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Federal Register

5–2–02 Thursday
Vol. 67 No. 85 May 2, 2002
Pages 21975–22336

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Contents

Federal Register

Vol. 67, No. 85

Thursday, May 2, 2002

Agriculture Department
See Animal and Plant Health Inspection Service
See Forest Service
See Rural Housing Service

Air Force Department
NOTICES
Meetings:
Scientific Advisory Board, 22061–22062

Animal and Plant Health Inspection Service
NOTICES
Environmental statements; availability, etc.:
Cycad scale control, 22037
Pink hibiscus mealybug control, 22038
Meetings:
National Poultry Improvement Plan General Conference Committee, 22038–22039

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
Hemophilia Prevention Education and Peer Support, 22085–22087

Children and Families Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 22087–22088

Coast Guard
RULES
Drawbridge operations:
New York, 21997–21998
PROPOSED RULES
Regattas and marine parades:
Sharptown Outboard Regatta, 22023–22025
NOTICES
Agency information collection activities:
Proposed collection; comment request, 22158

Commerce Department
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office

Defense Department
See Air Force Department
NOTICES
Arms sales notification; transmittal letter, etc., 22052–22061

Education Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 22062–22063
Submission for OMB review; comment request, 22063–22064

Employment and Training Administration
NOTICES
Adjustment assistance:
CustomShop.com, 22115–22116
Exolon-Esk Co., 22116
Fairbanks Morse Engine, 22116
Georgia-Pacific West, 22116–22117
Krones, Inc., 22117
New Holland North America, Inc., 22117
Paulson Wire Rope Corp., 22117–22118
Republic Technologies International, 22118
Teccor Electronics, 22118
Adjustment assistance and NAFTA transitional adjustment assistance:
Eastern Fine Paper, 22112
Harsco Track Technologies et al., 22112–22114
Tessy Plastic Corp. et al., 22114–22115
Grants and cooperative agreements; availability, etc.:
Workforce Investment Act—
State incentive awards (2000 PY), 22119–22121
NAFTA transitional adjustment assistance:
Chipman Union, Inc., 22121

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Grants and cooperative agreements; availability, etc.:
Energy Efficiency and Renewable Energy Office and Fossil Energy Office Joint Science Initiative, 22064–22065
Meetings:
Environmental Management Site-Specific Advisory Board—
Paducah Gaseous Diffusion Plant, KY, 22065

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Montana, 22167–22241
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Montana, 22241–22247
NOTICES
Agency information collection activities:
Proposed collection; comment request, 22077–22078
Confidential business information and data transfer, 22078
Grants and cooperative agreements; availability, etc.:
Bakery Partnership Program, 22078–22079
Superfund; response and remedial actions, proposed settlements, etc.:
Louisiana Oil Recycle and Reuse Site, LA, 22079
Tomah Armory Site, WI, 22080
Tomah Fairgrounds Site, WI, 22080
Water pollution control:
Total maximum daily loads—
Mermentau and Vermilion/Teche river basins, LA; final agency action on 88 TMDLs, 22080–22082
Water pollution control: discharge of pollutants (NPDES):
Alaska—
Small suction dredging; general permit, 22082

Federal Aviation Administration
RULES
Airworthiness directives:
Bombardier, 21983–21985

Eurocopter France, 21976–21978
Eurocopter France; correction, 21975–21976
McDonnell Douglas, 21981–21983, 21985–21988
Pratt & Whitney, 21988–21990
Rolls-Royce plc., 21979–21981
Airworthiness standards:
Special conditions—
Eclipse Aviation Corp. Model 500 airplane; correction, 21975
Class E airspace, 21990
Standard instrument approach procedures, 21990–21994
PROPOSED RULES
Air carrier certification and operations:
Operator flight attendant English language program; withdrawn, 22020–22021
Airworthiness directives:
Class E airspace; correction, 22020
Airworthiness standards:
Aircraft engines; fuel and induction systems; withdrawn, 22019–22020
NOTICES
Exemption petitions; summary and disposition, 22158–22160
Passenger facility charges; applications, etc.:
Phoenix Sky Harbor International Airport, AZ, 22160

Federal Communications Commission
RULES
Common carrier services:
Communications Assistance for Law Enforcement Act; implementation—
Wireline, cellular, and broadband Personal Communications Services telecommunications carriers; four electronic surveillance capabilities; compliance date, 21999–22008
PROPOSED RULES
Radio stations; table of assignments:
Montana and Wyoming, 22027–22028
NOTICES
Agency information collection activities:
Proposed collection; comment request, 22082–22083

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 22083–22084

Federal Energy Regulatory Commission
RULES
Record requests fees; revision, 21994–21996
PROPOSED RULES
Electric utilities (Federal Power Act):
Generator interconnection agreements and procedures; standardization, 22249–22293
NOTICES
Electric rate and corporate regulation filings:
Erie Boulevard Hydropower, L.P., et al., 22067–22071
Environmental statements; availability, etc.:
East Tennessee Natural Gas Co., 22071–22072
Hydroelectric applications, 22072–22074
Meetings:
Box Canyon Hydroelectric Project, Pend Oreille County, WA; environmental analysis concerns, 22074–22075
Southeast Energy Infrastructure Conference, 22075–22076
Practice and procedure:
Off-the-record communications, 22076–22077
Applications, hearings, determinations, etc.:
ANR Pipeline Co., 22065
Arizona Public Service Co., 22065–22066
Bonneville Power Administration, 22066
Kiowa Power Partners, LLC, 22066
New York Municipal Power Agency, 22066–22067
Williston Basin Interstate Pipeline Co., 22067

Federal Housing Finance Board
NOTICES
Meetings; Sunshine Act, 22084

Federal Railroad Administration
NOTICES
Meetings:
Railroad Safety Advisory Committee, 22160–22161

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 22084
Permissible nonbanking activities, 22084–22085

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 22162–22163

Fish and Wildlife Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 22103–22104

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Sponsor name and address changes—
Virbac AH, Inc., 21996
Tilmicosin, 21996–21997
NOTICES
Agency information collection activities:
Reporting and recordkeeping requirements, 22089
Meetings:
Dermatologic and Ophthalmic Drugs Advisory Committee, 22089
Technical Electronic Products Radiation Safety Standards Committee, 22090
Vaccines and Related Biological Products Advisory Committee, 22090–22091

Forest Service
NOTICES
Environmental statements; notice of intent:
Finger Lakes National Forest, NY, 22039–22043
Green Mountain National Forest, VT, 22043–22048
Mt. Hood National Forest, OR, 22048–22050
Meetings:
Resource Advisory Committees—
Siskiyou County, 22050
South Mt. Baker-Snoqualmie, 22050
Southwest Idaho, 22050–22051

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration

See National Institutes of Health
RULES
Energy Employees Occupational Illness Compensation Program Act; implementation:
Probable cause determination guidelines, 22295–22314
Radiation dose reconstruction methods, 22313–22336

Health Resources and Services Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 22091–22092
Meetings:
Maternal and Child Health Research Grants Review Committee, 22092–22093

Immigration and Naturalization Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 22110–22112

Interior Department
See Fish and Wildlife Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 22103

International Trade Commission
NOTICES
Import investigations:
Carbon and alloy steel wire rod from—
Various countries, 22105–22106
Meetings; Sunshine Act, 22106

Justice Department
See Immigration and Naturalization Service
NOTICES
Pollution control; consent judgments:
Alexander City, AL, et al., 22106–22107
American Scrap Co. et al., 22107
Barretts Minerals Inc., 22107
F.P. Woll & Co., 22108
Fruit of the Loom, Inc., 22108
General Motors Corp. et al., 22109
MEC Oregon Racing, Inc., et al., 22109–22110

Labor Department
See Employment and Training Administration
See Occupational Safety and Health Administration

National Institute of Standards and Technology
NOTICES
Meetings:
Advanced Technology Program Advisory Committee, 22051–22052

National Institutes of Health
NOTICES
Inventions, Government-owned; availability for licensing, 22093–22094
Meetings:
National Cancer Institute, 22094–22095
National Center for Research Resources, 22095
National Heart, Lung, and Blood Institute, 22095–22096
National Institute of Allergy and Infectious Diseases, 22097
National Institute of Arthritis and Musculoskeletal and Skin Diseases, 22098
National Institute of Child Health and Human Development, 22099–22100
National Institute of Diabetes and Digestive and Kidney Diseases, 22099
National Institute of Neurological Disorders and Stroke, 22096–22098
National Institute of Nursing Research, 22100
National Institute on Drug Abuse, 22098
National Library of Medicine, 22100
Scientific Review Center, 22100–22101
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Avalon Pharmaceuticals, 22101
EyeTech Pharmaceuticals, Inc., 22101–22102
GenVec, Inc., 22102–22103

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Groundfish; reporting and recordkeeping requirements; correction, 22008–22018
PROPOSED RULES
Fishery conservation and management:
Atlantic highly migratory species—
Atlantic tunas, swordfish, and sharks; charter boat operations; correction, 22165
Northeastern United States fisheries—
New England Fishery Management Council; meetings, 22035–22036
NOTICES
Permits:
Marine mammals, 22052

Nuclear Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Exelon Generation Co., LLC, 22122

Occupational Safety and Health Administration
NOTICES
Committees; establishment, renewal, termination, etc.:
Ergonomics National Advisory Committee, 22121–22122

Patent and Trademark Office
NOTICES
Reports and guidance documents; availability, etc.:
Information disseminated by Federal agencies; quality, objectivity, utility, and integrity guidelines, 22052

Postal Service
PROPOSED RULES
Postage meters:
Manufacture and distribution; authorization, 22025–22027

Public Debt Bureau
See Fiscal Service

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health

Research and Special Programs Administration
PROPOSED RULES
Hazardous materials:
Hazardous materials transportation—
Offerors and transporters; security requirements, 22028–22035

Rural Housing Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 22051

Securities and Exchange Commission
NOTICES
Investment Company Act of 1940:
Deregistration application—
CN Loan Fund Inc. et al., 22122–22123
Exemption applications—
First American Investment Funds, Inc., et al, 22124–22125
Meetings; Sunshine Act, 22125–22126
Securities:
Suspension of trading—
Investco, Inc., 22140
Securities fee rates; annual adjustments, 22126–22140
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 22140–22142
Chicago Board Options Exchange, Inc., 22142–22143
International Securities Exchange LLC, 22143
New York Stock Exchange, Inc., 22144
Philadelphia Stock Exchange, Inc., 22144–22146

Social Security Administration
PROPOSED RULES
Supplemental security income:
Aged, blind, and disabled—
Access to information held by financial institutions, 22021–22023

State Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Fulbright American Studies Institute on U.S. National Security; American Foreign Policy Formulation in Era of Globalization, 22146–22149
Islamic Life in the United States, 22149–22152
Jazz Ambassadors Program, 22152–22155
Moscow State University Journalism Support Project, 22155–22158

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Chicago Short Line Railway Co., 22161–22162

Tennessee Valley Authority
NOTICES
Reports and guidance documents; availability, etc.:
Information disseminated by Federal agencies; quality, objectivity, utility, and integrity guidelines, 22158

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Railroad Administration
See Research and Special Programs Administration
See Surface Transportation Board

Treasury Department
See Fiscal Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 22162

United States Institute of Peace
NOTICES
Grants and cooperative agreements; availability, etc.:
Solicited grants—
Fall competition program, 22163
Unsolicited grants—
Fall competition program, 22163

Veterans Affairs Department
RULES
Medical benefits:
Inpatient hospital care and outpatient medical care; copayments, 21998–21999
NOTICES
Meetings:
Research and Development Cooperative Studies Evaluation Committee, 22163–22164

Separate Parts In This Issue

Part II
Environmental Protection Agency, 22167–22247

Part III
Energy Department, Federal Energy Regulatory Commission, 22249–22293

Part IV
Health and Human Services Department, 22295–22336

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

14 CFR
23 21975
39 (8 documents) 21975, 21976, 21979, 21981, 21983, 21985, 21987, 21988
71 21990
97 (2 documents) 21990, 21992

Proposed Rules:
33 22019
71 22020
121 22020
125 22020
135 22020

18 CFR
388 21994

Proposed Rules:
35 22250

20 CFR

Proposed Rules:
416 22021

21 CFR
520 21996
558 21996

33 CFR
117 21997

Proposed Rules:
100 22023

38 CFR
17 21998

39 CFR

Proposed Rules:
501 22025

40 CFR
52 22168

Proposed Rules:
52 22242

42 CFR
81 22296
82 22314

47 CFR
22 21999
24 21999
64 21999

Proposed Rules:
73 22027

49 CFR

Proposed Rules:
107 22028
171 22028
172 22028
177 22028

50 CFR
679 22008

Proposed Rules:
635 22165
648 22035

Rules and Regulations

Federal Register

Vol. 67, No. 85

Thursday, May 2, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE177A, Special Condition 23–112A–SC]

Special Conditions; Eclipse Aviation Corporation, Model 500 Airplane; Protection of Systems From High Intensity Radiated Fields (HIRF): Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

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

SUMMARY: The FAA published a document in the **Federal Register** on March 13, 2002, concerning final special conditions with a request for comments on the Eclipse Aviation Corporation, Model 500 airplane. There were some inadvertent errors in the document. This document contains corrections to the final special conditions and reopens the comment period.

DATES: The effective date of these corrected special conditions is April 19, 2002. Comments must be received on or before June 3, 2002.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE177A, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE177A. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ervin Dvorak, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4123.

SUPPLEMENTARY INFORMATION:

Need for Correction

The FAA published a document in the **Federal Register** on March 13, 2002 (67 FR 11218) that issued final special conditions and requested comments. In the document, three errors appeared. This document corrects those errors.

Correction of Publication

Accordingly, the publication of the final special conditions with request for comments (Docket No. CE177) is corrected as follows:

1. On page 11218, column 3, beginning on line 12 under the ''Summary'' paragraph, the words ''displays manufactured by Eclipse Aviation Corporation'' appear. Remove these words and insert the words ''displays used in the Model 500 airplane manufactured by Eclipse Aviation Corporation'' in their place.

2. On page 11218, column 3, under the paragraph marked ''addresses,'' on line 5 of the paragraph marked ''addresses,'' ''Docket No. CE156'' appears. The docket number is corrected to read ''Docket No. CE177.''

3. On page 11219, column 3, in the table at the end of the column, line 3 under the column marked ''Frequency,'' the frequency listed as ''500 kHz–20 MHz'' is corrected to read ''500 kHz–2 MHz.''

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. CE177A.'' The postcard will be date stamped and returned to the commenter.

Issued in Kansas City, Missouri on April 19, 2002.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–10936 Filed 5–1–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–09–AD; Amendment 39–12681; AD 2002–03–52]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, AS355F2, AS355N, and EC130 B4 Helicopters; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects Airworthiness Directive (AD) 2002–03–52 for the specified helicopters that was published in the **Federal Register** on March 20, 2002 (67 FR 12856). The AD contains a misspelled word and incomplete effective dates. In all other respects, the original document remains the same.

DATES: Effective April 4, 2002 to all persons except those persons to whom it was made immediately effective by Emergency AD 2002–03–52, issued on February 8, 2002, which contained the requirements of this amendment.

FOR FURTHER INFORMATION CONTACT: Gary Roach, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0111, telephone (817) 222–5130, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The FAA issued a final rule AD 2002–03–52 on March 11, 2002, (67 FR 12856, March 20, 2002) for the specified helicopters. The AD contains two errors. In the

Supplementary Information, in the second sentence, a word is misspelled, ''STAFFLEX'' should be ''STARFLEX.'' Also, the effective dates listed both under the **DATES** caption of the AD and in paragraph (f) are incomplete and fail to make it clear that the effective date of the emergency AD, that was published in the **Federal Register** on March 20, 2002, was effective immediately to those persons that received it. Therefore, this needs to be clarified.

Since no other part of the regulatory information has been revised, the final rule is not being republished.

Correction of Publication

Accordingly, the publication on March 20, 2002 of the final regulations, which were the subject of FR Doc. 02–6627, is corrected as follows:

§ 39.13 [Corrected]

(1) On page 12856, under the **DATES** caption, correct ''Effective April 4, 2002'' to read ''Effective April 4, 2002, to all persons except those persons to whom it was made immediately effective by Emergency AD 2002–03–52, issued on February 8, 2002, which contained the requirements of this amendment.''

(2) On page 12856, in the third column, under Supplementary Information in the second sentence, correct the word ''STAFFLEX'' to read ''STARFLEX.''

(3) On page 12858, in the first column, paragraph (f), correct ''This amendment becomes effective on April 4, 2002'' to ''This amendment becomes effective on April 4, 2002, to all persons except those persons to whom it was made immediately effective by Emergency AD 2002–03–52, issued February 8, 2002, which contained the requirements of this amendment.''

Issued in Fort Worth, Texas, on April 18, 2002.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–10532 Filed 5–1–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–04–AD; Amendment 39–12736; AD 2002–09–03]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS332L2 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Eurocopter France (ECF) Model AS332L2 helicopters. This action requires, before further flight, verifying that the air vent is installed on the inflation cylinder of each life raft assembly. If the air vent is missing, this AD also requires replacing the cylinder head with an airworthy part before further flight. This amendment is prompted by the discovery that an inflation cylinder in the life raft did not have an air vent installed. This condition, if not corrected, could result in inadvertent life raft inflation, loss of the life raft, contact with the main or tail rotor, and subsequent loss of control of the helicopter.

DATES: Effective May 17, 2002.

Comments for inclusion in the Rules Docket must be received on or before July 1, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2002–SW–04–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9–asw–adcomments@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Carroll Wright, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5120, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on ECF Model AS332L2 helicopters. The DGAC advises of the discovery of a missing air vent on the head of the inflation cylinder of a life raft. Absence of an air vent on the cylinder head might lead to inadvertent life raft inflation and cause the life raft to be lost and to come into contact with the main or tail rotor.

ECF has issued Alert Telex No. 25.01.06, dated September 17, 2001, which specifies checking that the air vent is installed on the heads of the cylinders of the life raft assemblies. The DGAC classified this service bulletin as mandatory and issued AD 2001–500–019(A), dated October 17, 2001, to ensure the continued airworthiness of these helicopters in France.

This helicopter model is manufactured in France and is type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. 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.

This unsafe condition is likely to exist or develop on other helicopters of the same type design registered in the United States. Therefore, this AD is being issued to prevent inadvertent life raft inflation, loss of the life raft, contact with the main or tail rotor, and subsequent loss of control of the helicopter. This AD requires, before further flight, verifying that the air vent is installed on the head of the inflation cylinders of each life raft. If the air vent is missing, this AD also requires replacing the cylinder head with an airworthy part before further flight. Replacing the cylinder head or verifying that the air vent is installed on the heads of the inflation cylinder is terminating action for the requirements of this AD.

None of the Model AS332L2 helicopters affected by this action are on the U.S. Register. All helicopters included in the applicability of this rule are currently operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject helicopters are imported and placed on the U.S. Register in the future.

Should an affected helicopter be imported and placed on the U.S. Register in the future, it would require approximately ½ work hour to accomplish the required actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD would be $30 per helicopter.

Since this AD action does not affect any helicopter that is currently on the U.S. register, it has no adverse economic

impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2002-SW–04-AD.'' The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that notice and prior public comment are unnecessary in promulgating this regulation; therefore, it can be issued immediately to correct an unsafe condition in aircraft since none of these model helicopters are registered in the United States. The FAA has also determined that this regulation is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–09–03 Eurocopter France: Amendment 39–12736. Docket No. 2002–SW–04–AD.

Applicability: Model AS332L2 helicopters, with a life raft assembly, part number 00051047 or 00051048, installed, certificated in any category.

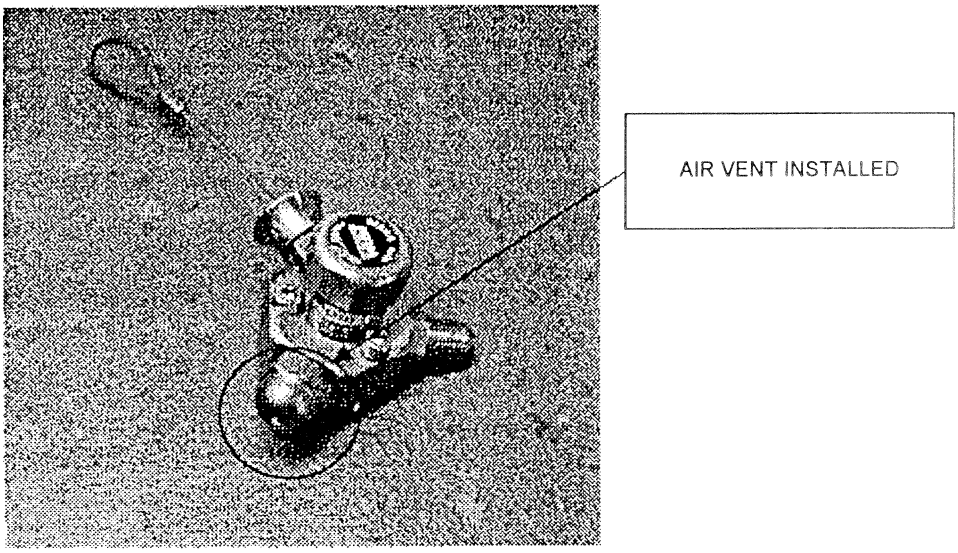
Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance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

Compliance: Required before further flight, unless accomplished previously.

