to provide HUD with requested information, an award will not be made. In such instances, HUD may elect to offer an award to the next highest-ranking applicant, and proceed with negotiations with that applicant.

## V. Application Submission Requirements

You should include an original or electronic copy of your application. Please note the page limits for some of the items listed below and do not exceed them.

*The application kit made available by HUD through NRC will require the following items:*

(A) SF–424

(B) SF–424–B

(C) SF–424–C

(D) Evidence of your eligibility, including:

(1) A Ph.D. received on or after January 1, 1997;

(2) A letter from your faculty chairperson, including the university's name, department, mailing address, telephone and facsimile numbers, attesting to your appointment to a tenure track or position extending beyond the 15-month duration of this fellowship and describing the support provided by the institution;

(E) Response to Rating Factor 1, your capacity to do the research, including:

(1) Your graduate and post-graduate educational background.

(2) A one-page abstract of your dissertation.

(3) A list of your publications: books, refereed journal articles, chapters contributed to books, articles in published proceedings, and any other articles.

(4) A list of text and poster presentations made during the last five years.

(5) Grants and awards received during the last five years.

(6) Teaching load during the last five years.

(7) Two letters of reference.

(F) Response to Rating Factor 2, need for the research, including,

A succinct description of how your proposal is non-duplicative of previously published research, and how it supports HUD's research agenda.

(G) Response to Rating Factor 3, a description of your work plan, including;

(1) A one-page abstract of your research project.

(2) A narrative of the proposed research, not to exceed 10 double-spaced typed pages.

(3) A working bibliography of your proposed project.

(4) An annotated bibliography, e.g., a two- or three-sentence annotation for ten to twelve key sources in your working bibliography.

(5) A letter from your mentor that includes his/her address, telephone and facsimile number and email address, states his/her qualifications and availability to be your mentor, and describes his/her proposed role in your research project.

(H) Certifications. These forms must be signed by the applicant and can be downloaded from the HUD web site at www.hud.gov.

(1) HUD–2992, Certification regarding debarment and suspension pursuant to 24 CFR part 24.

(2) HUD–50071, Disclosure of lobbying pursuant to 24 CFR part 87.

(3) HUD–50070, Certification of Drug-Free Workplace, pursuant to 24 CFR 24.600 *et seq.*

## VI. Corrections to Deficient Applications

After the application due date, HUD may not, consistent with its regulations in 24 CFR part 4, subpart B, consider any unsolicited information you, the applicant, may want to provide. HUD may contact you to clarify an item in your application or to correct technical deficiencies. HUD may not seek clarification of items or responses that improve the substantive quality of your response to any rating factors. In order not to unreasonably exclude applications from being rated and ranked, HUD may contact applicants to ensure proper completion of the application and will do so on a uniform basis for all applicants. Examples of curable (correctable) technical deficiencies include failure to submit the proper certifications or failure to submit an application that contains an original signature by an authorized official. In each case, HUD will notify you in writing by describing the clarification or technical deficiency. HUD will notify applicants by facsimile or by USPS, return receipt requested. Clarifications or corrections of technical deficiencies in accordance with the information provided by HUD must be submitted within 14 calendar days of the date of receipt of the HUD notification. (If the due date falls on a Saturday, Sunday, or Federal holiday, your correction must be received by HUD on the next day that is not a Saturday, Sunday, or Federal holiday.)

## VII. Environmental Requirements

This NOFA does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(C)(1), this NOFA is categorically excluded from environmental review under the National Environmental Policy Act (42 U.S.C. 4321).

## VIII. Other Matters

*(A) Federalism, Executive Order 13132*

This notice does not have federalism implication and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of Executive Order 13132 (entitled ''Federalism'').

(B) *Conducting Business In Accordance With Core Values and Ethical Standards.* Entities subject to 24 CFR parts 84 and 85 (most non-profit organizations and State, local and tribal governments or government agencies or instrumentalities who receive Federal awards of financial assistance) are required to develop and maintain a written code of conduct (see §§ 84.42 and 85.36(b)(3)). Consistent with regulations governing specific programs, your university's code of conduct must: prohibit real and apparent conflicts of interest that may arise among officers, employees, or agents; prohibit the solicitation and acceptance of gifts or gratuities by your officers, employees and agents for their personal benefit in excess of minimal value; and, outline administrative and disciplinary actions available to remedy violations of such standards. If awarded assistance under this NOFA, you will be required, prior to entering into a grant agreement with HUD, to submit a copy of your university's code of conduct.