To prevent inadvertent life raft inflation, loss of the life raft, contact with the main or tail rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) Verify that the air vent is installed on the head of the inflation cylinder of each lift raft assembly as shown in FIGURE 1:

DETAIL 1



DETAIL 1

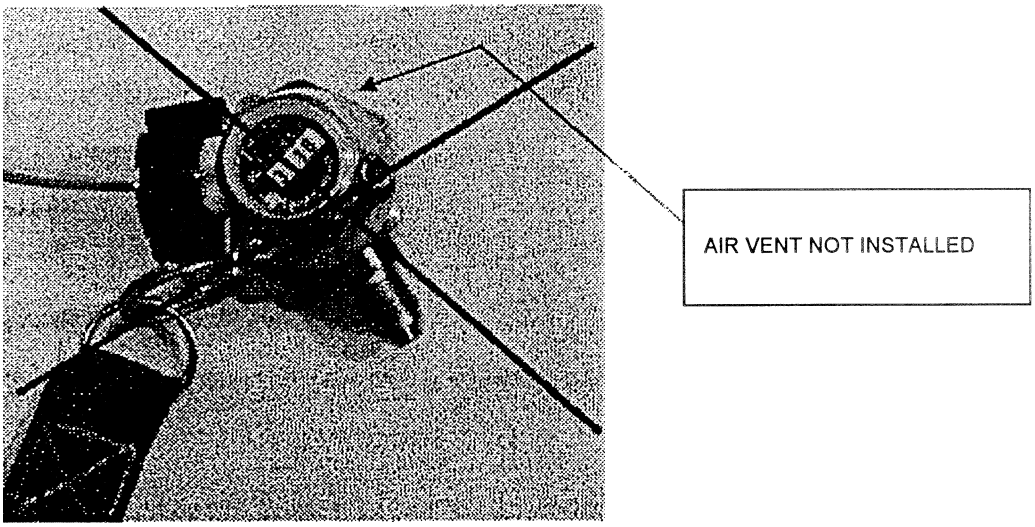


FIGURE 1

If the air vent is missing, replace the cylinder head with an airworthy cylinder head before further flight.

Note 2: Eurocopter France Alert Telex No. 25.01.06, dated September 17, 2001, pertains to the subject of this AD.

(b) Replacing the cylinder head or verifying that the air vent is installed on the head of the inflation cylinder is terminating action for the requirements of this AD.

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(d) Special flight permits will not be issued.

(e) This amendment becomes effective on May 17, 2002.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 2001–500–019(A), dated October 17, 2001.

Issued in Fort Worth, Texas, on April 17, 2002.

Larry M. Kelly,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–10649 Filed 5–1–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–36–AD; Amendment 39–12735; AD 2002–09–02]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to Rolls-Royce plc. (RR) Tay model 650–15 and 651–54 turbofan engines. This amendment requires revisions to the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness (ICA) in the Time Limits Section of the Engine Manual for Rolls-Royce plc. Tay model 650–15 and 651–54 series turbofan engines to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. The actions specified by this AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Effective date June 6, 2002.

ADDRESSES: The information referenced in this AD may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Keith Mead, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7744, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to Rolls-Royce plc. (RR) Tay model 650–15 and 651–54 turbofan engines was published in the **Federal Register** on December 4, 2001 (66 FR 63009). That action proposed to require revisions to the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness (ICA) in the Time Limits Section of the Engine Manual for RR Tay model 650–15 and 651–54 series turbofan engines to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure.

Comments

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

Inconsistencies Between Proposal Paragraph (a) and RR Time Limits Section

One commenter states there are inconsistencies between the proposed changes to the Time Limits Section (TLS) and the Engine Manual (EM) for RR Tay model 650–15 and 651–54 series turbofan engines, as follows:

The GROUP A PARTS MANDATORY INSPECTION TASK number is called out as 05–20–01–800–001, and in the RR EM the same task number is called out as 05–20–01–200–001. Also, in paragraph (2), the reference to ''time limits manual T–211(524)-7RR (reference engine manual M–211(524) 7RR)'' should read ''time limits manual T–TAY–3RR and T–TAY–5RR (reference engine manual E–TAY–3RR and E–TAY–5RR).''

The FAA agrees that these inconsistencies need to be corrected and has made these corrections to the final rule.

Inconsistencies Between Proposal Group A Parts Table and RR TLS

One commenter states there are inconsistencies between the proposal Group A Parts Table and the tabulated components of the RR TLS. One inconsistency is that the H.P. Compressor Stage 10 to 11 Rotor Disc Spacer nomenclature is not specifically referenced in the Table of the proposal, however, its task number appears to have been combined in the Table with the H.P. Compressor Stages 8, 9, 10, and 11 Rotor Discs. Another inconsistency is that the reference to H.P. Compressor Stage 11 to 12 Rotor Disc Spacer appears to have been omitted from the proposal Table. Also, another inconsistency is that for the H.P. Turbine Stage 2 Rotor Disc, the overhaul manual task number in the proposal reads ''72–41–33–200–001'' and in the RR TLS the task number reads ''72–41–33–200–000.''

The FAA agrees that these inconsistencies need to be corrected and has made these corrections to the final rule.

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

Economic Analysis

There are approximately 700 engines of the affected design in the worldwide fleet. The FAA estimates that 448 engines installed on aircraft of U.S. registry would be affected by this AD. The FAA also estimates that it would take approximately twenty work hours per engine to accomplish the inspections, and that the average labor rate is $60 per work hour. Since this is an added inspection requirement, included as part of the normal maintenance cycle, no additional part costs are involved. Based on these figures, the total cost of the proposed AD on U.S. operators is estimated to be $537,600.

Regulatory Analysis

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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 adding a new airworthiness directive to read as follows:

2002–09–02 Rolls-Royce, plc.: Amendment 39–12735. Docket No. 2001–NE–36–AD.

Applicability

This airworthiness directive (AD) is applicable to Rolls-Royce plc. Tay Model 650–15 and 651–54 turbofan engines. These engines are installed on, but not limited to Boeing 727 and Fokker 100 airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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

Compliance with this AD is required as indicated, unless already done. To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

(a) Within the next 30 days after the effective date of this AD, revise the Airworthiness Limitations Section (ALS) and Maintenance Scheduling Section (MSS) of the Instructions for Continued Airworthiness (ICA) in the Time Limits Manuals publication number (P/N) T–TAY–3RR, and T–TAY–5RR of the Engine Manuals, P/N E–TAY–3RR, and E–TAY–5RR as applicable, and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following: ''GROUP A PARTS MANDATORY INSPECTION TASK 05–20–01–200–001

(1) General: A full inspection of Group A Parts must be effected whenever the following conditions are satisfied.

(i) When the component has been completely disassembled to piece-part level in accordance with the appropriate disassembly procedures contained in the Engine Manual. and

(ii) The part has accumulated in excess of 100 flight cycles in service or since the last piece-part inspection. or

(iii) The component removal was for damage or a cause directly related to its removal.

(2) Mandatory inspections for individual Group A Parts are specified below: For time limits manual T–TAY–3RR and T–TAY–5RR (reference engine manual E–TAY–3RR and E–TAY–5RR) only, insert the following Table:

Part nomenclature	Part No.	Inspected per overhaul manual task
Low Pressure Compressor Rotor Disc	All	72–31–11–200–000
I. P. Compressor Rotor—Stage 1 Disc	All	72–33–31–200–000
I. P. Compressor Rotor—Stage 2 Disc	All	72–33–32–200–000
I. P. Compressor Rotor—Stage 3 Disk	All	72–33–33–200–000
L. P. and I. P. Compressor Drive Shaft	All	72–33–40–200–000
H. P. Compressor Rear Drive Shaft	All	72–37–31–200–000
L. P. Compressor Rotor Drive Shaft	All	72–37–32–200–002
H. P. Compressor Stage 1 Rotor Disc	All	72–37–33–200–001
H. P. Compressor Stages 2 and 3 Rotor Discs	All	72–37–33–200–002
H. P. Compressor Stages 4, 5, 6, and 7 Rotor Discs	All	72–37–34–200–000
H. P. Compressor Stages 8, 9, 10, and 11 Rotor Discs	All	72–37–35–200–000
H.P. Compressor Stage 10 to 11 Rotor Disc Spacer	All	72–37–35–200–001
H. P. Compressor Stage 12 Rotor Disc	All	72–37–36–200–001
H.P. Compressor Stage 11 to 12 Rotor Disc Spacer	All	72–37–36–200–003
H. P. Turbine Shaft	All	72–41–31–200–000
H. P. Stage 1 Rotor Disc	All	72–41–32–200–000
H. P. Turbine Stage 2 Rotor Disc	All	72–41–33–200–000
L. P. Turbine Shaft	All	72–52–21–200–003
L. P. Turbine Stage 1 Rotor Disc	All	72–52–22–200–000
L. P. Turbine Stage 2 Rotor Disc	All	72–52–23–200–000
L. P. Turbine Stage 3 Rotor Disc	All	72–52–24–200–000

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in section 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections must be performed only in accordance with the TLM and applicable Engine Manual.

Alternative Method 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 Engine Certification Office. Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the Engine Certification Office.

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

(d) Special flight permits may be issued in accordance with §§ 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 done.

(e) The records of the mandatory inspections required as a result of revising the TLM and the applicable Engine Manual and the air carrier's continuous airworthiness maintenance program as provided by paragraph (a) of this AD must be maintained by FAA-certificated air carriers which have an approved continuous airworthiness maintenance program in accordance with the record keeping system currently specified in their manual required by sections 121.369 of the Federal Aviation Regulations (14 CFR 121.369); or, in lieu of the record showing the current status of each mandatory inspection required by sections 121.380(a)(2)(vi) of the Federal Aviation Regulations (14 CFR 121.380(a)(2)(vi)), certificated air carriers may establish an approved alternate system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by sections 121.369 (c) of the Federal Aviation Regulations (14 CFR 121.369 (c)); however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated.

Note 3: These record keeping requirements apply only to the records used to document the mandatory inspections required as a result of revising the ALS and the MSS of the Instructions for Continued Airworthiness in the Time Limits Manual (Chapter 05–10–00) of the Engine Manuals as provided in paragraph (a) of this AD, and do not alter or amend the record keeping requirements for any other AD or regulatory requirement.

Effective Date

(f) This amendment becomes effective on June 6, 2002.

Issued in Burlington, Massachusetts, on April 23, 2002.

Marc J. Bouthillier,

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

[FR Doc. 02–10549 Filed 5–1–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–110–AD; Amendment 39–12729; AD 2002–08–17]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, and DC–10–30F (KC10A and KDC–10) 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 McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, and DC–10–30F (KC10A and KDC–10) airplanes. This action requires revising the airplane flight manual to advise the flightcrew of necessary procedures if certain thrust reverser indicator lights illuminate or are inoperative, and locking out any affected thrust reverser under certain conditions. This action also provides for returning a thrust reverser to service after it has been locked out. This action is necessary to prevent an uncommanded in-flight deployment of a thrust reverser, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective May 17, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 17, 2002.

Comments for inclusion in the Rules Docket must be received on or before July 1, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–110–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–110–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 Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Information related to this AD may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Technical Information: Philip C. Kush, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5263; fax (562) 627–5210.

Other Information: Judy Golder, Airworthiness Directive Technical Editor/Writer; telephone (425) 227–1119, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *judy.golder@faa.gov.* Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION: The FAA has received a report that, on February 16, 2002, an 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 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 subassembly. 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.

McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30F, and DC–10–30F (KC10A and KDC–10) airplanes are equipped with the same or similar engines and thrust reverser systems as the Model DC–10–30 airplane involved in the incident described previously. Therefore, these models may be subject to the same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing DC–10 Minimum Equipment List Procedures Manual, Item 78–1, Revision 11, dated January 1999. Item 78–1 describes maintenance procedures for deactivating and locking a fan thrust reverser, as well as an optional method for deactivating and locking a fan thrust reverser.

Explanation of Terminating Action

The FAA previously has issued AD 2001–17–19, amendment 39–12410 (66 FR 44950, August 27, 2001), which applies to all McDonnell Douglas DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, and DC–10–30F (KC10A and KDC–10) airplanes. Among other actions, that AD requires eventual installation of an additional locking system on each thrust reverser. Airplanes on which the additional locking system has been installed according to AD 2001–17–19 are not subject to this AD.

Other Relevant Rulemaking

The FAA has recently 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. That AD requires deactivating both thrust reversers and revising the FAA-approved airplane flight manual (AFM) to impose 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. That AD is intended to prevent an uncommanded in-flight deployment of a thrust reverser, which could result in reduced controllability of the airplane. Because the identified unsafe condition may be especially critical for Airbus Model A300 B2 and B4 series airplanes, the FAA found it appropriate to issue the action for those airplanes as an emergency AD.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent an uncommanded in-flight deployment of a thrust reverser, which could result in reduced controllability of the airplane. This AD requires revising the FAA-approved AFM to advise the flightcrew of necessary procedures if the ''REVERSER UNLOCK'' (also labeled ''REV IN TRANS'') or the ''REVERSER VALVE OPEN'' lights of engine 1 or engine 3 illuminate or are inoperative. This AD also requires locking out the affected thrust reverser if either of these lights illuminate or are inoperative or if a thrust reverser fails to stow after landing. This AD also provides for returning a thrust reverser to service after it has been locked-out.

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 Number 2002–NM–110–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:

2002–08–17 McDonnell Douglas: Amendment 39–12729. Docket 2002–NM–110–AD.

Applicability: Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, and DC–10–30F (KC10A and KDC–10) airplanes; certificated in any category; Except those on which an additional locking system has been installed on the thrust reverser on engine 1 and engine 3, according to paragraph (c) of AD 2001–17–19, amendment 39–12410.

Note 1: This AD applies to each airplane identified in the preceding applicability

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

Compliance: Required as indicated, unless accomplished previously.

To prevent an uncommanded in-flight deployment of a thrust reverser, which could result in reduced controllability of the airplane, accomplish the following:

Airplane Flight Manual Revision

(a) Within 15 days after the effective date of this AD, revise the Limitations Section of the FAA-approved airplane flight manual (AFM) to include the following information (this may be accomplished by inserting a copy of this AD into the AFM):

THRUST REVERSER LIGHTS

A. If the ''REVERSER UNLOCK'' (also labeled ''REV IN TRANS'') light of engine 1 or engine 3 or the ''REVERSER VALVE OPEN'' light of engine 1 or engine 3 illuminates, even if the aircraft behavior is normal (not accompanied by aircraft buffet, trim change, or performance degradation), the flightcrew must:

—Reduce the throttle to Flight Idle, AND

—Land at a suitable airport.

B. Takeoff is not permitted if:

1. Any of the conditions of A., above, have occurred, OR

2. A thrust reverser did not stow after previous landing, OR

3. Either the ''REVERSER UNLOCK'' (also labeled ''REV IN TRANS'') light of engine 1 or engine 3, or ''REVERSER VALVE OPEN'' light of engine 1 or engine 3, is inoperative.

C. Takeoff is permitted only if the affected reverser(s) has been locked out.

D. For landing with both wing thrust reversers deactivated:

For Model DC–10–15, DC–10–30, DC–10–30F, and DC–10–30F (KC10A and KDC–10) airplanes, increase the required runway length by 10% under wet or contaminated runway conditions.

For Model DC–10–10 and DC–10–10F airplanes, increase the required runway length by 22% under wet runway conditions, and increase the required runway length by 48% under contaminated runway conditions.

E. For takeoff with both wing thrust reversers deactivated:

For all airplane models, takeoff with both wing thrust reversers deactivated is prohibited under contaminated runway conditions. Increase the required runway length by 5% under wet runway conditions.''

Lock-out of Thrust Reverser

(b) If the conditions in paragraph (b)(1) or (b)(2) of this AD occur: Before the next flight, lock out any affected thrust reverser by accomplishing both maintenance procedures for fan reverser deactivation and locking and the optional method for fan reverser deactivation and locking in Boeing DC–10 Minimum Equipment List (MEL) Procedures Manual, Item 78–1, Revision 11, dated January 1999, according to that document.

(1) The ''REVERSER UNLOCK'' (also labeled ''REV IN TRANS'') light of engine 1 or engine 3, or the ''REVERSER VALVE OPEN'' light of engine 1 or engine 3, is inoperative or illuminates when the thrust reverser is in the stowed position.

(2) A thrust reverser does not stow after landing.

Operation With a Locked-Out Thrust Reverser/Return to Service

(c) An airplane may operate indefinitely with a thrust reverser that has been locked out according to this AD in lieu of MEL criteria. An operator may only return a locked-out thrust reverser to service when the cause of the condition that prompted the lock-out of the thrust reverser (as specified in paragraph (b)(1) or (b)(2) of this AD, as applicable) has been determined and corrected. The corrective action must be approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators must submit requests for such approvals through an appropriate FAA Principal Maintenance or Operations Inspector, who may add comments and then send it to the Manager, Los Angeles ACO. For a corrective action to be considered approved by the Manager, Los Angeles ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Terminating Action

(d) Installation of an additional locking system on each thrust reverser according to paragraph (c) of AD 2001–17–19, amendment 39–12410, terminates the requirements of this AD. After that action has been accomplished, the AFM revision required by paragraph (a) of this AD may be removed from the AFM.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

(1) The affected reverser must be in the stowed position before takeoff.

(2) The affected engine must be shut down and isolated from bleed air.

(3) The airplane may carry no passengers and only minimum crew.

Incorporation by Reference

(g) The lock-out of an affected thrust reverser, if accomplished, shall be done in accordance with Boeing DC–10 Minimum Equipment List Procedures Manual, Item 78–1, Revision 11, dated January 1999, which contains the following list of effective pages:

Page number	Date shown on page
Table of Contents ..... Page 78–i	January 1999

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

Effective Date

(h) This amendment becomes effective on May 17, 2002.

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

Lirio Liu-Nelson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–10248 Filed 5–1–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–49–AD; Amendment 39–12738; AD 2002–09–05]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model CL–600–2B19 series airplanes, that requires a one-time inspection of the fuel-level sensing wires in the center fuel tank for damage and for clearance

from the adjacent structure; and corrective action, if necessary. The actions specified by this AD are intended to detect and correct inadequate clearance between the fuel-level sensing wires in the center fuel tank and adjacent structures, which could lead to chafing of the wires, resulting in electrical arcing between the fuel-level sensing wires and the center fuel tank and a consequent fire or explosion in the center fuel tank. This action is intended to address the identified unsafe condition.

DATES: Effective June 6, 2002.

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

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Luciano Castracane, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7535; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–2B19 series airplanes was published in the **Federal Register** on February 22, 2002 (67 FR 8214). That action proposed to require a one-time inspection of the fuel-level sensing wires in the center fuel tank for damage and for clearance from the adjacent structure; and corrective action, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received. The commenter states that an inspection of the fuel-level sensing wires in the center fuel tank has revealed no damage or chafing on its airplanes.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 160 Model CL–600–2B19 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be provided at no charge by the manufacturer. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $96,000, or $600 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–09–05 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–12738. Docket 2001–NM–49–AD.

Applicability: Model CL–600–2B19 series airplanes, serial numbers 7003 through 7295 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) 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 detect and correct inadequate clearance between the fuel-level sensing wires in the center fuel tank and adjacent structures, which could lead to chafing of the wires, resulting in electrical arcing between the fuel-level sensing wires and the center fuel tank and a consequent fire or explosion in the center fuel tank, accomplish the following:

Inspection

(a) At the next ''A'' check but no later than 500 flight hours after the effective date of this AD: Perform a general visual inspection of the fuel-level sensing wires in the center fuel tank for damage and for clearance from adjacent structures, in accordance with Bombardier Alert Service Bulletin 601R–28–042, Revision 'A,' dated January 12, 2001. If the inspection reveals that the clearance between the fuel-level sensing wires and adjacent structures is less than the minimum clearance specified in the service bulletin,

prior to further flight, adjust the clearance in accordance with the service bulletin.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Note 3: Inspection, adjustment of the clearance between the fuel-level sensing wires and adjacent structures, and replacement of damaged fuel-level sensing wires accomplished prior to the effective date of this AD, in accordance with Bombardier Alert Service Bulletin 601R–28–042, dated August 14, 2000, are considered acceptable for compliance with the applicable action specified in this AD.

Replacement

(b) If the inspection required by paragraph (a) of this AD reveals damage to the fuel-level sensing wires: Prior to further flight, replace the damaged fuel-level sensing wires having part number (P/N) 601R57137–1/01 with new, improved fuel-level sensing wires having P/N 601R57137–1/S01, in accordance with Bombardier Alert Service Bulletin 601R–28–042, Revision 'A,' dated January 12, 2001.

Installation of Cushioned Clamps

(c) Prior to further flight after accomplishing the actions required by paragraphs (a) and (b) of this AD, if applicable: Install cushioned clamps between pipe P/N 601R62261–55 and the fuel-level sensing wires, in accordance with Bombardier Alert Service Bulletin 601R–28–042, Revision 'A,' dated January 12, 2001.

Alternative Methods of Compliance

(d) 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, New York 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, New York ACO.

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

Special Flight Permits

(e) 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

(f) The actions shall be done in accordance with Bombardier Alert Service Bulletin 601R–28–042, Revision 'A,' dated January 12, 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 Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; 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 Canadian airworthiness directive CF–2000–31, dated October 4, 2000.

Effective Date

(g) This amendment becomes effective on June 6, 2002.

Issued in Renton, Washington, on April 24, 2002.

Lirio Liu-Nelson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–10651 Filed 5–1–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–165–AD; Amendment 39–12739; AD 2002–09–06]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and MD–88 airplanes. This AD requires an inspection to verify proper installation of the support clamp of the alternating current (AC) power relay feeder cables at the aft inboard side of the electrical power center, and corrective actions, if necessary. This action is necessary to prevent the AC power relay feeder cables from chafing against the aft inboard side of the electrical power center due to improper installation, which could result in electrical arcing and damage to adjacent structures, and consequent smoke and/or fire in the electrical power center area. This action is intended to address the identified unsafe condition.

DATES: Effective June 6, 2002.

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

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

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–81, –82, and –83 series airplanes, and Model MD–88 airplanes, was published in the **Federal Register** on January 9, 2002 (67 FR 1165). That action proposed to require an inspection to verify proper installation of the support clamp of the alternating current (AC) power relay feeder cables at the aft inboard side of the electrical power center, and corrective actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Explanation of Change to Applicability of Proposed Rule

The FAA has revised the applicability of this final rule to identify model designations as published in the most recent type certificate data sheet for the affected models.

Conclusion

After careful review of the available data, the FAA has determined that air

safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 162 Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and MD–88 airplanes of the affected design in the worldwide fleet. The FAA estimates that 90 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the requirements of this AD on U.S. operators is estimated to be $5,400, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–09–06 McDonnell Douglas: Amendment 39–12739. Docket 2000–NM–165–AD.

Applicability: Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and MD–88 airplanes; certificated in any category; as listed in McDonnell Douglas Alert Service Bulletin MD80–24A145, Revision 01, dated June 22, 2000.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) 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 the alternating current (AC) power relay feeder cable from chafing against the aft inboard side of the electrical power center, which could result in electrical arcing and damage to adjacent structures, and consequent smoke and/or fire in the electrical power center area, accomplish the following:

Inspection

(a) Within 1 year from the effective date of this AD, do a general visual inspection to verify proper installation of the support clamp of the alternating current (AC) power relay feeder cables (includes the clamp, grommet, and sta-strap) at the aft inboard side of the electrical power center, per McDonnell Douglas Alert Service Bulletin MD80–24A145, Revision 01, dated June 22, 2000.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Proper Installation: No Further Action

(1) If the installation of the clamp, grommet, and sta-strap is correct, no further action is required by this AD.

Improper Installation: Corrective Actions

(2) If any installation of the clamp, grommet, or sta-strap is not correct, before further flight, do the actions specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Do a general visual inspection of the power relay feeder cables for chafing, per the service bulletin. If any chafing is found, before further flight, repair per the service bulletin.

(ii) Install the clamp, grommet, and sta-strap, per the service bulletin.

Note 3: Accomplishment of the actions specified in McDonnell Douglas MD80–24–145, dated December 15, 1992, before the effective date of this AD, is considered acceptable for compliance with the requirements of this AD.

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

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

Incorporation by Reference

(c) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD80–24A145, Revision 01, dated June 22, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(d) This amendment becomes effective on June 6, 2002.

Issued in Renton, Washington, on April 24, 2002.

Lirio Liu-Nelson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–10652 Filed 5–1–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–164–AD; Amendment 39–12740; AD 2002–09–07]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and MD–88 airplanes. This AD requires an inspection of the electrical power feeder cables in the aft cargo compartment sidewall for chafing and/or preloading, and corrective actions, if necessary. This action is necessary to prevent possible arcing of the electrical power cables in the aft cargo compartment sidewall and consequent damage to equipment and the adjacent structure, which could result in smoke and/or fire in the cargo compartment. This action is intended to address the identified unsafe condition.

DATES: Effective June 6, 2002.

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

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

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Airframe Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–81, -82, and -83 series airplanes, and Model MD–88 airplanes, was published in the **Federal Register** on January 9, 2002 (67 FR 1169). That action proposed to require an inspection of the electrical power feeder cables in the aft cargo compartment sidewall for chafing and/or preloading, and corrective actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Explanation of Change to Applicability of Proposed Rule

The FAA has revised the applicability of this final rule to identify model designations as published in the most recent type certificate data sheet for the affected models.

Conclusion

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

Cost Impact

There are approximately 112 Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and MD–88 airplanes of the affected design in the worldwide fleet. The FAA estimates that 57 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the requirements of this AD on U.S. operators is estimated to be $3,420, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–09–07 McDonnell Douglas: Amendment 39–12740. Docket 2000–NM–164–AD.

Applicability: Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and MD–88 airplanes; certificated in any category; as listed in McDonnell Douglas Alert Service Bulletin MD80–24A124, Revision 01, dated August 24, 2000.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) 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 possible arcing of the electrical power cables in the aft cargo compartment sidewall and consequent damage to equipment and the adjacent structure, which could result in smoke and/or fire in the cargo compartment, accomplish the following:

Inspection and Corrective Action, if Necessary

(a) Within 1 year after the effective date of this AD, perform a general visual inspection of the electrical power feeder cables on each side of the floor support strut at station Y=1231.00 for chafing and preloading against the adjacent floor support cutout, in accordance with McDonnell Douglas Alert Service Bulletin MD80–24A124, Revision 01, dated August 24, 2000.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Note 3: Accomplishment of the actions required by this AD, before the effective date of this AD, in accordance with McDonnell Douglas MD–80 Service Bulletin 24–124, dated September 26, 1991, is considered acceptable for compliance with the requirements of this AD.

(1) Condition 1. If no chafing and preloading of the electrical power feeder cables are found, no further action is required by this AD.

(2) Condition 2. If any chafing of the electrical power feeder cable is found, before further flight, repair the cable, install a shim on the bracket, and reposition the cable; in accordance with the service bulletin.

(3) Condition 3. If any preloading of the electrical power feeder cable is found, before further flight, install a shim on the bracket and reposition the cable, in accordance with the service bulletin.

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

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

Special Flight Permits

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

Incorporation by Reference

(d) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD80–24A124, Revision 01, dated August 24, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on June 6, 2002.

Issued in Renton, Washington, on April 24, 2002.

Lirio Liu-Nelson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–10653 Filed 5–1–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–25–AD; Amendment 39–12734; AD 2002–09–01]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney 4000 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to Pratt & Whitney (PW) PW4090, PW4090–3, PW4074D, PW4077D, PW4090D, and PW4098 turbofan engines with 15th stage high pressure compressor (HPC) disks having certain part numbers (P/N's). This amendment requires initial and repetitive borescope inspections of 15th stage HPC disks for cracks in the knife edges, eddy current inspections (ECI's) of blade loading slots if required, and removal of cracked disks. In addition, this amendment requires the removal from service of these P/N disks, at a new lower cyclic life limit. This amendment is prompted by two reports of 15th stage HPC disks with cracks in the outer rim front rail of the blade loading slots, and in the front forward and middle knife edges. The actions specified by this AD are intended to prevent 15th stage HPC disk failures from cracks, which could result in an uncontained engine failure.

DATES: Effective date June 6, 2002. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 6, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–6600, fax (860) 565–4503. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park; telephone (781) 238–7747, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to

include an AD that is applicable to PW4090, PW4090–3, PW4074D, PW4077D, PW4090D, and PW4098 turbofan engines with 15th stage high pressure compressor (HPC) disks having certain P/N's, was published in the **Federal Register** on November 23, 2001 (66 FR 58689). That action proposed to require initial and repetitive borescope inspections of 15th stage HPC disks for cracks in the knife edges, eddy current inspections (ECI's) of blade loading slots if required, and removal of cracked disks. In addition, that action proposed to require the removal from service of these P/N disks, at a new lower cyclic life limit. The proposed actions were to be done in accordance with the Accomplishment Instructions of PW Service Bulletin PW4G–112–A72–242, dated May 1, 2001.

Comments

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

One commenter requests that in the paragraph entitled ''Differences Between this AD and Manufacturer's Service Information'' the sentence stating that PW has informed the FAA that to help reduce the operators' cost of replacing disks, PW may supply replacement disks at no cost, to be installed at the time disks with more than 2,000 cycles-since-new (CSN) are removed for maintenance, be deleted.

The FAA agrees. Although this cost reduction information was supplied by the manufacturer for the proposed rule, the purposes of this AD are to mandate initial and repetitive inspections for cracks, and to establish a lower life limit for the disk. The replacement of disks with more than 2,000 CSN when in the shop was determined based on economic consideration, and is not a hard time limit for the disk. Therefore, to avoid confusion, the cost reduction information is removed from this final rule.

One commenter requests that a typographical error be corrected in the paragraph entitled ''Manufacturer's Service Information'' from 8,000 hours CSN, to 8,000 CSN.

The FAA agrees that the sentence does contain a typographical error, however, the final rule does not contain the paragraph referred to and is not affected.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Economic Analysis

There are approximately 160 PW4090, PW4090–3, PW4074D, PW4077D, PW4090D, and PW4098 turbofan engines of the affected design in the worldwide fleet. The FAA estimates that 70 engines installed on airplanes of U.S. registry would be affected by this AD. The FAA also estimates that it would take approximately 2.5 work hours per engine to accomplish an initial borescope inspection, and that the average labor rate is $60 per work hour. Required parts for a borescope inspection would cost approximately $9 per engine. Based on these figures, the total cost for the initial borescope inspection for U.S. operators is estimated to be $11,130. Assuming that all 70 engines would require 15th stage HPC disk replacement, and that a replacement disk costs approximately $65,000, the total disk cost of the AD on U.S. operators is estimated to be $4,550,000.

Regulatory Analysis

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–09–01 Pratt & Whitney: Amendment 39–12734. Docket No. 2001–NE–25–AD.

Applicability: This airworthiness directive (AD) is applicable to Pratt & Whitney (PW) PW4090, PW4090–3, PW4074D, PW4077D, PW4090D, and PW4098 turbofan engines with 15th stage high pressure compressor (HPC) disks part numbers (P/N's) 56H015 or 57H715. These engines are installed on, but not limited to Boeing 777 airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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: Compliance with this AD is required as indicated, unless already done.

To prevent 15th stage HPC disk failures from cracks, which could result in an uncontained engine failure, do the following:

Initial Inspection

(a) Perform an initial inspection for cracks in the front rail of the blade loading slots and front forward and middle knife edges of the 15th stage HPC disk, and replace disk in accordance with paragraphs 1.A. through 1.E.(4) of, ''For Engines Installed on Aircraft''; or paragraphs 2.A. through 2.E.(4) of, ''For Engines Removed From the Aircraft'', of the Accomplishment Instructions of PW Service Bulletin PW4G–112–A72–242, dated May 1, 2001, and the following Table 1:

TABLE 1.—15TH STAGE HPC DISK INITIAL INSPECTION

Action	If:	Then:
(1) Borescope-inspect disk, within 4,600 cycles-since-new (CSN) or before 90 days after the effective date of this AD, whichever occurs later.	(i) Borescope inspection shows a crack in any knife edge area.	Replace the disk with a serviceable disk before further flight.
	(ii) Borescope inspection shows a suspect crack in any loading slot.	Perform an eddy current inspection (ECI) to confirm crack within the next 25 cycles-in-service (CIS), and if cracked replace with a serviceable disk before further flight.

Repetitive Inspections

(b) Perform repetitive inspections in accordance with the inspection procedures in paragraph (a) of this AD at intervals of no more than 1,000 CIS since the last inspection.

New Cyclic Life Limit

(c) This AD establishes a new cyclic life limit for 15th stage HPC disks P/N's 56H015 and 57H715 of 8,000 cycles-since-new (CSN). Thereafter, except as provided in paragraph (d) of this AD, no alternative cyclic life limit may be approved for 15th stage HPC disks P/N's 56H015 and 57H715.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Documents That Have Been Incorporated by Reference

(f) The inspections must be done in accordance with PW Service Bulletin PW4G–112–A72–242, dated May 1, 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 Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–6600, fax (860) 565–4503. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on June 6, 2002.

Issued in Burlington, Massachusetts, on April 18, 2002.

Francis A. Favara,

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

[FR Doc. 02–10274 Filed 5–1–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AEA–17]

Establishment of Class E Airspace at Sharon, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the description of Shenango-UMPC Horizon Hospital Heliport, PA Class E5 airspace published as a final rule in the **Federal Register** on September 28, 2001, Airspace Docket Number 01–AEA–17FR. The final rule established Class E airspace at Sharon, PA.

EFFECTIVE DATE: May 2, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 01–23938, Airspace Docket 01–AEA–17FR, published on September 28, 2001 (66 FR 49518–49519), established Class E5 airspace at Shenango-UMPC Horizon Hospital Heliport, Sharon, PA. An error was discovered in the description of the airspace in the latitude and the reference point for the description of the delegated airspace. This action corrects the description of the minutes of latitude and the reference point.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the airspace designation for the Shenango-UMPC Horizon Hospital Heliport, Sharon, PA Class E5 airspace, as published in the **Federal Register** on September 28, 2001 (66FR 49518–49519) is corrected as follows:

§ 71.1 [Corrected]

On page 49519, column 1, in the airspace designation for Sharon, PA correct the description to read: ''That airspace extending upward from 700 feet above the surface within a 6 mile radius of the Point in Space for the SIAP RNAV262 to the Shenango-UMPC Hospital Heliport.''

Issued in Jamaica, New York on April 22, 2002.

Richard J. Ducharme,

Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 02–10938 Filed 5–1–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30306; Amdt. No. 3003]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are

designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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. For the same reason, the FAA certifies that this amendment 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 97

Air traffic control, Airports, Navigation (air).

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

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective June 13, 2002

Anchorage, AK, Ted Stevens Anchorage Intl, ILS RWY 14, Amdt 3
Anchorage, AK, Ted Stevens Anchorage Intl, RNAV (GPS) RWY 14, Orig
Anchorage, AK, Ted Stevens Anchorage Intl, GPS RWY 14, Amdt 1A, CANCELLED
Reform, AL, North Pickens, RNAV (GPS) RWY 19, Orig
Covington/Cincinnati, OH/KY, Cincinnati/Northern Kentucky Intl, NDB RWY 9, Amdt 15
Covington/Cincinnati, OH/KY, Cincinnati/Northern Kentucky Intl, ILS RWY 18L, Amdt 5
Covington/Cincinnati, OH/KY, Cincinnati/Northern Kentucky Intl, ILS RWY 18R, Amdt 20
Covington/Cincinnati, OH/KY, Cincinnati/Northern Kentucky Intl, ILS RWY 36L, Amdt 39

Covington/Cincinnati, OH/KY, Cincinnati/Northern Kentucky Intl, ILS RWY 36R, Amdt 6
Covington/Cincinnati, OH/KY, Cincinnati/Northern Kentucky Intl, RNAV (GPS) RWY 9, Orig
Covington/Cincinnati, OH/KY, Cincinnati/Northern Kentucky Intl, RNAV (GPS) RWY 36L, Orig
Covington/Cincinnati, OH/KY, Cincinnati/Northern Kentucky Intl, RNAV (GPS) RWY 36R, Orig
Covington/Cincinnati, OH/KY, Cincinnati/Northern Kentucky Intl, RNAV (GPS) RWY 18L, Orig
Covington/Cincinnati, OH/KY, Cincinnati/Northern Kentucky Intl, RNAV (GPS) RWY 18R, Orig
Easton, MD, Easton/Newnam Field, ILS RWY 4, Orig
Grand Rapids, MI, Gerald R. Ford Intl, NDB RWY 26L, Amdt 20A
Grand Rapids, MI, Gerald R. Ford Intl, RNAV (GPS) RWY 8R, Orig
Grand Rapids, MI, Gerald R. Ford Intl, RNAV (GPS) RWY 26L, Orig
Monroe City, MO, Monroe City Regional, RNAV (GPS) RWY 9, Orig
Monroe City, MO, Monroe City Regional, RNAV (GPS) RWY 27, Orig
Monroe City, MO, Monroe City Regional, VOR/DME–A, Amdt 2
Monroe City, MO, Monroe City Regional, VOR/DME RWY 27, Amdt 1
Monroe City, MO, Monroe City Regional, GPS RWY 27, Orig CANCELLED
McComb, MS, McComb, MS, McComb-Pike County-John E. Lewis Field, LOC RWY 15, Amdt 6A, CANCELLED
McComb, MS, McComb, MS, McComb-Pike County-John E. Lewis Field, ILS RWY 15, Orig
Grant, NE, Grant Muni, RNAV (GPS) RWY 15, Orig
Grant, NE, Grant Muni, RNAV (GPS) RWY 33, Orig
Grant, NE, Grant Muni, NDB RWY 15, Amdt 3
Grant, NE, Grant Muni, NDB RWY 33, Amdt 3
Columbus, OH, Darby Dan, NDB–A, Orig
Columbus, OH, Darby Dan, RNAV (GPS) RWY 9, Orig
Columbus, OH, Darby Dan, RNAV (GPS) RWY 27, Orig
Idabel, OK, Idabel, GPS RWY 17, Orig CANCELLED
Idabel, OK, Idabel, NDB RWY 17, Amdt 3 CANCELLED
Isla De Vieques, PR, Antonio Rivera Rodriguez, RNAV (GPS) RWY 9, Orig
Westerly, RI, Westerly State, LOC RWY 7, Amdt 6
Westerly, RI, Westerly State, RNAV (GPS) RWY 7, Orig
Westerly, RI, Westerly State, GPS RWY 7, Orig, CANCELLED
Nashville, TN, Nashville Intl, RNAV (GPS) RWY 2C, Orig
Nashville, TN, Nashville Intl, RNAV (GPS) RWY 2L, Orig
Nashville, TN, Nashville Intl, RNAV (GPS) RWY 2R, Orig
Nashville, TN, Nashville Intl, RNAV (GPS) RWY 13, Orig
Nashville, TN, Nashville Intl, RNAV (GPS) RWY 20L, Orig
Nashville, TN, Nashville Intl, RNAV (GPS) RWY 20R, Orig
Nashville, TN, Nashville Intl, RNAV (GPS) RWY 31, Orig
Richfield, UT, Richfield Muni, RNAV (GPS) RWY 19, Orig
Burlington, VT, Burlington Intl, RADAR–1, Amdt 5, CANCELLED
Springfield, VT, Hartness State (Springfield), NDB–A, Amdt 6
Springfield, VT, Hartness State (Springfield), RNAV (GPS) RWY 5, Orig
Mineral Point, WI, Iowa County, NDB RWY 22, Amdt 5
Mineral Point, WI, Iowa County, RNAV (GPS) RWY 4, Orig
Mineral Point, WI, Iowa County, RNAV (GPS) RWY 22, Orig
Mineral Point, WI, Iowa County, RNAV (GPS) RWY 11, Orig
Mineral Point, WI, Iowa County, RNAV (GPS) RWY 29, Orig
Mineral Point, WI, Iowa County, GPS RWY 4, Orig, CANCELLED
Cody, WY, Yellowstone Regional, RNAV (GPS) RWY 22, Orig

. . . *Effective July 11, 2002*

[FR Doc. 02–10939 Filed 5–1–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30307; Amdt. No. 3004]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective data for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the

SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/T NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/T NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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. For the same reason, the FAA certifies that this amendment 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 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on April 26, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME OR TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

. . . *Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	Subject
10/05/01	TX	WACO	McGREGOR EXECUTIVE	1/0966	VOR RWY 17, AMDT 10A
10/26/01	TX	SAN ANTONIO	SAN ANTONIO INTL	1/1648	NDB RWY 12R, AMDT 20C
03/06/02	NY	BINGHAMTON	BINGHAMTON REGIONAL/EDWIN A. LINK FIELD.	2/1950	ILS RWY 16, AMDT 6A. THIS CORRECTS FDC 2/1950 PUBLISHED IN TL02–08.
04/10/02	PA	HARRISBURG	CAPITAL CITY	2/2898	ILS RWY 8, AMDT 10D
04/10/02	OK	OKLAHOMA CITY	WILL ROGERS WORLD	2/2910	NDB RWY 35R, AMDT 5B
04/10/02	OK	OKLAHOMA CITY	WILL ROGERS WORLD	2/2917	ILS RWY 35R (CAT I, II) AMDT 8C
04/10/02	OK	OKLAHOMA CITY	WILL ROGERS WORLD	2/2919	RNAV (GPS) RWY 35R, ORIG
04/10/02	OK	OKLAHOMA CITY	WILL ROGERS WORLD	2/2921	LOC BC RWY 35L, AMDT 10C
04/11/02	TX	McKINNEY	McKINNEY MUNI	2/2838	ILS RWY 17, AMDT 1B
04/11/02	TX	BONHAM	JONES FIELD	2/2934	VOR/DME RWY 17, ORIG
04/11/02	TX	GREENVILLE	MAJORS	2/2937	VOR/DME RWY 17, ORIG-B
04/11/02	TX	McKINNEY	McKINNEY MUNI	2/2941	GPS RWY 35, ORIG-A
04/11/02	TX	McKINNEY	McKINNEY MUNI	2/2943	VOR/DME-A, ORIG-B
04/11/02	TX	SHERMAN/DENISON	GRAYSON COUNTY	2/2946	ILS RWY 17L, ORIG
04/11/02	TX	SHERMAN/DENISON	GRAYSON COUNTY	2/2947	VOR/DME-A, ORIG-A
04/11/02	TX	SHERMAN/DENISON	GRAYSON COUNTY	2/2949	NDB OR GPS RWY 17L, AMDT 9A
04/11/02	TX	SHERMAN/DENISON	GRAYSON COUNTY	2/2950	VOR/DME RNAV RWY 35R, ORIG-B
04/11/02	TX	SHERMAN	SHERMAN MUNI	2/2957	VOR/DME-A, ORIG
04/11/02	CA	VISALIA	VISALIA MUNI	2/2976	ILS RWY 30, AMDT 5B
04/15/02	WV	LOGAN	LOGAN COUNTY	2/3052	GPS RWY 6, ORIG
04/15/02	WV	LOGAN	LOGAN COUNTY	2/3053	GPS RWY 24, ORIG
04/16/02	WI	MILWAUKEE	LAWRENCE J. TIMMERMAN	2/3072	VOR OR GPS RWY 15L, AMDT 13
04/16/02	TX	GREENVILLE	MAJORS	2/3083	ILS RWY 17, AMDT 5A
04/16/02	TX	GREENVILLE	MAJORS	2/3084	ILS 2 RWY 17, AMDT 4A