(C) *Prohibition Against Lobbying Activities.* You, the applicant, are subject to the provisions of Section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991 (31 U.S.C. 1352) (the Byrd Amendment), which prohibits recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the Federal government in connection with a specific contract, grant, or loan. You are required to certify, using the certification found at Appendix A to 24 CFR part 87, that you will not and have not used appropriated funds for any prohibited lobbying activities. In addition, you must disclose, using Standard Form LLL ''Disclosure of Lobbying Activities,'' any funds, other than federally appropriated funds, that will be or have been used to influence Federal employees, members of Congress, and congressional staff regarding specific grants or contracts. Federally recognized Indian tribes and tribally designated housing entities (TDHEs) established by federally recognized Indian tribes as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but State-recognized Indian tribes and TDHEs established under State law must comply with this requirement.

(D) *Section 102 of the HUD Reform Act, Documentation and Public Access Requirements.* Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) (HUD Reform Act) and the regulations codified in 24 CFR part 4, subpart A, contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published a notice that also provides information on the implementation of Section 102 (57 FR 1942). The documentation, public access, and disclosure requirements of Section 102 apply to assistance awarded under this NOFA as follows:

(1) *Documentation and public access requirements.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations (24 CFR part 15).

(2) *Debriefing.* Beginning not less than 30 days after the awards for assistance are announced in the above-mentioned **Federal Register** notice and for at least 120 days after awards for assistance are announced, HUD will provide a debriefing to any applicant requesting one on their application. All debriefing requests must be made in writing or by

email by the authorized official whose signature appears on the SF–424 or his or her successor in office, and submitted to the organization identified in the section entitled ''For Further Information and Technical Assistance.'' Information provided during a debriefing will include, at a minimum, the final score you received for each rating factor, final evaluator comments for each rating factor, and the final assessment indicating the basis upon which assistance was provided or denied.

(3) *Disclosures.* HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also reported on HUD Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period of less than three years. All reports, both applicant disclosures and updates, will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations (24 CFR part 5).

(4) *Publication of Recipients of HUD Funding.* HUD's regulations at 24 CFR part 4 provide that HUD will publish a notice in the **Federal Register** to notify the public of all decisions made by the Department to provide:

(i) Assistance subject to Section 102(a) of the HUD Reform Act; and/or

(ii) Assistance provided through grants or cooperative agreements on a discretionary (non-formula, non-demand) basis, but that is not provided on the basis of a competition.

(E) *Section 103 of the HUD Reform Act.* HUD's regulations implementing Section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a), codified in 24 CFR part 4, subpart B, apply to this funding competition. The regulations continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by the regulations from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Ethics Law Division at 202–708–3815. (This is not a toll-free number.) HUD employees who have specific program questions should contact the appropriate field office counsel or Headquarters counsel for the program to which the question pertains. The Catalogue of Federal Domestic Assistance number is: 14.506.

## IX. Authority

The authority for this program is found in Title V of the Housing and Urban Development Act of 1970 (Pub. L. 91–609).

Dated: April 25, 2002.

**Lawrence L. Thompson,**

*General Deputy Assistant Secretary for Policy Development and Research.*

[FR Doc. 02–10726 Filed 4–30–02; 8:45 am]

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**H.R. 1432/P.L. 107–160**

To designate the facility of the United States Postal Service located at 3698 Inner Perimeter Road in Valdosta, Georgia, as the ''Major Lyn McIntosh Post Office Building''. (Apr. 18, 2002; 116 Stat. 123)

**H.R. 1748/P.L. 107–161**

To designate the facility of the United States Postal Service located at 805 Glen Burnie Road in Richmond, Virginia, as the ''Tom Bliley Post Office Building''. (Apr. 18, 2002; 116 Stat. 124)

**H.R. 1749/P.L. 107–162**

To designate the facility of the United States Postal Service located at 685 Turnberry Road in Newport News, Virginia, as the ''Herbert H. Bateman Post Office Building''. (Apr. 18, 2002; 116 Stat. 125)

**H.R. 2577/P.L. 107–163**

To designate the facility of the United States Postal Service located at 310 South State Street in St. Ignace, Michigan, as the ''Bob Davis Post Office Building''. (Apr. 18, 2002; 116 Stat. 126)

**H.R. 2876/P.L. 107–164**

To designate the facility of the United States Postal Service located in Harlem, Montana, as the ''Francis Bardanouve United States Post Office Building''. (Apr. 18, 2002; 116 Stat. 127)

**H.R. 2910/P.L. 107–165**

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**H.R. 3379/P.L. 107–167**

To designate the facility of the United States Postal Service located at 375 Carlls Path in Deer Park, New York, as the ''Raymond M. Downey Post Office Building''. (Apr. 18, 2002; 116 Stat. 130)

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