FDC date	State	City	Airport	FDC No.	Subject
04/16/02	TX	GREENVILLE	MAJORS	2/3085	NDB OR GPS RWY 17, AMDT 5B
04/16/02	TX	GREENVILLE	MAJORS	2/3086	TACAN RWY 17, AMDT 2A ROW
04/17/02	IL	CHICAGO/AURORA	AURORA MUNI	2/3099	VOR RWY 15, ORIG–A
04/17/02	TN	DICKSON	DICKSON MUNI	2/3126	VOR/DME OR GPS RWY 17, AMDT 4
04/17/02	TN	DICKSON	DICKSON MUNI	2/3127	NDB RWY 17, AMDT 2
04/17/02	NV	LAS VEGAS	McCARRAN INTL	2/3131	ILS RWY 25L, AMDT 3
04/18/02	TX	DALLAS-FORTH WORTH.	DALLAS-FORT WORTH INTERNATIONAL.	2/3171	RNAV (GPS) RWY 13R, ORIG
04/18/02	TX	DALLAS-FORT WORTH	DALLAS-FORT WORTH INTERNATIONAL.	2/3172	ILS RWY 13R, AMDT 6
04/18/02	TX	McKINNEY	McKINNEY MUNI	2/3178	GPS RWY 17, ORIG-B
04/18/02	TX	ATLANTA	HALL-MILLER	2/3179	RNAV (GPS) RWY 5, ORIG
04/18/02	VA	RICHMOND/ASHLAND	HANOVER COUNTY MUNI	2/3184	NDB RWY 16, ORIG-C
04/18/02	CA	LOS ANGELES	LOS ANGELES INTL	2/3204	ILS RWY 24R (CAT I, II, III) AMDT 22
04/19/02	VA	ROANOKE	ROANOKE REGIONAL/WOODRUM	2/3228	LDA RWY 6, AMDT 7B
04/19/02	KS	WICHITA	CESSNA AIRCRAFT FIELD	2/3256	VOR OR GPS-C, ORIG-A
04/19/02	WV	PINEVILLE	KEE FIELD	2//3258	GPS RWY 7, ORIG
04/19/02	WV	PINEVILLE	KEE FIELD	2/3259	GPS RWY 25, ORIG
04/19/02	VA	ROANOKE	ROANOKE REGIONAL/WOODRUM	2/3262	ILS RWY 33, AMDT 11
04/19/02	NY	ROCHESTER	GREATER ROCHESTER INTL	2/3280	ILS RWY 4, AMDT 17
04/19/02	NY	ROCHESTER	GREATER ROCHESTER INTL	2/3281	ILS RWY 22, AMDT 5. THIS REPLACES FDC 2/2747 IN TL02–11.
04/19/02	NY	ROCHESTER	GREATER ROCHESTER INTL	2/3283	RNAV (GPS) RWY 22, ORIG-A. THIS REPLACES FDC 2/2752 IN TLOS–11.
04/19/02	AK	ANCHORAGE	TED STEVENS ANCHORAGE INTL	2/3284	NDB RWY 6R, AMDT 6E
04/19/02	NY	ROCHESTER	GREATER ROCHESTER INTL	2/3286	ILS RWY 4, (CAT II), AMDT 17. THIS REPLACES FDC 2/2746 IN TL02–11.
04/22/02	SC	UNION	UNION COUNTY-TROY SHELTON FIELD.	2/3348	NDB RWY 5, ORIG
04/22/02	CA	JACKSON	WESTOVER FIELD AMADOR COUNTY.	2/3364	GPS RWY 1, ORIG
04/22/02	CA	JACKSON	WESTOVER FIELD AMADOR COUNTY.	2/3365	VOR/DME RWY 1, AMDT 1
04/22/02	CA	SACRAMENTO	McCLELLAN AIRFIELD	2/3367	ILS RWY 16, ORIG-A
04/23/02	VA	RICHMOND/ASHLAND	HANOVER COUNTY MUNI	2/3383	GPS RWY 16, AMDT 1A

[FR Doc. 02–10940 Filed 5–1–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 388

[Docket No. RM02–8–000; Order No. 625]

Revised Fees for Record Requests; Final Rule

Issued April 26, 2002.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is amending its regulations to increase the fee for hard copies of documents printed from the Federal Energy Regulatory Records Information System (FERRIS) from 15 to 20 cents per page. This change is necessary due to decreased volume and will enable the Commission to continue offering copying services to the public.

EFFECTIVE DATE: This final rule is effective immediately upon issuance.

FOR FURTHER INFORMATION CONTACT: Katherina Quijada-Cusack, Office of the Chief Information Officer, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–1748, *Katherina.Quijada-Cusack@ferc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission is amending Section 388.109 of its regulations to increase the fee for hard copies of documents available through its Public Reference Room in electronic form from 15 to 20 cents per page.

II. Background

The Commission makes public documents available for download through the Internet.[1] Until recently, this has been done primarily through the Commission's Records and Information Management System (RIMS). The Commission now is in the process of replacing RIMS and other records systems with the Federal Energy Regulatory Records Information System (FERRIS). FERRIS will provide improved functionality and reliability to members of the public seeking information about Commission proceedings and other matters.[2]

Documents available electronically are also available to the public in hard copy. Currently, the Commission's regulations call for a charge of 15 cents per page for hard copies of documents that are available in electronic format.[3]

[1] 18 CFR 388.106.

[2] *See* 67 FR 10910 (Mar. 11, 2002).

[3] 18 CFR 388.109(a)(4)(i).

This rule will change the charge to 20 cents per page.

III. Discussion

Due to increased usage of the Internet by members of the public who wish to access public Commission documents, the Commission has seen a decreased demand for hard copies of electronically available documents. Because of the smaller volume, the Commission's Public Reference Room contractor, which was recently selected through a competed procurement as offering the best value among available firms, requires an increase in the copying charge for the service to continue to remain economically viable. Commission staff monitors printing statistics and has verified the contractor's need. The Commission does not believe the price increase will cause any hardship, particularly given the increasing reliance on electronic means for accessing documents. This final rule also deletes the reference to the Commission's Records and Information Management System (RIMS) and substitutes a reference to the new Federal Energy Regulatory Records Information System (FERRIS).

IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (''RFA'') requires agencies to prepare certain statements, descriptions, and analyses of proposed rules that will have a significant economic impact on a substantial number of small entities.[4] The Commission is not required to make such an analysis if a rule would not have such an effect.

The Commission does not believe that this rule would have such an impact on small entities. Charges for hard copies of documents remain modest and the Commission considers it very unlikely that any person or entity would require such a large volume of documents for this increase to have a significant impact.

V. Environmental Statement

Issuance of this Final Rule does not represent a major federal action having a significant adverse effect on the human environment under the Commission's regulations implementing the National Environmental Policy Act.[5] Part 380 of the Commission's regulations lists a number of exemptions where an Environmental Analysis or Environmental Impact Statement will not be done. Included are exemptions for procedural, ministerial or internal administrative actions, and for information gathering, analysis and dissemination.[6] This rulemaking is exempt under those provisions.

VI. Information Collection Statement

The Office of Management and Budget's (''OMB's'') regulations require that OMB approve certain information collection requirements imposed by agency rule.[7] This Final Rule contains no information reporting requirements, and is not subject to OMB approval.

VII. Document Availability

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

From FERC's Home Page on the Internet, this information is available in both the Federal Energy Regulatory Records Information System (FERRIS) and the Records and Information Management System (RIMS).

—FERRIS provides access to the texts of formal documents issued by the Commission since November 14, 1994.

—FERRIS can be accessed using the FERRIS link or the Energy Information Online icon. The full text of this document is available on FERRIS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.

—RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, FERRIS, and the Website during normal business hours from our Help line at (202) 208–2222 (E-Mail to *WebMaster@ferc.gov*) or the Public Reference at (202) 208–1371 (E-Mail to *public.referenceroom@ferc.gov*).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, FERRIS, and the FERC Website are available. User assistance is also available.

VIII. Effective Date and Congressional Notification

This Final Rule will take effect immediately upon issuance. Pursuant to 5 U.S.C. 804(3)(A), agencies are not required to notify Congress of any Final Rule that is a rule of particular applicability, including a rule that approves or prescribes rates, services, corporate or financial structures, reorganizations, or accounting practices. The Commission finds that this Final Rule is covered by the exception. The only impact of the rule is to prescribe the rate that the Commission's Public Reference Room contractor can charge for hard copies of certain documents. It is therefore a rule of particular applicability prescribing a rate, and the provisions of 5 U.S.C. 801 regarding Congressional review of Final Rules do not apply.

The Commission is issuing this as a final rule without a period for public comment. Under 5 U.S.C. 553(b), notice and comment procedures are unnecessary where a rulemaking concerns only agency procedure and practice, or where the agency finds that notice and comment is unnecessary. This rule concerns only matters of agency procedure and will not significantly affect regulated entities or the general public. Therefore, the Commission finds notice and comment procedures to be unnecessary.

In addition, in accordance with 5 U.S.C. 553(d)(3), the Commission finds that good cause exists to make this Final Rule effective immediately upon issuance. The increase in copying charges is necessary to make it economically viable for the Commission's Public Reference Room to continue offering this service, and will have minimal impact upon the public.

List of Subjects in 18 CFR Part 388

Confidential business information, Freedom of information.

By the Commission.

Linwood A. Watson, Jr.,

Deputy Secretary.

In consideration of the foregoing, the Commission amends Part 388, Chapter I, Title 18, of the *Code of Federal Regulations* as follows:

[4] U.S.C. 601–612.

[5] Order No. 486, 52 FR 47897 (Dec. 17, 1987); FERC Stats. & Regs. [Regulations Preambles 1986–1990] ¶ 30,783 (Dec. 10, 1984) (*codified* at 18 CFR part 380).

[6] 18 CFR 380.4(1) and (5).

[7] 5 CFR part 1320.

PART 388—INFORMATION AND REQUESTS

1. The authority citation for part 388 continues to read as follows:

Authority: 5 U.S.C. 301–305, 551, 552 (as amended), 553–557; 42 U.S.C. 7101–7352.

2. In § 388.109, paragraph (a)(4)(i) is revised to read as follows:

* * * * *

§ 388.109 Fees for record requests.

(a) * * *

(4)(i) The public may purchase hard copies of documents available in electronic form from the Commission's Federal Energy Regulatory Records Information System (FERRIS) for 20 cents per page.

[FR Doc. 02–10808 Filed 5–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for three approved abbreviated new animal drug applications (ANADAs) from Blue Ridge Pharmaceuticals, Inc., to Virbac AH, Inc.

DATES: This rule is effective May 2, 2002.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209, e-mail: lluther@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Blue Ridge Pharmaceuticals, Inc., 4249–105 Piedmont Pkwy., Greensboro, NC 27410, has informed FDA that it has transferred ownership of, and all rights and interest in, NADA 200–270 for IVERHART (ivermectin) Tablets, NADA 200–281 for WORMEXX (pyrantel pamoate) Chewable Tablets, and NADA 200–302 for IVERHART Plus (ivermectin/pyrantel pamoate) Flavored Chewable Tablets to Virbac AH, Inc., 3200 Meacham Blvd., Ft. Worth, TX 76137. Accordingly, the agency is amending the regulations in 21 CFR 520.1193, 520.1196, and 520.2041 to reflect the transfer of ownership.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.1193 [Amended]

2. Section 520.1193 *Ivermectin tablets and chewables* is amended in paragraph (b)(2) by removing ''065274'' and by adding in its place ''051311''.

§ 520.1196 [Amended]

3. Section 520.1196 *Ivermectin and pyrantel pamoate chewable tablet* is amended in the section heading by removing ''tablet'' and by adding in its place ''tablets''; and in paragraph (b) by removing ''065274'' and by adding in its place ''051311''.

§ 520.2041 [Amended]

4. Section 520.2041 *Pyrantel pamoate chewable tablets* is amended in paragraph (b) by removing ''065274'' and by adding in its place ''051311''.

Dated: April 3, 2002..

Andrew J. Beaulieu,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 02–10793 Filed 5–1–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tilmicosin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Elanco Animal Health. The supplemental NADA provides for additions to labeling of tilmicosin for use in swine feed.

DATES: This rule is effective May 2, 2002.

FOR FURTHER INFORMATION CONTACT: Janis R. Messenheimer, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7578.

SUPPLEMENTARY INFORMATION: Elanco Animal Health, A Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, filed a supplement to NADA 141–064 that provides for the use of PULMOTIL (tilmicosin phosphate) Type A medicated article in swine feed for the control of swine respiratory disease associated with certain bacterial organisms. The supplemental NADA provides for additional use information in labeling. The supplemental NADA is approved as of November 15, 2001, and the regulations are amended in 21 CFR 558.618 to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.618 is amended by redesignating paragraphs (a) through (d) as paragraphs (b) through (e), respectively; by adding new paragraph (a); and by revising newly redesignated paragraphs (b), (c), and (e)(3) to read as follows:

§ 558.618 Tilmicosin.

(a) *Specifications*. Type A medicated article containing 20 percent tilmicosin as tilmicosin phosphate (90.7 grams per pound).

(b) *Approvals*. *See* No. 000986 in § 510.600(c) of this chapter.

(c) *Special considerations*. (1) Federal law limits this drug to use under the professional supervision of a licensed veterinarian. *See* § 558.6 of this chapter for additional requirements for the use of products regulated as veterinary feed directives (VFDs).

(2) The expiration date of VFDs for tilmicosin must not exceed 90 days from the time of issuance. VFDs for tilmicosin shall not be refilled.

(3) Do not use in Type B or Type C medicated feeds containing bentonite.

* * * * *

(e) * * *

(3) *Limitations*. Feed continuously as the sole ration for 21-day period, beginning approximately 7 days before an expected disease outbreak. Feed containing tilmicosin shall not be fed to pigs for more than 21 days during each phase of production without ceasing administration for reevaluation of antimicrobial use by a licensed veterinarian before reinitiating a further course of therapy with an appropriate antimicrobial. The safety of tilmicosin has not been established in pregnant swine or swine intended for breeding purposes. Do not allow horses or other equines access to feeds containing tilmicosin. Withdraw 7 days before slaughter.

Dated: April 9, 2002.

Andrew J. Beaulieu,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 02–10792 Filed 5–1–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–02–050]

RIN 2115–AE47

Drawbridge Operation Regulations: Newtown Creek, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary final rule governing the operation of the Pulaski Bridge, mile 0.6, across Newtown Creek between Brooklyn and Queens, New York. This temporary final rule allows the bridge to remain closed from 9:30 a.m. to 11:30 a.m. on May 5, 2002. This action is necessary for public safety, to facilitate the running of the Five Borough Bike Tour Race.

DATES: This temporary final rule is effective on Sunday, May 5, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–02–50) and are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, 6:30 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Schmied, Project Officer, First Coast Guard District, (212) 668–7165.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard has determined that good cause exists under the Administrative Procedure Act (5 U.S.C. 553) to forego notice and comment for this rulemaking and for making this regulation effective in less than 30 days after publication in the **Federal Register**. Processing and publication of this temporary rule 30 days prior to the effective date was not possible due to the late notification provided to the Coast Guard. The Coast Guard believes notice and comment are not necessary because the requested closure is of short duration on a Sunday when there have been few requests to open this bridge. The Newtown Creek is used mostly by commercial vessels and those vessels normally pass under the draws without openings. The commercial vessels that do require openings are work barges that do not operate on Sundays. The Coast Guard, for the reasons just stated, has also determined that good cause exists for this rule to be effective less than 30 days after it is published in the **Federal Register**.

Background

The Pulaski Bridge, mile 0.6, across the Newtown Creek between Brooklyn and Queens, has a vertical clearance of 39 feet at mean high water and 43 feet at mean low water in the closed position. The existing operating regulations listed at 117.801(g) require the draw to open on signal, if at least a two-hour advance notice is given.

New York City Department of Transportation requested a temporary change to the operating regulations to allow the Pulaski Bridge to remain in the closed position from 9:30 a.m. to 11:30 a.m. on May 5, 2002, for the running of the Five Borough Bike Tour. Vessels that can pass under the bridges without bridge openings may do so at all times.

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). This conclusion is based on the fact that the requested closure is of short duration and on Sunday morning when there have been few requests to open the bridge.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612) we considered whether this rule would have a significant economic impact on a substantial number of small entities. ''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 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 conclusion is based on the fact that the requested closure is of short duration and on Sunday when there have been few requests to open the bridge.

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 that 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

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

This rule meets applicable standards in 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 concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A written ''Categorical Exclusion Determination'' is not required for the temporary final rule.

Indian Tribal Governments

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

Energy Effects

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

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. In section 117.801, from 9:30 a.m. through 11:30 a.m. on May 5, 2002, paragraph (g) is suspended and a new paragraph (h) is added to read as follows:

§ 117.801 Newtown Creek, Dutch Kills, English Kills, and their tributaries.

* * * * *

(h) The draw of the Pulaski Bridge, mile 0.6, across the Newtown Creek between Brooklyn and Queens, need not open for vessel traffic, on May 5, 2002, from 9:30 a.m. to 11:30 a.m.

Dated: April 22, 2002.

G.N. Naccara,

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

[FR Doc. 02–10935 Filed 5–1–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AK50

Copayments for Inpatient Hospital Care and Outpatient Medical Care

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document affirms amendments to VA's medical regulations to set forth a mechanism for determining copayments for inpatient hospital care and outpatient medical care. These amendments were made by an interim final rule and were necessary to implement provisions of the Veterans Millennium Health Care and Benefits Act and to set forth exemptions from copayment requirements as mandated by statute.

DATES: *Effective Date:* May 2, 2002.

FOR FURTHER INFORMATION CONTACT: Nancy L. Howard at (202) 273–8198, Revenue Office (174), Office of Finance, Veterans Health Administration, 810 Vermont Avenue, NW, Washington, DC 20420. (The telephone number is not a toll-free number.)

SUPPLEMENTARY INFORMATION: An interim final rule amending VA's medical regulations to set forth a mechanism for determining copayments for inpatient hospital care and outpatient medical care provided to veterans by VA was published in the **Federal Register** on December 6, 2001 (66 FR 63446).

We provided a 60-day comment period that ended February 4, 2002. No comments have been received. Based on the rationale set forth in the interim final rule we now affirm as a final rule the changes made by the interim final rule.

Administrative Procedure Act

This document without any changes affirms amendments made by an interim final rule that is already in effect. Accordingly, we have concluded under 5 U.S.C. 553 that there is good cause for dispensing with a delayed effective date based on the conclusion that such procedure is impracticable, unnecessary, and contrary to the public interest.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This final rule would have no consequential effect on State, local, or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. This final rule would not directly affect any small entities. Only individuals could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers for the programs affected by this document are 64.005, 64.007, 64.008, 64.009, 64.010, 64.011, 64.012, 64.013, 64.014, 64.015, 64.016, 64.018, 64.019, 64.022, and 64.025. 1

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and record-keeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: April 15, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

PART 17—MEDICAL

Accordingly, the interim final rule amending 38 CFR part 17 which was published at 66 FR 63446 on December 6, 2001, is adopted as a final rule without change.

[FR Doc. 02–10886 Filed 5–1–02; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 22, 24 and 64

[CC Docket No. 97–213; FCC 02–108]

Communications Assistance for Law Enforcement Act

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document adopts four electronic surveillance capabilities for wireline, cellular, and broadband Personal Communications Services (''PCS'') telecommunications carriers and sets a compliance date of June 30, 2002 for those four capabilities, as well as two capabilities previously mandated by the Commission. The Commission takes this action under the provisions of the Communications Assistance for Law Enforcement Act of 1994 (Public Law 103–414, 108 Stat. 4279 (1994) (codified as amended in scattered sections of 18 U.S.C. and 47 U.S.C. 229, 1001–1010, 1021)). (''CALEA'') and in response to a decision issued by the United States Court of Appeals for the District of Columbia Circuit (''Court'') that vacated four Department of Justice (''DoJ'')/ Federal Bureau of Investigation (''FBI'') ''punch list'' electronic surveillance capabilities mandated by the Commission's Third Report and Order (''Third R&O'') in this proceeding.

DATES: Effective June 3, 2002.

FOR FURTHER INFORMATION CONTACT: Jamison Prime, Office of Engineering and Technology, (202) 418–7474, TTY (202) 418–2989, e-mail: *jprime@fcc.gov* or Rodney Small, Office of Engineering and Technology, (202) 418–2452, TTY (202) 418–2989, e-mail *rsmall@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Remand, CC Docket No. 97–213, FCC 02–108, adopted April 5, 2002, and released April 11, 2002. The full text of this document is available on the Commission's internet site at *www.fcc.gov.* It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street., SW, Washington, DC 20554. The complete text of this document may be purchased from the Commission's duplication contractor, Qualex International, (202) 863–2893 voice, (202) 863–2898 Fax, qualexint@aol.com e-mail, Portals II, 445 12th St., SW, Room CY–B402, Washington, DC 20554.

Summary of Order on Remand

1. The Order on Remand adopts additional technical requirements for wireline, cellular, and broadband PCS carriers to comply with the assistance capability requirements prescribed by CALEA and sets a June 30, 2002 compliance date for carriers to provide these capabilities. Section 103(a) of CALEA requires that a telecommunications carrier shall ensure that its equipment, facilities, or services that provide a customer or subscriber with the ability to originate, terminate, or direct communications are capable of isolating and providing to the government, pursuant to a lawful authorization, certain wire and electronic communications, including call-identifying information that is reasonably available to the carrier. Under section 107(a)(2) of CALEA (the ''safe harbor'' provision), carriers and manufacturers that comply with industry standards for electronic surveillance are deemed in compliance with their specific responsibilities under CALEA, but, if industry associations or standard-setting organizations fail to issue technical requirements or standards or if a Government agency or any other person believes that such requirements or standards are deficient, the Commission is authorized in response to a petition from any Government agency or person, to establish, by rule, technical requirements or standards. Under section 107 (b) of (CALEA) technical requirements or standards adopted by the Commission must meet the assistance capability requirements of section 103 by cost-effective methods; protect the privacy and security of communications not authorized to be intercepted; minimize the cost of such compliance on residential ratepayers; serve the policy of the United States to encourage the provision of new technologies and services to the public; and provide a reasonable time and conditions for compliance with and the transition to any new standard.

2. In the Third R&O, 14 FCC Rcd 16794, 64 FR 51710, September 24, 1999, the Commission required that

wireline, cellular, and broadband PCS carriers implement all electronic surveillance capabilities of the industry interim standard, J–STD–025 (''J-Standard'') and six of nine additional capabilities requested by DoJ/FBI, known as the ''punch list'' capabilities. With respect to the six required punch list capabilities, ''dialed digit extraction'' would provide to law enforcement agencies (''LEAs'') those digits dialed by a subject after the initial call setup is completed; ''party hold/join/drop'' would provide to LEAs information to identify the active parties to a conference call; ''subject-initiated dialing and signaling'' would provide to LEAs access to all dialing and signaling information available from the subject, such as the use of flash-hook and other feature keys; ''in-band and out-of-band signaling'' would provide to LEAs information about tones or other network signals and messages that a subject's service sends to the subject or associate, such as notification that a line is ringing or busy; ''subject-initiated conference calls'' would provide to LEAs the content of conference calls supported by the subject's service; and ''timing information'' would provide to LEAs information necessary to correlate call-identifying information with call content.

3. Several parties challenged the Commission's decision before the Court. In its August 15, 2000 Remand Decision, 227 F. 3d 450, the Court affirmed the Commission's findings in the Third R&O in part and vacated and remanded for further proceedings the Third R&O's decisions concerning four punch list capabilities (dialed digit extraction, party hold/join/drop messages, subject-initiated dialing and signaling information, and in-band and out-of-band signaling information).

4. Section 102(2) of CALEA defines ''call-identifying information'' as ''dialing or signaling information that identifies the origin, direction, destination, or termination of each communication generated or received by a subscriber by means of any equipment, facility, or service of a telecommunications carrier.'' The J-Standard further interprets the key terms in this definition as follows: origin is the number of the party initiating the call (e.g., calling party); termination is the number of the party ultimately receiving a call (e.g., answering party); direction is the number to which a call is re-directed or the number from which it came, either incoming or outgoing (e.g., redirected-to party or redirected-from party); and destination is the number of the party to which a call in being made (e.g., called party). Although the J-Standard adopts definitions that frame call-identifying information in terms of telephone numbers, the Commission, in the Third R&O, found capabilities required under CALEA, in some cases, require carriers to disclose information that is not a telephone number. The Court held that CALEA is ambiguous as to precisely what constitutes call-identifying information and thus, what the CALEA requirements are. In cases where the intent of Congress is not clear, an agency may develop its interpretation of the statute within the guidelines set forth in Chevron v. National Resources Defense Counsel, Inc., 467 U.S. 837 (1984), and subsequent cases.

5. The J-Standard's definitions do not give all portions of CALEA full effect, and we are disinclined to interpret a statute in a manner that will render portions of it superfluous. The legislative history of CALEA does not clearly state Congress's intent with respect to the key terms at issue, and we think it would be implausible to read CALEA as providing for a more limited class of information than that which LEAs already receive. Nor do we find a basis for tying our interpretation of CALEA exclusively to a prior, separate statute, such as the Electronic Communications Privacy Act of 1986 (''ECPA''). In the Remand Decision, the Court stated that CALEA does not cross-reference or incorporate the definitions of pen registers and trap and trace devices in the ECPA. Moreover, the standards have been modified by such legislation as the USA PATRIOT Act, which expands the terms ''pen register'' and ''trap and trace device'' to include the concept of ''dialing, routing, addressing, or signaling information.''

6. We are adopting a definition of ''call-identifying information'' that replicates the existing electronic surveillance capability functions, but that is also expressed in sufficiently broad terms so as not to be limited to a specific network technology. This analysis is consistent with overall purpose expressed for the Act: CALEA was intended to preserve the ability of law enforcement officials to conduct electronic surveillance effectively and efficiently in the face of rapid advances in telecommunications technology. An example of this approach can be found in the Court's upholding of the provision of antenna location information, even though this capability has no structural equivalent in the traditional wireline architecture. Similarly, we note that there are many situations in which a party inputs dialing information that, in itself, is not a telephone number.

7. Although ''call-identifying information'' consists of both dialing and signaling information that may or may not be described in terms of telephone numbers, not all dialing and signaling information is ''call-identifying information.'' While some dialing or signaling information identifies the origin, direction, destination, or termination of a communication, other dialing or signaling information—such as a bank account number in a bank-by-phone system—clearly does not. Insofar as a ringing tone or a busy signal provides information that is descriptive of an origin, direction, destination, or termination a communication, that tone or signal ''identifies'' such a communication for purposes of CALEA and falls within CALEA's definition of ''call-identifying information.'' By contrast, call content does not identify the origin, termination, direction, and destination of a communication, and thus is not ''call identifying information'' for purposes of CALEA. Section 102(2) of CALEA defines call-identifying information as ''dialing or signaling information that identifies the origin, direction, destination, or termination'' of each call or communication. Thus, the origin, direction, destination, or termination is identified by call-identifying information, such as the caller's phone number. The J-Standard's definitions are deficient to the extent that they claim that a phone number is itself an origin, direction, destination, and termination.

8. In a simple two-way telephone call, the dialing or signaling information that identifies the ''origin'' of a communication is the calling party's telephone line (which is commonly identified by a telephone number). There are situations in which information other than a number is needed to identify the party initiating a call. For example, when a wireless phone is used to initiate a call, that origin may be identified by both the number assigned to the wireless phone and the location information of the antenna site to which the phone is connected. Because the origin pertains to a calling party, there may be multiple points in a telephone call scenario that give rise to information that identifies the origin of a communication.

9. We conclude that a ''termination'' is a party or place at the end of a communication path. The J-Standard defines ''termination'' in terms of the ''party ultimately receiving the call.'' Common practice as well as the industry's own technical standards suggest a broader definition that recognizes that a call can ''terminate''

when it reaches an identifiable stopping point in the network. The J-Standard shows a diagram where the surveillance subject (''S'') is connected to one party (''A''), while the other party (''B'') is on hold. As shown in the diagram, the communication path starting from party A terminates at S. However, as is also shown in the diagram, the communication path coming from the held party B terminates at the subject's switch, and not at the subject's line. This example also supports the proposition that a termination is not always identified by a telephone number because (1) a network switch is not a party in a call, and (2) a network switch is a point in the network with no directory telephone number. There can be multiple terminations within a single call because there are multiple points in a call at which there is information that identifies the called party.

10. A ''destination'' is a party or place to which a call is being made. We reach this definition after considering common and technical dictionary definitions of the term, as well as that provided by the J-Standard. Similarly, we agree with the J-Standard's general characterization of ''direction'' as a description of navigation within a network but reject the contention that this information is exclusively a telephone number. We find that the ''direction'' is, broadly speaking, information that identifies the path of communication.

11. Thus, we are defining the relevant terms as follows: origin is a party initiating a call (e.g., a calling party), or a place from which a call is initiated; destination is a party or place to which a call is being made (e.g., the called party); direction is a party or place to which a call is re-directed or the party or place from which it came, either incoming or outgoing (e.g., a redirected-to party or redirected-from party); and termination is a party or place at the end of a communication path (e.g., the called or call-receiving party, or the switch of a party that has placed another party on hold). These changes distinguish between origin, destination, direction, and termination, and the information that identifies them; permit multiple origins, destinations, directions, and terminations in a call; and provide for terminations inside a network switch or at another point within a network. Moreover, this approach defines call-identifying information in a manner that can be converted into actual network capabilities, unlike the definition suggested by DoJ/FBI.

12. Under sections 107(b)(1) and 107(b)(3) of CALEA, if the Commission finds that industry-established technical standards are deficient, it may establish standards that ''meet the assistance capability requirements of section 103 by cost-effective methods'' and ''minimize the cost of such compliance on residential ratepayers.'' The Court was unable to find a rational connection between the facts found and the choice made in the Third R&O. CALEA does not define ''cost-effective.'' One approach for determining whether something is ''cost-effective'' that is consistent with the Court's analysis in its Remand Decision is to compare two or more ways of accomplishing a task and identifying the process that is the least expensive. This approach is supported by the Commission's own rules, other statutes where Congress has defined or described the term, as well as in other agencies' rules. Thus, it makes sense to consider whether a particular option is better than some alternative at achieving some particular regulatory requirement, when such a comparison is available. We first inquire whether we have in the record an alternative means to accomplish each of the punch list capabilities.

13. When a punch list capability ''meet(s) the assistance capability requirements'' of CALEA, but there is no alternative means of accomplishing the same task, we will then consider whether the capability serves to minimize costs. In general, something is ''effective'' if it accomplishes a task in an efficient manner. However, we will not adopt or reject a capability solely on the basis of a cost-benefit analysis because Congress has already made such a calculation when it determined the assistance capability requirements of CALEA. There are costs associated with CALEA, and it is clear that Congress anticipated that carriers would bear some of these costs. However, as part of our examination of whether a technical standard that we require under CALEA is ''cost-effective,'' we will consider the financial burden it places on carriers. In the case of the punch list capabilities, we note that several aspects of the implementation program significantly mitigate this burden, which serves to make implementation of the punch list capabilities ''cost-effective'' for carriers. These features include DoJ/FBI cost reimbursement programs, buyout agreements with manufacturers to pay for all necessary software upgrades, and deferral of required punch list capabilities coincident with routine switch upgrades. Also, five telecommunications equipment manufacturers have incorporated all six punch list capabilities required by the Third R&O into one software upgrade, and it is unclear whether deleting one or more of these capabilities from that upgrade will lessen the cost of the upgrade to those carriers that purchase software from manufacturers that are not covered by the DoJ/FBI buyout agreements. Carriers may also recover at least a portion of their CALEA software and hardware costs by charging to LEAs, for each electronic surveillance order authorized by CALEA.

14. In considering the effect of CALEA compliance on residential ratepayers under section 107(b)(3) we look at the effect on residential wireline subscribers only. Although CALEA does not define the term ''residential ratepayers,'' floor debate emphasized concern over ''basic residential telephone service'' rates. Wireless telecommunications services such as cellular or PCS are intrinsically mobile services, and we have not previously attempted to describe what ''basic residential'' service is in the wireless context, nor have we differentiated between residential and other classes of wireless service. By contrast, the concept of ''residential ratepayer'' has historically been used in the context of rate regulation for wireline telecommunication service, which traditionally differentiates rates for residential and business customers. Other provisions of CALEA can only apply to wireline telecommunications carriers, as states do not have authority to regulate rates for commercial mobile radio services and the Commission has forborne from such rate regulation under legislation and Commission decisions that were adopted prior to CALEA.

15. The general approach we have taken with our analysis of ''cost-effective'' is applicable in considering ways of minimizing the impact on residential ratepayers. That which is ''cost-effective'' is also likely to correlate to the effect on residential ratepayers, and so many of the factors we have previously identified will apply in this context. We conclude that the capabilities that we have identified—and the means of implementing them—do serve to minimize the cost on residential ratepayers. To the extent that there are costs borne by the carriers and passed through to customers, we note that it is likely that the costs would be shared by all ratepayers and, therefore, would be significantly diluted on an individual residential ratepayer basis. The fact that costs are spread across such a large base in itself suggests another means by which provision of these capabilities will minimize the effect on residential ratepayers—that the cost of CALEA compliance for any

particular residential ratepayer will be minimal.

16. We note, however, that, even if the definition of ''residential taxpayers'' is broadened to include households that use wireless telephone service as a substitute for local wireline telephone service, there is no reason to believe that implementation of the punch list items would fail to minimize the cost on wireless residential ratepayers. In the Third R&O, the Commission found that five major telecommunications manufacturers—which account for the great majority of sales to wireline, cellular, and broadband PCS carriers in the United States—anticipated total revenues from carriers purchasing the four vacated punch list capabilities of about $277 million. Of this amount, about $159 million was anticipated in wireless revenues and about $117 million was anticipated in wireline revenues. While these figures do not include all carrier costs of implementing the four capabilities, in the Third R&O, we found that, relative to other cost/revenue estimates, the manufacturers' estimates were ''the most detailed and reliable.'' Further the FBI's buyout and flexible deployment programs, coupled with manufacturers incorporating all punch list capabilities into one software upgrade would likely lessen costs to such an extent that total costs of implementing the four vacated capabilities nationwide would be well below $159 million to wireless carriers and $117 million to wireline carriers. Nonetheless, assuming pessimistically that those costs would eventuate and that they would be passed on to wireless subscribers and residential wireline ratepayers in full as a one-time charge, the respective charge per wireless subscriber and residential wireline ratepayer would average about $1.45 and $1.20. Alternatively, if these costs to wireless and wireline carriers were converted to a rate increase to wireless subscribers and residential wireline ratepayers, the rate increase would average only pennies per month per subscriber/ratepayer. Accordingly, we find that the likely worst case cost impact of carriers implementing the four vacated capabilities would be minimal on both wireless subscribers and residential wireline taxpayers.

17. The dialed digit extraction capability would require the telecommunications carrier to provide to the LEA on the call data channel the identity of any digits dialed by the subject after connecting to another carrier's service (also known as ''post-cut-through digits''). The dialed digit extraction capability provides call-identifying information. Post-cut-through digits identify, under many circumstances, a communication's destination or a termination. For example, a party may dial a toll-free number to connect to a long distance carrier (e.g. 1–800–CALL–ATT) and subsequently enter another phone number to be connected to a party. That second number identifies a ''destination'' because it is ''a party or place to which a call is being made.'' If a successful connection is made, that second number also identifies a ''termination'' because it is the called or call-receiving party. A subject may also dial digits that are not call-identifying information—such as a bank account or social security number. However, many post-cut-through dialed digits simply route the call to the intended party and are, therefore, unquestionably call-identifying information even under a narrow interpretation of that term.

18. Section 103(a) of CALEA requires carriers to be capable of ''expeditiously isolating'' wire and electronic communications and call-identifying information to enable LEAs to obtain this information ''concurrently with their transmission from the subscriber's equipment, facility, or service. * * *'' (in the case of the interception of wire and electronic communications) or ''before, during, or immediately after the transmission of a wire or electronic communication'' (in the case of call-identifying information). Because of this timing requirement, we are rejecting the alternative of having a LEA serve the terminating carrier with a pen register order to obtain those dialed digits that were placed once a call has been cut-through from the originating carrier. Under such a process, the government would be unable to obtain call-identifying information concurrently with its transmission to or from a subscriber.

19. Dialed digit extraction is a capability that is ''reasonably available to the carrier'' under section 103 of CALEA. The J-Standard defines ''reasonably available'' as information ''present at an Intercept Access Point for call processing purposes.'' We reject the limitation that the information must be present ''for call processing purposes'' for it to be ''available.'' We read ''reasonably'' as a qualifier; if information is only accessible by significantly modifying a network, then we do not think it is ''reasonably'' available.

20. Section 107(b)(2) requires that any standards we require must ''protect the privacy and security of communications not authorized to be intercepted.'' There currently appears to be no technology that can separate those post-cut-through dialed digits from other post-cut-through dialed digits that are not call-identifying (i.e., that are call content). Because post-cut-through digits include call-identifying information, LEAs should be able to obtain this information under CALEA so long as they have a valid legal instrument. Although a Title III warrant—which would give a LEA call content—may be one such valid instrument, it is not up to us to decide whether it is the only one that could be used. Were we to conclude that a Title III warrant represents an alternative means of accomplishing the dialed digit extraction capability we would necessarily have to assume that a pen register does not entitle a LEA to dialed digit extraction. Such a decision would improperly usurp the role of the courts to decide what legal instrument is necessary to obtain the dialed digit information. Our approach is similar to the approach that we employed with respect to a packet-mode communications capability, which was upheld by the Court in the Remand Decision.

21. Because the standards we adopt must protect the privacy and security of communications not authorized to be intercepted, we reject the proposal to allow a LEA to extract dialed digits on content channels using their own decoders. This alternative is not acceptable because it would require the LEA in every case, no matter the level of authorization involved, to obtain the entire content when a less intrusive alternative (dialed digit extraction, whereby carriers separate out tone information) is available. This alternative would also shift from carriers to LEAs responsibility for ensuring that interceptions are conducted in a way that protects the privacy and security of communications not authorized for interception as much as possible. Such a result would be inconsistent with section 103(a)(4) of CALEA, which requires carriers to protect the privacy and security of communications and call-identifying information not authorized to be intercepted.

22. In order to respond to the appropriate legal authority, a carrier must have the ability to turn on and off the dialed digit extraction capability. We believe that a toggle feature for dialed digit extraction is necessary in order to protect privacy interests under certain circumstances, without disrupting the carrier's ability to provide other punch list capabilities included in the same software. We therefore conclude that carriers must have the equipment and software to

support a dialed digit extraction capability with a toggle feature. Where such a toggle feature will not be available from a carrier's vendor by the compliance deadline, that carrier may file a petition with the Commission under section 107(c), requesting an extension of the compliance deadline.

23. The party hold/join/drop messages capability would permit the LEA to receive from the telecommunications carrier messages identifying the parties to a conference call at all times. The party hold message would be provided whenever one or more parties are placed on hold. The party join message would report the addition of a party to an active call or the reactivation of a held call. The party drop message would report when any party to a call is released or disconnects and the call continues with two or more other parties. Under our revised definitions of the components of call-identifying information, party hold/join/drop information is call-identifying information because it identifies changes in the origin(s) and termination(s) of each communication generated or received by the subject. Further, by isolating call-identifying information in this manner, the LEA may more readily avoid monitoring the communications of third parties who are not privy to the communications involving the subject, thereby furthering privacy considerations. In the Third R&O, the Commission defined call-identifying information to be ''reasonably available'' to an originating carrier if such information ''is present at an [Intercept Access Point] and can be made available without the carrier being unduly burdened with network modifications.'' The J-Standard acknowledges that the network must recognize and process party hold/join/drop functions as part of its basic operation. Thus, we conclude that party hold/join/drop information is not only present at an Intercept Access Point but, because it is already being used by the carrier, satisfies the definition of ''reasonably available'' in the original version of the J-Standard.

24. The subject-initiated dialing and signaling information capability would permit the LEA to be informed when a subject sends signals or digits to the network. This capability would require the telecommunications carrier to deliver a message to the LEA, for each communication initiated by the subject, informing the LEA whenever the subject has invoked a feature during a call, including features that would place a party on hold, transfer a call, forward a call, or add/remove a party to a call. This capability constitutes call-identifying information because it provides information regarding the party or place to which a forwarded call is redirected and because it provides information regarding a waiting calling party. Signals such as on-hook, off-hook, and flash-hook signals, which are generated by a subject, are reasonably available to the carrier because they must be processed at the carrier's Intercept Access Point. DTMF signals generated by a subject that must be processed at the Intercept Access Point also are reasonably available to the carrier; however, some DTMF signals generated by the subject are post-cut-through digits, and those signals are covered under dialed digit extraction.

25. The in-band and out-of-band signaling information capability would enable a telecommunications carrier to send a notification message to the LEA when any call-identifying network signal (e.g., audible ringing tone, busy, call waiting signal, message light trigger) is sent to a subject. For example, if someone leaves a voice mail message on the subject's phone, the notification to the LEA would indicate the type of call-identifying network signal sent to the subject (e.g., stutter dial tone, message light trigger). For calls the subject originates, a notification message would also indicate whether the subject ended a call when the line was ringing, busy (a busy line or busy trunk), or before the network could complete the call. Authorizing this capability for call-identifying information that is based on network signals that originate on carriers' own networks conforms with CALEA. While certain types of signals used by carriers for supervision or control do not trigger any audible or visual message to the subscriber and are therefore not call-identifying information, other types of signals—such as ringing and busy tones—are call-identifying information under our revised definitions because they convey information about the termination of a call. For example, when a subject calls another party, until the called party answers the subject's communications path is terminated at an audible ringing tone generator. However, if the called party is engaged in another conversation and does not have call waiting, the subject's communications path is terminated at a busy signal generator. Thus, even for calls from the subject that are never answered, the fact that the subject hears busy or audible ringing signal provides call-identifying information that is not provided to law enforcement via other means. The J-Standard is inadequate in this regard. For example, the fact that a call attempt does not result in a conversation because the line is busy or because the called party does not answer does not mean that no ''communication'' has taken place. In-band and out-of-band signals that are generated at the carrier's Intercept Access Point toward the subscriber are handled by the carrier and are clearly available to the carrier at an Intercept Access Point, and convey call-identifying information. Because carriers already deliver this information to subscribers, we see no reason why it cannot also be made available to LEAs without significantly modifying the carrier's network. Thus, in-band and out-of-band signaling information is ''reasonably available.''

26. For each of the punch list items, Commenters have presented no alternative ways of obtaining all the information encompassed by this capability or those alternatives (in the case of dialed digit extraction) have deficiencies that make them unsatisfactory. Because there are no alternative means of accomplishing these objectives, we cannot engage in a cost-comparison analysis. Mechanisms such as the FBI's buyout and flexible deployment programs, coupled with five manufacturers incorporating all punch list capabilities into one software upgrade, will lessen software costs significantly, and including or not including any one of these capabilities may not significantly change carriers' costs. Because of these cost-mitigation measures, we find that it will be cost-effective to require these capabilities. For similar reasons, the capabilities are unlikely to significantly affect residential ratepayers. The aforementioned programs will serve to mitigate carriers' costs, which in turn will reduce the costs that carriers may pass on to ratepayers. Moreover, carriers will also be able to spread costs across a large ratepayer base and there is no indication that the compliance costs will be disproportionately borne by residential ratepayers. Although we have addressed privacy issues with respect to dialed digit extraction, we see no significant privacy issues arising from grant to LEAs of the remaining capabilities. No party to this proceeding challenged the Third R&O's decision with respect to those capabilities on privacy grounds, and the Court did not cite privacy as a basis for remanding to the Commission the Third R&O's decision with respect to that capability.

27. Section 107(b)(4) of CALEA—i.e., serve the policy of the United States to encourage the provision of new technologies and services to the public—was not briefed to or addressed by the Court in its Remand Decision. As

described in the legislative history, one of the key concerns in enacting CALEA was ''the goal of ensuring that the telecommunications industry was not hindered in the rapid development and deployment of the new services and technologies that continue to benefit and revolutionize society.'' Aside from one suggestion that the cost of compliance would divert capital from new technology deployment, no commenter has argued—nor is there anything in the record to suggest—that inclusion of the four punch list requirements would impede in any way the provision of new telecommunications technologies or services to the public or would delay in any manner the course or current pace of technology. Rather, the punch list requirements represent a technical solution that interfaces with the carriers' own network designs to provide LEAs with interception access and the capability to intercept wire and electronic communications. Additionally, as noted above, for the majority of switches, carriers will be permitted under the FBI's flexible deployment program to implement any required punch list capabilities coincident with routine switch upgrades. Moreover, we do not believe section 107(b)(4) was intended to bar a feature simply because it imposes costs on telecommunications companies and thereby might affect their other spending. The two express references to costs in section 107(b) (i.e., cost effectiveness and minimizing impact on residential ratepayers) consider cost in a relative, not an absolute, sense. Accordingly, we do not believe paragraph (b)(4) was intended to prohibit any feature because the cost might have some impact on telecommunications companies' other spending. Given this, we find that adoption of the punch list requirements is consistent with the United States' policy of encouraging the provision of new technologies and services to the public.

28. Section 107(b)(5) of CALEA requires that the Commission ''provide a reasonable time and conditions for compliance with and the transition to any new standard, including defining the obligations of telecommunications carriers under section 103 during any transition period.'' The Third R&O required that the six punch list capabilities be implemented by wireline, cellular, and broadband PCS carriers by September 30, 2001 and five telecommunications switch manufacturers have incorporated all of these capabilities into one software upgrade. In the Order in this proceeding, which suspended the September 30, 2001 deadline for all punch list capabilities, including the two unchallenged capabilities (i.e., subject-initiated conference calls and timing information), we indicated that we anticipated establishing June 30, 2002 as the new compliance date for all required punch list capabilities as we expected to address the Court's Remand Decision by year's end and given that the record indicates that carriers can implement any required changes to their software within six months of our decision. We find it reasonable to require wireline, cellular, and broadband PCS carriers to implement all punch list capabilities by June 30, 2002, and conclude that the June 30, 2002 deadline will satisfy section 107(b)(5). At the initial stages of CALEA implementation, the Commission found that carriers could put into effect any required changes to their network within six months of its decision. We recognize that this is a more aggressive timetable than the six months we anticipated earlier. We believe that this accelerated compliance schedule is reasonable for this stage of the CALEA implementation, as carriers have been aware of the CALEA capabilities under consideration in the instant Order on Remand since October 2000. In addition, the record indicates that much of the software required to implement the punch list items has already been developed, which should significantly speed implementation. Finally, carriers have much greater experience in meeting CALEA's capability requirements than they had in 1998. Together, these factors make a shorter implementation timetable reasonable. Therefore, we are lifting the suspension of the punch list compliance deadline, and specifying the revised punch list compliance deadline as June 30, 2002.

29. We note that carriers who are unable to comply may seek relief under the applicable provisions of CALEA. The Wireline Competition Bureau (formerly, the Common Carrier Bureau) and the Wireless Telecommunications Bureau previously issued a Public Notice outlining the petitioning process for telecommunications carriers seeking relief under section 107(c) for an extension of the CALEA compliance deadline. Carriers seeking relief from the June 30, 2002 compliance date should follow the procedures outlined in that Public Notice. We further note that, in most cases, extensions that the Commission has already granted will apply to the capabilities we are requiring in this Order on Remand. As the Wireline Competition and Wireless Telecommunications Bureaus have previously stated: ''Unless the Commission action [granting an extension] specifies otherwise, the extension applies to all assistance capability functions, including punch list and packet-mode capabilities, at the listed facilities.''

Supplemental Final Regulatory Flexibility Analysis

(A) Need for and Purpose of This Action

30. As required by the Regulatory Flexibility Act (RFA),[1] the Commission incorporated an Initial Regulatory Flexibility Analysis (IRFA) in the Further NPRM.[2] The Commission sought written public comments on the proposals in the Further NPRM, including the IRFA. In the Third R&O, the Commission adopted a Final Regulatory Flexibility Analysis (FRFA).[3] As part of the instant Order on Remand, we have prepared this Supplemental FRFA to conform to the RFA.[4]

31. The Third R&O responded to the legislative mandate contained in the Communications Assistance for Law Enforcement Act, Public Law 103–414, 108 Stat. 4279 (1994) (codified as amended in sections of 18 U.S.C. and 47 U.S.C.). The Commission, in compliance with 47 U.S.C. 229, promulgates rules in this Order on Remand to ensure the prompt implementation of section 103 of CALEA. This action simply responds to an Order of the United States Court of Appeals for the District of Columbia Circuit (the ''Court'') and puts into effect rules we originally evaluated as part of the FRFA in the Third R&O. Also, as noted, we have already done a FRFA for the rules at issue in the Third R&O.

32. In enacting CALEA, Congress sought to balance three key policies with CALEA: ''(1) to preserve a narrowly focused capability for law enforcement agencies to carry out properly authorized intercepts; (2) to protect privacy in the face of increasingly powerful and personally revealing technologies; and (3) to avoid impeding the development of new communications services and

[1] *See* 5 U.S.C. 603. The RFA, see 5 U.S.C. 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] Communications Assistance for Law Enforcement Act, *Further Notice of Proposed Rulemaking*, 13 FCC Rcd 22632, 22695–703 (1998).

[3] Communications Assistance for Law Enforcement Act, *Third Report and Order*, CC Docket No. 97–213, 14 FCC Rcd 16794, 16852–59 (1999).

[4] *See* 5 U.S.C. 604.

technologies.'' [5] The rules adopted in this Order on Remand implement Congress's goal to balance the three key policies enumerated above. The objective of the rules is to implement as quickly and effectively as possible the national telecommunications policy for wireline, cellular, and broadband PCS telecommunications carriers to support the lawful electronic surveillance needs of law enforcement agencies in a manner that is responsive to the Court's remand of the Third R&O.

(B) Summary of the Issues Raised by Public Comments

33. In the Further NPRM, the Commission performed an IRFA and asked for comments that specifically addressed issues raised in the IRFA. No parties filed comments directly in response to the IRFA. Similarly, as part of the pleading cycle that followed the Court's remand of the Third R&O, no parties filed comments directly in response to the IRFA or the FRFA. In response to non-RFA comments filed in this docket, the Commission modified several of the proposals made in the Further NPRM. These modifications include changes to packet switching, conference call content, in-band and out-of-band signaling, and timing information, as first discussed in the Third R&O.

34. The Commission's effort to update the record in response to the Court's Remand Order resulted in additional non-RFA comments. The Rural Cellular Association (RCA) asserts that the costs of additional communications assistance capabilities would impose undue cost burdens on and jeopardize the efficient planning and development of facilities by small and rural carriers. Similarly, the National Telephone Cooperative Association (NTCA) claims that any regulation which requires carriers to deploy or upgrade facilities disproportionally affects small and rural carriers.

(C) Description and Estimate of the Number of Entities Affected

35. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the action taken.[6] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [7] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[8] A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[9] A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' [10] Nationwide, as of 1992, there were approximately 275,801 small organizations.[11] Finally, ''small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' [12] As of 1992, there were approximately 85,006 such jurisdictions in the United States.[13] This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.[14] The United States Bureau of the Census (Census Bureau) estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities.

36. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide appears to be data the Commission publishes annually in its Telecommunications Provider Locator report, derived from filings made in connection with the Telecommunications Relay Service (TRS).[15] According to data in the most recent report, there are 5,679 interstate service providers.[16] These providers include, inter alia, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone service, providers of telephone exchange service, and resellers.

37. We have included small incumbent local exchange carriers (LECs) [17] in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, inter alia, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' [18] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope.[19] We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

38. Total Number of Telecommunications Entities Affected. The Census Bureau reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.[20] This number contains a variety of different categories of entities, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not ''independently owned and operated.'' [21] For example, a PCS provider that is affiliated with an

[5] H.R. Rep. No. 103–827, 103rd Cong., 2d Sess (1994) at 13.

[6] 5 U.S.C. 603(b)(3).

[7] *Id.*, 601(6).

[8] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' 5 U.S.C. 601(3).

[9] Small Business Act, 15 U.S.C. 632.

[10] 5 U.S.C. 601(4).

[11] 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[12] 5 U.S.C. 601(5).

[13] U.S. Dept. of Commerce, Bureau of the Census, ''1992 Census of Governments.''

[14] *Id.*

[15] FCC, Common Carrier Bureau, Industry Analysis Division, *Telecommunications Provider Locator*, Tables 1–2 (November 2001) (*Provider Locator*). This report is available on-line at: *http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State__Link/Locator/locat01.pdf. See also* 47 CFR 64.601 *et seq.*

[16] *Provider Locator* at Table 1.

[17] *See* 47 U.S.C 251(h) (defining ''incumbent local exchange carrier'').

[18] 15 U.S.C. 632.

[19] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of ''small business concern,'' which the RFA incorporates into its own definition of ''small business.'' *See* 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret ''small business concern'' to include the concept of dominance on a national basis. 13 CFR 121.102(b).

[20] United States Dept. of Commerce, Bureau of the Census, *1992 Census of Transportation*, Communications, and Utilities: Establishment of Firm Size, at Firm Size 1–123 (1995) (''1992 Census'').

[21] 15 U.S.C. 632(a)(1).

interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the actions taken in this Order on Remand.

39. Wireline Carriers and Service Providers. The SBA has developed a definition of small entities for wired telecommunications carriers. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992.[22] According to the SBA's definition, such a small business telephone company is one employing no more than 1,500 persons.[23] All but 26 of the 2,321 wireline companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Even if all 26 of the remaining companies had more than 1,500 employees, there would still be 2,295 wireline companies that might qualify as small entities. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Therefore, we estimate that fewer than 2,295 communications wireline companies are small entities that may be affected by these rules.

40. Local Exchange Carriers, Competitive Access Providers, Interexchange Carriers, Operator Service Providers, Payphone Providers, and Resellers. Neither the Commission nor the SBA has developed a specific size standard definition for small LECs, competitive access providers (CAPS), interexchange carriers (IXCs), operator service providers (OSPs), payphone providers, or resellers. The closest applicable size standard for these carrier-types under SBA rules is for wired telecommunications carriers and telecommunications resellers.[24] The most reliable source of information that we know regarding the number of these carriers nationwide appears to be the data that we collect annually in connection with the TRS.[25] According to our most recent data, there are 1,329 LECs, 532 CAPs, 229 IXCs, 22 OSPs, 936 payphone providers, and 710 resellers.[26] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under the SBA's definition. Therefore, we estimate that there are fewer than 1,329 small entity LECs or small incumbent LECs, 532 CAPs, 229 IXCs, 22 OSPs, 936 payphone providers, and 710 resellers that may be affected by these rules.

41. Wireless Carriers. The applicable definition of a small entity wireless carrier is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons. The Census Bureau reports that there were 1,176 radiotelephone (wireless) companies in operation for at least one year at the end of 1992, of which 1,164 had fewer than 1,000 employees.[27] Even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned are operated. It seems certain that some of these carriers are not independently owned and operated. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the actions taken in this Order on Remand.

42. Cellular, PCS, SMR and Other Mobile Service Providers. The most reliable source of current information from which we can draw an estimate of the number of small business commercial wireless entities appears to be data the Commission published annually in its Trends in Telephone Service report.[28] According to the most recent Trends Report, 806 carriers reported that they were engaged in the provision of cellular service, PCS services, or SMR telephony services, which are placed together in the data.[29] Moreover, 323 such licensees in combination with their affiliates have 1,500 or fewer employees and thus qualify as ''small businesses'' under the above definition. Thus, we estimate that there are 323 or fewer small wireless service providers that may be affected by the rules we adopt in this proceeding.

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

43. No reporting and recordkeeping requirements are imposed on telecommunications carriers. Telecommunications carriers, including small carriers, will have to upgrade their network facilities to provide to law enforcement the assistance capability requirements adopted herein. Although compliance with the technical requirements will impose costs on carriers, we have examined means by which these costs will be minimized (such as by federal cost-reimbursement mechanisms and the ability of carriers to charge for the provision of assistance capability services). The most detailed and reliable cost estimates for carriers to implement the assistance capability features we require herein are $159 million total for wireless carriers and $117 million for wireline carriers, including small entities. However, as discussed in paragraph 65, supra, we expect the actual costs borne by carriers to be substantially lower after the application of the cost-minimization provisions discussed above.

(E) Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered.

44. The need for the regulations adopted herein is mandated by Federal legislation. In the regulations we adopt, we affirm our proposals in the Further NPRM to establish regulations for wireline, cellular, and broadband PCS telecommunications carriers. Costs to telecommunications carriers will be mitigated in several ways. For example, the final regulations require telecommunications carriers to make available to law enforcement call identifying information when it can be done without unduly burdening the carrier with network modifications, thus allowing cost to be a consideration in determining whether the information is ''reasonably available'' to the carrier and can be provided to law enforcement. Thus, compliance with the assistance capability requirements of CALEA will be reasonable for all carriers, including small carriers. Also, under CALEA, some carriers will be able to request reimbursement from the Department of Justice for network upgrades to comply

[22] *1992 Census* at Firm Size 1–123 (based on previous SIC codes).

[23] 13 CFR 121.201, North American Industry Classification System (NAICS) code 513310. The category of Telecommunications Resellers, NAICS code 513330 also has an associated business size standard of 1,500 or fewer employees.

[24] 13 CFR 121.201, NAICS codes 513310 and 513330.

[25] *See* 47 CFR 64.601 *et seq.*; *Provider Locator* at Table 1.

[26] *Provider Locator* at Table 1. The total for resellers includes both toll resellers and local resellers.

[27] 1992 Census at Firm Size 1–123.

[28] Trends in Telephone Service, Common Carrier Bureau, Industry Analysis Division (Aug. 2001) (''Trends Report''). This report is available on-line at: http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/trend801.pdf

[29] Trends Report, Table 5.3.

with the technical requirements adopted herein, and others may defer network upgrades to their normal business cycle.

45. We believe that these provisions can serve to mitigate any additional cost burdens that would otherwise be borne by small carriers. The Commission considered several alternatives advanced by commenters in the proceeding—including not requiring the assistance capabilities adopted herein—but rejected them after concluding that they would not meet the statutory requirements of CALEA. We note that the statutory mandate under CALEA requires all carriers to provide assistance capabilities, and this includes small entities. Thus, we must rely on cost-mitigation procedures to address NTCA's assertion that any regulation that requires carriers to deploy or upgrade facilities will disproportionally affect small carriers.

Report to Congress

46. The Commission will send a copy of this Supplemental FRFA, along with this Order on Remand, in a report to Congress pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of this Order on Remand, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this Order on Remand, including the Supplemental FRFA, will also be published in the **Federal Register**. See 5 U.S.C. 604(b).

Ordering Clauses

47. Authority for issuance of this Order on Remand is contained in sections 1, 4, 229, 301, 303, and 332 of the Communications Act of 1934, as amended, and section 107(b) of the Communications Assistance for Law Enforcement Act, 47 U.S.C. 151, 154, 229, 301, 303, 332, and 1006(b).

48. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Order on Remand, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 22, 24 and 64

Communications common carriers.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rules Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 22, 24 and 64 as follows:

PART 22—MOBILE SERVICES

1. The authority citation in part 22 continues to read:

Authority: 47 U.S.C. 154, 222, 303, 309 and 332.

2. Section 22.1102 is amended by adding definitions in alphabetical order to read as follows:

§ 22.1102 Definitions.

* * * * *

Destination. A party or place to which a call is being made (e.g., the called party).

* * * * *

Direction. A party or place to which a call is re-directed or the party or place from which it came, either incoming or outgoing (e.g., a redirected-to party or redirected-from party).

* * * * *

Origin. A party initiating a call (e.g., a calling party), or a place from which a call is initiated.

* * * * *

Termination. A party or place at the end of a communication path (e.g. the called or call-receiving party, or the switch of a party that has placed another party on hold).

* * * * *

3. Section 22.1103 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 22.1103 Capabilities that must be provided by a cellular telecommunications carrier.

* * * * *

(b) As of November 19, 2001, a cellular telecommunications carrier shall provide to a LEA communications and call-identifying information transported by packet-mode communications.

(c) As of June 30, 2002, a cellular telecommunications carrier shall provide to a LEA the following capabilities:

(1) Content of subject-initiated conference calls;

(2) Party hold, join, drop on conference calls;

(3) Subject-initiated dialing and signaling information;

(4) In-band and out-of-band signaling;

(5) Timing information;

(6) Dialed digit extraction, with a toggle feature that can activate/deactivate this capability.

PART 24—PERSONAL COMMUNICATIONS SERVICES

4. The authority citation in part 24 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 309 and 332.

5. Section 24.902 is amended by adding definitions in alphabetical order to read as follows:

§ 24.902 Definitions.

* * * * *

Destination. A party or place to which a call is being made (e.g., the called party).

* * * * *

Direction. A party or place to which a call is re-directed or the party or place from which it came, either incoming or outgoing (e.g., a redirected-to party or redirected-from party).

* * * * *

Origin. A party initiating a call (e.g., a calling party), or a place from which a call is initiated.

* * * * *

Termination. A party or place at the end of a communication path (e.g. the called or call-receiving party, or the switch of a party that has placed another party on hold).

* * * * *

6. Section 24.903 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 24.903 Capabilities that must be provided by a broadband PCS telecommunications carrier.

* * * * *

(b) As of November 19, 2001, a broadband PCS telecommunications carrier shall provide to a LEA communications and call-identifying information transported by packet-mode communications.

(c) As of June 30, 2002, a broadband PCS telecommunications carrier shall provide to a LEA the following capabilities:

(1) Content of subject-initiated conference calls;

(2) Party hold, join, drop on conference calls;

(3) Subject-initiated dialing and signaling information;

(4) In-band and out-of-band signaling;

(5) Timing information;

(6) Dialed digit extraction, with a toggle feature that can activate/deactivate this capability.

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

7. The authority citation for part 64 is revised to read as follows:

Authority: 47 U.S.C. 151, 154, 201, 202, 205, 218–220, and 332 unless otherwise noted. Interpret or apply sections 201, 218, 225, 226, 227, 229, 332, 48 Stat. 1070, as amended. 47 U.S.C. 201–204, 208, 225, 226, 227, 229, 332, 501 and 503 unless otherwise noted.

8. Section 64.2202 is amended by adding definitions in alphabetical order to read as follows:

§ 64.2202 Definitions.

* * * * *

Destination. A party or place to which a call is being made (e.g., the called party).

* * * * *

Direction. A party or place to which a call is re-directed or the party or place from which it came, either incoming or outgoing (e.g., a redirected-to party or redirected-from party).

* * * * *

Origin. A party initiating a call (e.g., a calling party), or a place from which a call is initiated.

* * * * *

Termination. A party or place at the end of a communication path (e.g. the called or call-receiving party, or the switch of a party that has placed another party on hold).

* * * * *

9. Section 64.2203 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 64.2203 Capabilities that must be provided by a wireline telecommunications carrier.

* * * * *

(b) As of November 19, 2001, a wireline telecommunications carrier shall provide to a LEA communications and call-identifying information transported by packet-mode communications.

(c) As of June 30, 2002, a wireline telecommunications carrier shall provide to a LEA the following capabilities:

(1) Content of subject-initiated conference calls;

(2) Party hold, join, drop on conference calls;

(3) Subject-initiated dialing and signaling information;

(4) In-band and out-of-band signaling;

(5) Timing information;

(6) Dialed digit extraction, with a toggle feature that can activate/deactivate this capability.

[FR Doc. 02–10832 Filed 5–1–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010313063-1297-02; I.D. 121200A]

RIN 0648-AO20

Fisheries of the Exclusive Economic Zone off Alaska; Revisions to Recordkeeping and Reporting Requirements

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

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule that was published in the Federal Register on January 28, 2002 (67 FR 4100), which revised certain recordkeeping and reporting (R&R) requirements for groundfish fisheries in the Exclusive Economic Zone off Alaska. This action is necessary to correct errors and omissions that occurred in the final rule.

DATES: Effective May 1, 2002.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7008.

SUPPLEMENTARY INFORMATION:

Background

A final rule was published in the Federal Register on January 28, 2002 (67 FR 4100) (R&R rule) to revise certain provisions of the recordkeeping and reporting (R&R) requirements for groundfish fisheries in the Exclusive Economic Zone off Alaska. This rule makes minor corrections to that final rule and corrects errors caused by conflicts with the Steller Sea Lion Emergency Rule (67 FR 956, January 8, 2002) (SSL Rule). Specifically, some paragraphs are redesignated for consistency between the SSL Rule and the R&R final rule; Table 9 is republished to reflect VMS changes made in the SSL rule; the footnote numbers in Table 10 are correctly sequenced; and Table 11 is republished to reflect changes to groundfish species group descriptions made in the 2002 Harvest Specifications (67 FR 956, January 8, 2002).

Classification

The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment under the authority set forth at 5 U.S.C. 553(b)(3)(B). Rationale for this finding is that prior notice and comment are unnecessary because the terms this action changes will have no substantive effect on the regulated public. This action does not substantively alter the regulations. The changes are considered to be minor technical amendments that involve little exercise of agency discretion. Further, prior notice and comment would be contrary to the public interest because it would prolong the inaccurate language that currently exists in the regulations. Therefore, the Assistant Administrator for Fisheries, NOAA, waives the 30-day delay in effective date under 5 U.S.C. 553(d).

Need for Corrections

The final rule, FR Doc. 02-1875, published in the issue of January 28, 2002 (67 FR 4100), is corrected as follows:

CORRECTIONS TO TABLES

What is the correction?	Why is the correction necessary?
On page 4142, Table 9, last line is corrected by removing ''Atka mackerel or AFA pollock'' and adding in its place ''Atka mackerel, pollock, or Pacific cod''.	VMS requirements were established in the SSL final rule for pollock, Pacific cod, and Atka mackerel. This change to Table 9 was inadvertently omitted from the R&R rule and is corrected.
On pages 4143 through 4145, Table 10 is corrected by removing the incorrect table and adding in its place a correct version.	In the final rule, target species descriptions were moved from the temporary annual specifications to the footnotes of Table 10 to this part. The basis species are reordered by species code number in numerical order; as a result the footnote numbers are revised for correct sequencing.

CORRECTIONS TO TABLES—Continued

What is the correction?	Why is the correction necessary?
On page 4146, Table 11 is corrected by removing the incorrect table and adding in its place a correct version.	In the final rule, target species descriptions were moved from the temporary annual specifications to the footnotes of Tables 10 and 11 to this part. An outdated version of Table 11 inadvertently was published. The basis species are reordered by species code number in numerical order; as a result the footnote numbers are revised. In the first column, ''Shortaker/Rougheye'' is replaced with ''Shortraker/rougheye'' and the incorrect code (171) is replaced with (152/151). In addition, Table 11 is revised to reflect changes made in the 2002 Harvest Specifications (67 FR 956, January 8, 2002). Footnote 1 is redesignated as footnote 2, and revised to read ''Other flatfish includes all flatfish species, except for Pacific halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, Alaska plaice, and arrowtooth flounder.'' Alaska plaice is removed from ''other flatfish'' and becomes a unique category. A new column entitled ''Alaska plaice'' is added with the same values as ''other flatfish''. Footnote 2 is redesignated as footnote 6 and revised by removing ''except in the Aleutian Islands Subarea where shortraker and rougheye rockfish is a separate category'' and adding in its place ''except shortraker and rougheye rockfish.'' Shortraker/rougheye rockfish are now managed in both the BS and the AI rather than just the AI, so the limitation to AI subarea is removed. Footnote 3 is redesignated as footnote 7 and revised by removing ''Table 1'' and adding in its place ''Table 2''. Footnote 4 is redesignated as footnote 5. Footnote 5 is redesignated as footnote 1. Footnote 6 is redesignated as footnote 3 and revised by removing ''sharpchin,''. Sharpchin rockfish is now included in ''other rockfish''. Footnote 7 is removed. Footnote 8 is redesignated as footnote 4 and revised by removing ''as defined at § 679.2'' and replacing it with ''as defined in Table 2 to this part.''

CORRECTION TO AMENDATORY INSTRUCTION PARAGRAPHS

What is the correction?	Why is the the correction necessary?
On page 4107, in the third column, amendatory instruction 3, line 2 is corrected by removing ''(a)(6)'' and adding in its place ''(a)(7)''.	The redesignation of paragraph 679.4(a)(7) was inadvertently omitted from instruction paragraph 3.
On page 4107, in the third column, amendatory instruction 3, line 3 is corrected by replacing ''(a)(8)'' and adding in its place ''(a)(9)''.	
On page 4108, third column, amendatory instruction 4, 4th line is corrected by removing ''(l)(7)(i)(C)(*4*)(*i*)'' and adding in its place ''(l)(7)(ii)(C)(*4*)(*i*)''.	A typographic error is corrected in instruction paragraph 4.

CORRECTIONS DUE TO CONFLICT WITH SSL RULE

What is the correction?	Why is the the correction necessary?
Corrections due to conflicts with SSL rule On page 4108, second column, following paragraph (b)(5)(iv) and before the asterisks, add the following: ''(v) *Signature.* The owner or agent of the owner of the vessel must sign and date the application. If the owner is a company, the agent of the owner must sign and date the application.'' ''(vi) (Applicable through July 8, 2002) If the vessel will be using pot, hook-and-line, or trawl gear in the directed fisheries for pollock, Atka mackerel or Pacific cod in the GOA or in the BSAI. (vii) (Applicable through July 8, 2002) If the vessel owner will be fishing in the harvest limit area in Statistical Areas 542 or 543 in the directed fishery for Atka mackerel.''	A timing conflict between the R&R final rule (67 FR 4100, 1-28-02) and SSL emergency rule (67 FR 956, 1-8-02) resulted in loss of regulatory text because the two documents final rule (67 FR 4100, 1-28-02) and the SSL emergency rule (67 FR 956, 1-8-02) were prepared independently and were not being coordinated; in the confusion resulting from those two documents revising the same paragraph in the same regulation at the same time, paragraphs § 679.4(b)(5)(v), § 679.4(b)(5)(iv)(E) and § 679.4(b)(5)(iv)(F) were removed. Because the erroneous mistake inadvertently deleted paragraphs that should not have been deleted, the paragraphs had to be added to restore them to the regulations. This correction adds the previously deleted text as paragraphs § 679.4(b)(5)(v), § 679.4((b)(5)(vi), and § 679.4(b)(5)(vii).
On page 4132, first column, 8th full paragraph, insert after line 5: ''(*4*) (Applicable through July 8, 2002) Indicate the intended target species.''	The SSL rule added a paragraph (n)(2)(iii)(A)(*4*). The R&R rule reorganized paragraph (n)(2)(iii) and the new paragraph (A)(4) was inadvertently omitted. This error is corrected by redesignating and adding paragraph 679.5(n)(iii)(B)(*4*).

MISCELLANEOUS CORRECTIONS

What is the correction?	Why is the the correction necessary?
On page 4107, second column, 3rd paragraph, 4th line, starting with ''Sablefish (black cod)'' is corrected by removing ''679.31(b)'' and adding in its place ''679.21(b)(5)''.	Correction of a typographic error in the definition of ''Sablefish (black cod).'' The cross reference was printed incorrectly.
On page 4112, the second row of in-text table, line 3 is corrected by removing ''0≥'' and adding in its place ''0''.	Correction of a typographic error in paragraph 679.5(a)(7)(iv)(C)(*7*).
On page 4123, the fourth row of in-text table, third column, 3rd line is corrected by adding ''(if available)'' after the word ''name''.	When completing a PTR, the name and address of the transporting agent supplies the necessary information to verify shipments. The name of the vessel transporting the van is not always known at the time the PTR is completed. A phrase to this effect was inadvertently omitted at 679.5(g)(4)(ii)(C)(*33*)(*i*).
On page 4129, the first column, 15th full paragraph, 5th row is corrected by removing ''(in pounds)'' and adding in its place ''(in pounds or to the nearest thousandth of a metric ton)''.	When completing the IFQ landing report on the ATM, the software program asks whether weight is reported in pounds or metric tons. If metric tons, the calculation is made to the nearest thousandth of a metric ton. This was inadvertently omitted from 679.5(l)(2)(vi)(J)(*1*) and is corrected here.
On page 4133, the third column, 4th full paragraph after in-text table, 3rd and 4th lines are corrected by removing: ''A CDQ or IFQ account will be debited as indicated in Table 3 to this part.''.	Paragraph 679.42(c)(2)is corrected by removing the last sentence of the paragraph, which is outdated language and should be removed. Table 3 to this part does not refer to CDQ or IFQ debits.

ON PAGES 4149 THROUGH 4161, THE REPLACEMENT TABLE IS CORRECTED AS FOLLOWS:

What is the correction?	Why is the the correction necessary?
Revise definition of ''area/species endorsement.''	*Area/species endorsement definition, paragraphs (1) through (7).* The definition of ''area/species endorsement'' on page 4106 was revised in the R&R final rule to refer the reader to Figures 16 and 17 for further information. This definition revision satisfies the need for a cross reference to the figures. This definition revision supercedes the need to make the changes that were indicated in the replacement table for its subparagraphs. In order to correct this, the instructions remove mention of the figures.
Delete the extra word ''bycatch'' in the definition of ''Authorized distributor'' on page 4150.	*Authorized distributor definition* on page 4150 of the R&R final rule. A global change was made in the R&R final rule to change the term ''bycatch'' under certain conditions to read ''incidental catch.'' The definition for ''Authorized distributor'' was affected by that change but the replacement table contained a typographical error that made the replacement incorrect. The error is corrected.
Remove cross references to the Annual Harvest Specifications and add a reference to Tables 10 and 11.	*Target species definitions.* A global change was made in the R&R final rule to change the cross reference to target species descriptions formerly described in the Annual Harvest Specifications to the footnotes of Tables 10 and 11 to this part which present incidental catch retainable percentages by target species. The change in cross reference was inadvertently omitted from these definitions in § 679.2: Deep water flatfish; other flatfish; other red rockfish; other rockfish; other species; and shallow water flatfish.
Change ''experimental fishing'' to ''exempted fishing'' and change ''experimental fisheries'' to ''exempted fisheries''.	*Experimental vs exempted.* A global change was made to replace ''experimental fishing'' or ''experimental fisheries'' with ''exempted fishing'' or ''exempted fisheries,'' respectively. Some of the terms were inadvertently not replaced and are corrected here.
Change ''Central Regulatory Area of the GOA'' or ''Central Area of the Gulf of Alaska'' to ''Central GOA regulatory area''.	*Central GOA regulatory area.* A global change was made in the R&R final rule to change ''Central Regulatory Area of the GOA'' or ''Central Area of the Gulf of Alaska'' with the words ''Central GOA regulatory area''. Some of the terms were inadvertently not replaced and are corrected here.
Change ''Western Regulatory Area of the GOA'' or ''Western Area of the Gulf of Alaska'' to ''Western GOA regulatory area''.	*Western GOA regulatory area.* A global change was made in the R&R final rule to change ''Western Regulatory Area of the GOA'' or ''Western Area of the Gulf of Alaska'' with the words ''Western GOA regulatory area''. Some of the terms were inadvertently not replaced and are corrected here.

Correction

As published, the final regulations (67 FR 4100, January 28, 2002) contain errors which may be misleading and need to be clarified.

1. On page 4107,

Second column, under the definition ''Sablefish (black cod)'', ''679.31(b)'' is corrected to read ''679.21(b)(5).''

Third column, in amendatory instruction 3, line 1, remove the text ''paragraphs (a)(1) through (a)(6) are redesignated as paragraphs (a)(3) through (a)(8),'' and add in its place the text ''paragraphs (a)(1) through (a)(7) are redesignated as paragraphs (a)(3) through (a)(9),''.

2. On page 4108,

In the second column, following paragraph (b)(5)(iv) and before the asterisks, add the following:

''(v) *Signature.* The owner or agent of the owner of the vessel must sign and date the application. If the owner is a company, the agent of the owner must sign and date the application.

(vi) (Applicable through July 8, 2002) If the vessel will be using pot, hook-and-

line, or trawl gear in the directed fisheries for pollock, Atka mackerel or Pacific cod in the GOA or in the BSAI.

(vii) (Applicable through July 8, 2002) If the vessel owner will be fishing in the harvest limit area in Statistical Areas 542 or 543 in the directed fishery for Atka mackerel.''

In the third column, amendatory instruction 4, line 4, ''(l)(7)(i)(C)(*4*)(*i*)'' is corrected to read ''(l)(7)(ii)(C)(*4*)(*i*)''.

3. On page 4112, first column of the table, second entry, ''0≥'' is corrected to read ''0''.

4. On page 4123, paragraph (3), third column, second row, ''Name of'' is corrected to read ''Name (if available) of''.

5. On page 4129, the first column, paragraph (vi)(J)(*1*), line 5, ''(in pounds)'' is corrected to read ''(in pounds or to the nearest thousandth of a metric ton)''.

6. On page 4132, first column, after paragraph (iii)(B)(*3*) paragraph (iii)(B)(*4*) is added to read as follows:

''(*4*) (Applicable through July 8, 2002) Indicate the intended target species.''

7. On page 4133, the third column, in § 679.42(c)(2) remove the second sentence.

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8. On page 4142, Table 9 to Part 679 is replaced with a corrected version.

Table 9 to Part 679--Required Logbooks, Reports, Forms and Electronic Logbook and Reports from Participants in the Federal Groundfish Fisheries

Requirement Name	Catcher vessel	Catcher/ Processor	Mothership	Shoreside Processor[3]	Buying Station
Daily Fishing Logbook (DFL)[1]	YES	NO	NO	NO	NO
Daily Cumulative Production Logbook (DCPL)[1]	NO	YES	YES	YES	NO
Buying Station Report (BSR)	NO	NO	NO	NO	YES
Check-in/Check-out Report	NO	YES	YES	YES	NO
Optional: Electronic Check-in/out report	NO	YES	YES	YES	NO
Weekly Production Report (WPR)	NO	YES	YES	YES	NO
Optional: Electronic WPR	NO	YES	YES	YES	NO
Shoreside Processor Electronic Logbook Report (SPELR) instead of DCPL and WPR when receiving AFA pollock or pollock harvested in a directed pollock fishery	NO	NO	NO	YES	NO
Optional: SPELR instead of DCPL and WPR	NO	NO	NO	YES	NO
U.S. Vessel Activity Report (VAR)	YES	YES	YES	NO	NO
Daily Production Report (DPR)[2]	NO	YES	YES	YES	NO
Product Transfer Report (PTR)	NO	YES	YES	YES	NO
Required use AFA and CDQ at-sea scales, including daily scale test, printed scale output, request for inspection of scales and observer station, scale approval sticker	NO	YES	YES	NO	NO
VMS when directed fishing for Atka mackerel, pollock, or Pacific cod	YES	YES	NO	NO	NO

[1]Two formats of the DFL and catcher/processor DCPL exist: one for trawl gear and one for longline and pot gear.
[2]DPR is submitted only when specifically requested by Regional Administrator.
[3]Also stationary floating processor

9. On page 4143, Table 10 to Part 679 is replaced with a corrected version.

Table 10 to Part 679--Gulf of Alaska Retainable Percentages

BASIS SPECIES		INCIDENTAL CATCH SPECIES													
Code	Species	Pollock	Pacific cod	DW flat [2]	Rex sole	Flathead sole	SW flat [3]	Arrowtooth	Sablefish	Aggregated rockfish[8]	SR/RE ERA [1]	DSR SEO [6]	Atka mackerel	Aggregated forage fish [10]	Other species [7]
110	Pacific cod	20	na[9]	20	20	20	20	35	1	5	[1]	10	20	2	20
121	Arrowtooth	5	5	0	0	0	0	na[9]	0	0	0	0	0	2	0
122	Flathead sole	20	20	20	20	na[9]	20	35	7	15	7	1	20	2	20
125	Rex sole	20	20	20	na[9]	20	20	35	7	15	7	1	20	2	20
136	Northern rockfish	20	20	20	20	20	20	35	7	15	7	1	20	2	20
141	Pacific ocean perch	20	20	20	20	20	20	35	7	15	7	1	20	2	20
143	Thornyhead	20	20	20	20	20	20	35	7	15	7	1	20	2	20
152/151	Shortraker/rougheye [1]	20	20	20	20	20	20	35	7	15	na[9]	1	20	2	20
193	Atka mackerel	20	20	20	20	20	20	35	1	5	[1]	10	na[9]	2	20
270	Pollock	na[9]	20	20	20	20	20	35	1	5	[1]	10	20	2	20
710	Sablefish	20	20	20	20	20	20	35		15	7	1	20	2	20
Flatfish, deep water [2]		20	20	na[9]	20	20	20	35	7	15	7	1	20	2	20
Flatfish, shallow water [3]		20	20	20	20	20	na[9]	35	1	5	[1]	10	20	2	20
Rockfish, other [4]		20	20	20	20	20	20	35	7	15	7	1	20	2	20
Rockfish, pelagic [5]		20	20	20	20	20	20	35	7	15	7	1	20	2	20
Rockfish, DSR-SEO [6]		20	20	20	20	20	20	35	7	15	7	na[9]	20	2	20
Other species [7]		20	20	20	20	20	20	35	1	5	[1]	10	20	2	na[9]
Aggregated amount of non-groundfish species		20	20	20	20	20	20	35	1	5	[1]	10	20	2	20

Notes to Table 10 to Part 679				
1	Shortraker/rougheye rockfish			
		SR/RE	shortraker/rougheye rockfish (171)	
			shortraker rockfish (152)	
			rougheye rockfish (151)	
		SR/RE ERA	shortraker/rougheye rockfish in the Eastern Regulatory Area.	
	Where numerical percentage is not indicated, the retainable percentage of SR/RE is included under Aggregated Rockfish			
2	Deep-water flatfish	Dover sole, Greenland turbot, and deep-sea sole		
3	Shallow water flatfish	Flatfish not including deep water flatfish, flathead sole, rex sole, or arrowtooth flounder		
4	Other rockfish	Western Regulatory Area	means slope rockfish and demersal shelf rockfish	
		Central Regulatory Area		
		West Yakutat District		
		Southeast Outside District	means slope rockfish	
		Slope rockfish		
		S. aurora (aurora)	S. variegatus (harlequin)	S. brevispinis (silvergrey)
		S. melanostomus (blackgill)	S. wilsoni (pygmy)	S. diploproa (splitnose)
		S. paucispinis (bocaccio)	S. babcocki (redbanded)	S. saxicola (stripetail)
		S. goodei (chilipepper)	S. proriger (redstripe)	S. miniatus (vermilion)
		S. crameri (darkblotch)	S. zacentrus (sharpchin)	S. reedi (yellowmouth)
		S. elongatus (greenstriped)	S. jordani (shortbelly)	
		In the Eastern GOA only,	Slope rockfish also includes S. polyspinous. (Northern)	
5	Pelagic shelf rockfish	S. ciliatus (dusky)	S. entomelas (widow)	S. flavidus (yellowtail)
6	Demersal shelf rockfish (DSR)	S. pinniger (canary)	S. maliger (quillback)	S. ruberrimus (yelloweye)
		S. nebulosus (china)	S. helvomaculatus (rosethorn)	
		S. caurinus (copper)	S. nigrocinctus (tiger)	

	DSR-SEO = Demersal shelf rockfish in the Southeast Outside District			
7	Other species	sculpins	skates	octopus
		sharks	squid	
8	Aggregated rockfish	means rockfish of the genera Sebastes and Sebastolobus defined at § 679.2 except in:		
		Southeast Outside District (SEO)	where DSR is a separate category for those species marked with a numerical percentage	
		Eastern Regulatory Area (ERA)	where SR/RE is a separate category for those species marked with a numerical percentage	
9	N/A	not applicable		
10	Aggregated forage fish (all species of the following families)			
		Bristlemouths, lightfishes, and anglemouths (family Gonostomatidae)	209	
		Capelin smelt (family Osmeridae)	516	
		Deep-sea smelts (family Bathylagidae)	773	
		Eulachon smelt (family Osmeridae)	511	
		Gunnels (family Pholidae)	207	
		Krill (order Euphausiacea)	800	
		Laternfishes (family Myctophidae)	772	
		Pacific herring (family Clupeidae)	235	
		Pacific Sand fish (family Trichodontidae)	206	
		Pacific Sand lance (family Ammodytidae)	774	
		Pricklebacks, war-bonnets, eelblennys, cockscombs and Shannys (family Stichaeidae)	208	
		Surf smelt (family Osmeridae)	515	

10. On page 4146, Table 11 to Part 679 is replaced with a corrected version.

Table 11 to Part 679-BSAI Retainable Percentages

BASIS SPECIES		INCIDENTAL CATCH SPECIES											
		Pollock	Pacific cod	Atka mackerel	Alaska plaice	Arrow-tooth	Yellow fin sole	Other flatfish[2]	Rock sole	Flathead sole	Green-land turbot	Sablefish[1]	Short-raker/ rougheye
110	Pacific cod	20	na[5]	20	20	35	20	20	20	20	1	1	2
121	Arrowtooth	0	0	0	0	na[5]	0	0	0	0	0	0	0
122	Flathead sole	20	20	20	35	35	35	35	35	na[5]	35	15	7
123	Rock sole	20	20	20	35	35	35	35	na[5]	35	1	1	2
127	Yellowfin sole	20	20	20	35	35	na[5]	35	35	35	1	1	2
133	Alaska Plaice	20	20	20	na[5]	35	35	35	35	35	1	1	2
134	Greenland turbot	20	20	20	20	35	20	20	20	20	na[5]	15	7
136	Northern	20	20	20	20	35	20	20	20	20	35	15	7
141	Pacific Ocean perch	20	20	20	20	35	20	20	20	20	35	15	7
152/ 151	Shortraker/ Rougheye	20	20	20	20	35	20	20	20	20	35	15	na[5]
193	Atka mackerel	20	20	na[5]	20	35	20	20	20	20	1	1	2
270	Pollock	na[5]	20	20	20	35	20	20	20	20	1	1	2
710	Sablefish[1]	20	20	20	20	35	20	20	20	20	35	na[5]	7
875	Squid	20	20	20	20	35	20	20	20	20	1	1	2
Other flatfish[2]		20	20	20	35	35	35	na[5]	35	35	1	1	2
Other rockfish[3]		20	20	20	20	35	20	20	20	20	35	15	7
Other species[4]		20	20	20	20	35	20	20	20	20	1	1	2
Aggregated amount non-groundfish species		20	20	20	20	35	20	20	20	20	1	1	2

NOTES to Table 11	
1	Sablefish: for fixed gear restrictions, see 50 CFR 679.7(f)(3)(ii) and 679.7(f)(11).
2	Other flatfish includes all flatfish species, except for Pacific halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, Alaska plaice, and arrowtooth flounder.
3	Other rockfish includes all Sebastes and Sebastolobus species except for Pacific ocean perch; and northern, shortraker, and rougheye rockfish. The CDQ reserves for shortraker, rougheye, and northern rockfish will continue to be managed as the ''other red rockfish'' complex for the BS.
4	Other species includes sculpins, sharks, skates and octopus. Forage fish, as defined at Table 2 to this part are not included in the "other species" category.
5	na = not applicable
6	Aggregated rockfish includes all of the genera Sebastes and Sebastolobus, except shortraker and rougheye rockfish.
7	Forage fish are defined at Table 2 to this part.

11. On page 4149, the Remove-and-Add table is corrected by adding the corrected table as follows:

At each of the locations shown in the "Location" column, remove the phrase indicated in the "Remove" column and replace it with the phrase indicated in the "Add" column.

LOCATION	REMOVE	ADD	FREQUENCY
§ 679.2 Definition for Area/species endorsement, paragraph (1)	Aleutian Islands brown king (see Figure 15 to this part)	Aleutian Islands brown king	1
§ 679.2 Definition for Area/species endorsement, paragraph (2)	Aleutian Islands red king (see Figure 15 to this part)	Aleutian Islands red king	1
§ 679.2 Definition for Area/species endorsement, paragraph (3)	Bristol Bay red king (see Figure 15 to this part)	Bristol Bay red king	1
§ 679.2 Definition for Area/species endorsement, paragraph (4)	Bering Sea and Aleutian Islands Area C. opilio and C. bairdi (see Figure 16 to this part)	Bering Sea and Aleutian Islands Area C. opilio and C. bairdi	1
§ 679.2 Definition for Area/species endorsement, paragraph (5)	Norton Sound red king and Norton Sound blue king (see Figure 15 to this part)	Norton Sound red king and Norton Sound blue king	1
§ 679.2 Definition for Area/species endorsement, paragraph (6)	Pribilof red king and Pribilof blue king (see Figure 15 to this part)	Pribilof red king and Pribilof blue king	1
§ 679.2 Definition for Area/species endorsement, paragraph (7)	St. Matthew blue king (see Figure 15 to this part)	St. Matthew blue king	1
§ 679.2 Definition for Authorized distributor	catch bycatch in	catch in	1
§ 679.2 Definition for Deep water flatfish	(see annual final specifications published in the Federal Register pursuant to § 679.20(c)))	(see Table 10 to this part pursuant to § 679.20(c))	1

§ 679.2 Definition for Other flatfish	(see annual final specifications published in the Federal Register) pursuant to § 679.20(c))	(see Table 11 to this part pursuant to § 679.20(c))	1
§ 679.2 Definition for Other red rockfish	(see annual final specifications published in the Federal Register pursuant to § 679.20(c); see also "rockfish" at § 679.2)	(see Table 10 to this part pursuant to § 679.20(c); see also "rockfish" at § 679.2)	1
§ 679.2 Definition for Other rockfish	(see annual final specifications published in the Federal Register pursuant to § 679.20(c); see also "rockfish" at § 679.2)	(see Table 10 to this part pursuant to § 679.20(c); see also "rockfish" at § 679.2)	1
§ 679.2 Definition for Other species	(see Table 1 of the specifications provided at § 679.20(c)	(see Tables 10 and 11 to this part pursuant to § 679.20(c)	1
§ 679.2 Definition for Shallow water flatfish	(see annual final specifications published in the Federal Register pursuant to § 679.20(c))	(see Table 10 to this part pursuant to § 679.20(c))	1
§ 679.4(i) heading	Experimental fisheries	Exempted fisheries	1
§ 679.4(k)(4)(ii)(C) introductory text	Western Area of the Gulf of Alaska	Western GOA regulatory area	1
§ 679.6 heading	Experimental fisheries	Exempted fisheries	1
§ 679.6 (a)	experimental fishing	exempted fishing	2
§ 679.6 (a)	Experimental fishing	Exempted fishing	1
§ 679.6(f)	experimental fishing	exempted fishing	2
§ 679.20(e)(1)	a bycatch species or species group	an incidental catch species	1
§ 679.23(h)(2)	Western Regulatory Area of the GOA	Western GOA regulatory area	1
§ 679.23(h)(3)	Central Regulatory Area of the GOA	Central GOA regulatory area	1

Dated: April 25, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 02–10949 Filed 5–1–02; 8:45 am]

BILLING CODE 3510–22–C

Proposed Rules

Federal Register
Vol. 67, No. 85
Thursday, May 2, 2002

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 33]

[Docket No. 24922; Notice No. 92–14]

RIN 2120–AB76

Airworthiness Standards: Aircraft Engines; Fuel and Induction Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM); withdrawal.

SUMMARY: The FAA is withdrawing a previously published Notice of Proposed Rulemaking (NPRM) that proposed to require fail-safe design features in the fuel control systems used on reciprocating aircraft engines. The proposal would have required the fuel-air mixture control device and the throttle control device to move automatically to an acceptable position for continued safe operation if the linkage to these devices becomes disconnected. Based upon comments and after further analysis of the issue, we are withdrawing Notice No. 92–14 because existing regulations adequately cover the issues contained in the NPRM, and Advisory Circular No. 20–143, Installation, Inspection, and Maintenance of Controls for General Aviation Reciprocating Aircraft Engines, issued on June 6, 2000, provides additional guidance on maintenance procedures.

FOR FURTHER INFORMATION CONTACT: Bonnie Fritts, ARM–28, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267–7037; e-mail *bonnie.fritts@faa.gov.*

SUPPLEMENTARY INFORMATION

Background

The FAA published an Advance Notice of Proposed Rulemaking (ANPRM) (51 FR 7224, Notice No. 86–2) on February 28, 1986, as a result of analysis of accidents attributed to mixture control failure. Accidents involving mixture and throttle control failures had resulted in serious injuries and a fatality. The National Transportation Safety Board (NTSB) analyzed 54 aircraft accidents and concluded that in most cases, failure of the mixture control linkage mechanism resulted in the mixture control moving to the idle cut-off position. Concerns of commenters to the ANPRM included inadequate maintenance, inclusion of a similar proposal on the throttle linkage, and that the full-rich mixture may not be the needed mixture position after linkage disconnect. The NTSB had also recommended a similar requirement for the throttle linkage.

As a result of the information gathered from the ANPRM responses, the FAA published a Notice of Proposed Rulemaking (NPRM) (57 FR 47934, Notice No. 92–14) on October 20, 1992. Notice No. 86–2 had addressed mixture control failures. Notice No. 92–14 addressed both mixture and throttle control failures. The NPRM would have also removed the requirement that full-rich is the only acceptable mixture position following mixture control failure. The comment period of the NPRM closed February 17, 1993.

After issuance of the NPRM, further investigations revealed the accidents were not a result of design problems, but were a result of inconsistent maintenance procedures involving throttle and mixture control cables. The FAA has determined that existing regulations adequately address the concerns of Notice No. 92–14, but to provide additional means of compliance, we have also issued an advisory circular to address maintenance procedures. We issued Advisory Circular No. 20–143, Installation, Inspection, and Maintenance of Controls for General Aviation Reciprocating Aircraft Engines, on June 6, 2000.

Discussion of Comments

Twelve commenters responded to the NPRM. Concerns of commenters included maintenance techniques, editorial corrections to the NPRM, harmonization with Joint Aviation Authorities, and application of the proposed rulemaking to multi-engine aircraft.

The National Transportation Safety Board concurred with the need to define and require fail-safe provisions at the engine certification level.

The Air Line Pilots Association expressed support for the proposed rulemaking without further comment.

The Joint Aviation Authorities (JAA) expressed concern that the proposed rulemaking creates new differences between the Joint Aviation Regulations and the Code of Federal Regulations. They also stated their position that an engine requirement is not the appropriate solution to the problem, as well as pointed out some editorial errors in the NPRM. They concluded that the FAA should cancel the NPRM or harmonize the issues with the JAA.

Three aviation industry associations responded, two of which expressed concern that the proposal should not be mandatory for multi-engine aircraft. One association suggested a review of maintenance techniques and withdrawal of the proposal, stating that the proposal increases opportunity for disaster.

Two aviation industry manufacturers also cited maintenance procedures as a focus for further scrutiny. Of five individuals responding, one concerned about maintenance stated that ''given good maintenance, this problem should not exist.'' Another individual wanted the proposal to be made effective for new production engines after a specified date. Another supported the proposal but emphasized the need to keep requirements simple. Others suggested editorial changes to the proposed rule language and requested a detailed study of the problem.

The greater number of commenters were concerned about effective maintenance procedures, which prompted further analysis of those procedures. Analysis revealed the issues contained in the NPRM to be largely a product of inconsistent maintenance practices involving throttle and mixture control cables. Based on the comments and further analysis of the issues, we provided additional guidance on maintenance procedures to complement existing regulations.

Reason for Withdrawal

Existing regulations adequately cover the concerns of Notice No. 92–14, but to provide additional means of compliance with the regulations, we have issued an advisory circular on maintenance

issues. Analysis revealed the issues addressed in the NPRM were largely a product of inconsistent maintenance practices. The FAA determined that issuance of an advisory circular was the proper method of dealing with the maintenance issues, and that a rule was not necessary. Advisory Circular No. 20–143, Installation, Inspection, and Maintenance of Controls for General Aviation Reciprocating Aircraft Engines, issued on June 6, 2000, addresses the issues contained in the NPRM. Therefore, we withdraw Notice No. 92–14, published October 20, 1992 at 57 FR 47934.

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

John Hickey,

Director, Aircraft Certification Service, (AIR–1).

[FR Doc. 02–10946 Filed 5–1–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AEA–22]

Establishment of Class E Airspace

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the description of the established airspace designation that was published in the **Federal Register** on January 31, 2002, Airspace Docket No. 01–AEA–22.

EFFECTIVE DATE: May 2, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 02–1006, Airspace Docket No. 01–AEA–22FR, published on January 31, 2002 (67 FR 4655), established Class E airspace at Easton Memorial Hospital. A review of Federal Aviation Administration Order 7400.9J revealed a similarity to an existing airspace description. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the Class E airspace designation for the Easton Memorial Hospital as published in the **Federal Register** on January 31, 2002 (67 FR 4655) (Federal Register Document 02–1006), is corrected as follows:

§ 71.1 [Corrected]

On page 4655, column 3, the 25th line is corrected removing ''AEA MD E5, Easton Memorial Hospital [NEW] and substituting ''AEA MD E5 Oxford''[NEW]

Issued in Jamaica, New York on April 22, 2002.

Richard J. Ducharme,

Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 02–10937 Filed 5–1–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 125, and 135

[Docket No. 27694, Notice No. 94–11]

RIN 2120–AE98

Operator Flight Attendant English Language Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM), withdrawal.

SUMMARY: The FAA is withdrawing a previously published ANPRM that sought information to establish requirements to ensure that flight attendants understand sufficient English language to communicate, coordinate, and perform all required safety related duties. The ANPRM discussion concerned domestic, flag, and supplemental operations; airplanes having a seating capacity of 20 or more passengers or a maximum payload capacity of 6,000 pounds or more; and commuter and on demand operations. We are withdrawing the document because we are incorporating the flight attendant English language issue into a separate regulatory action on the broader subject of crewmember training. We believe that consolidating the flight attendant English language issue into the proposed training rulemaking will enable a more effective and efficient use of FAA resources, and the broader proposal will better serve the public interest.

FOR FURTHER INFORMATION CONTACT: Cindy Nordlie, ARM–108, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7627.

SUPPLEMENTARY INFORMATION

Background

On April 18, 1994, the FAA published an Advance Notice of Proposed Rulemaking (ANPRM) (Notice No. 94–11, 59 FR 18456). The ANPRM informed the public that the FAA was considering amending parts 121, 125, and 135 of title 14 of the Code of Federal Regulations to require certificate holders to ensure flight attendants understand sufficient English to communicate, coordinate, and perform all required safety related duties. The comment period closed on July 18, 1994.

In 1996, the FAA's Aviation Rulemaking Advisory Committee (ARAC) was tasked with providing advice and recommendations on the flight attendant English language issue. ARAC's Operator Flight Attendant English Language Program Working Group was unable to reach consensus on an appropriate rulemaking action recommendation and asked ARAC to resolve the impasse. ARAC recommended proceeding with the rulemaking process. FAA determined that the most appropriate way to proceed with the rulemaking was to address the flight attendant English language issue in the overall context of crewmember training. ARAC concurred with the FAA's decision. Therefore, the task was withdrawn from ARAC and incorporated into a separate Crewmember Qualification and Training proposed rulemaking currently being developed by the FAA.

Discussion of Comments

All but one of the fourteen commenters expressed support for the proposal under consideration. The Air Transport Association strongly opposed any English language proficiency requirement, believing it to be the source of an unreasonable economic burden and unsupported by any identified specific safety problem.

Two individual commenters related personal experiences of communication difficulties with flight attendants and requested the problem be addressed before it results in tragedy. One individual noted that the ANPRM excludes operations that do not require flight attendants and stated that mandatory compliance by these operators would be burdensome and unfair.

The Canadian Air Line Pilots Association expressed complete agreement with the possible rulemaking without further comment.

The Air Line Pilots Association (ALPA), the Association of Flight Attendants (AFA), the Association of Professional Flight Attendants, the National Transportation Safety Board, an aircraft manufacturer, and the International Brotherhood of Teamsters Airline Division all expressed support for the possible rulemaking and declared an English language proficiency requirement to be essential for aviation safety. ALPA further suggested that flight attendants be required to communicate in the language of the flight's origin and destination. AFA added that the ability to understand a language does not assure an accompanying ability to communicate in that language, and requested that any rulemaking focus on communication, addressing problems with accents and speech impediments.

The FAA acknowledges these contributions to the rulemaking process, and we reaffirm our commitment to aviation safety regarding this issue by continuing to develop and implement training and qualification requirements for crewmembers. The FAA is currently developing a proposed rulemaking on the overall subject of Crewmember Qualification and Training that will encompass the issues of Notice No. 94–11.

Reason for Withdrawal

We are withdrawing Notice No. 94–11 because the flight attendant English language issue will be incorporated into a separate regulatory action currently being developed on the broader subject of Crewmember Qualification and Training. We believe that consolidating the flight attendant English language issue into the proposed training rulemaking will enable a more effective and efficient use of FAA resources, and the broader proposal will better serve the public interest.

Conclusion

Withdrawal of Notice No. 94–11 does not preclude the FAA from issuing another notice on the subject matter in the future or committing the agency to any future course of action. We will make any future necessary changes to the Code of Federal Regulations through an NPRM with opportunity for public comment.

The FAA has determined that this regulatory course of action is no longer necessary. Accordingly, the FAA withdraws Notice No. 94–11, published at 59 FR 18456 on April 18, 1994.

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

James Ballough,

Director, Flight Standards Service.

[FR Doc. 02–10945 Filed 5–1–02; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

RIN 0960–AF43

Access to Information Held by Financial Institutions

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: We are proposing new rules to implement a law that will enhance our access to bank account information of Supplemental Security Income (SSI) applicants and beneficiaries and other individuals whose income and resources we consider as being available to the applicant or beneficiary.

DATES: To consider your comments, we must receive them no later than July 1, 2002.

ADDRESSES: You may give us your comments by using: our Internet site facility (*i.e., Social Security Online*) at *http://www.ssa.gov/regulations/,* e-mail to *regulations@ssa.gov,* telefax to (410) 966–2830 or by sending a letter to the Commissioner of Social Security, PO Box 17703, Baltimore, Maryland 21235–7703. You may also deliver them to the Office of Process and Innovation Management, Social Security Administration, 2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site, or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

Electronic Version: The electronic file of this document is available on the date of publication in the **Federal Register** on the Internet site for the Government Printing Office: *http://www.access.gpo.gov/su—docs/aces/aces140.html.* It is also available on the Internet site for SSA (*i.e., Social Security Online*): *http://www.ssa.gov/regulations/.* Electronic copies of public comments may also be found on this site.

FOR FURTHER INFORMATION CONTACT: Georgia E. Myers, Regulations Officer, Office of Process and Innovation Management, 2109 West Low Rise Building, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, regulations@ssa.gov, (410) 965–3632 or TTY (410) 966–5609 for information about this rule. For information on eligibility or filing for benefits, call our national toll-free numbers, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet Web site, *Social Security Online,* at *http://www.ssa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 1631(e)(1)(B) of the Social Security Act (the Act) requires the Commissioner to verify all relevant information provided regarding the eligibility of SSI applicants and beneficiaries. Section 213 of the Foster Care Independence Act of 1999, Public Law 106–169, amended section 1631(e)(1)(B) of the Act to grant the Commissioner new authority with respect to verifying financial accounts. Under section 213, the Commissioner may require each SSI applicant or beneficiary to provide us with permission to obtain any financial record (as defined in section 1101(2) of the Right to Financial Privacy Act) held by any financial institution (as defined in section 1101(1) of the Right to Financial Privacy Act) with respect to the applicant or beneficiary. This law also allows the Commissioner to require such permission from deemors (*i.e.* individuals whose income and resources we consider as being available to the applicant or beneficiary).

This law requires us to tell you, or any other person whose income and resources we consider as being available to you, how we will use the permission and how long the permission lasts. It also allows us to request the information from financial institutions without furnishing a copy of the permission to the financial institution. We may request the information from financial institutions at any time we think it is needed to determine your eligibility or payment amount. Requests under this provision are considered to meet the requirements of the Right to Financial Privacy Act regarding identification and description of the financial record(s) to be disclosed.

This law also allows us to deny your SSI eligibility or suspend your SSI eligibility if you, or any person whose income and resources we consider as being available to you, refuses to provide or cancels the permission.

Explanation of Proposed Changes

The Commissioner is exercising her authority under section 213 of the Foster Care Independence Act of 1999 by proposing new rules to make giving permission to contact financial

institutions a condition of SSI eligibility. Therefore, we propose to amend our regulations by adding a new section § 416.207 to explain that in order to receive SSI benefits, you must give us permission to contact any financial institution, and request any financial records the financial institution may have for you. The section further explains that the permission to contact financial institutions is required from anyone whose income and resources we consider as being available to you. This section also explains that the permission to contact financial institutions lasts until:

(1) You cancel the permission in writing and provide the writing to us.

(2) Anyone whose income and resources we consider as being available to you cancels their permission in writing and provides the writing to us.

(3) Your application for SSI is denied, and the denial is final.

(4) You are no longer eligible for SSI.

This section explains that we will ask financial institutions for this information when we think that it is necessary to determine SSI eligibility or payment amount. This section defines a financial institution as any bank, savings bank, credit card issuer, industrial loan company, trust company, savings association, building and loan, homestead association, credit union, consumer finance institution, or any other financial institution as defined in section 1101(1) of the Right to Financial Privacy Act. The section also defines a financial record as an original of, a copy of, or information known to have been derived from any record held by the financial institution pertaining to your relationship with the financial institution.

In addition, we propose to revise current § 416.200 to add the new section § 416.207 as a reference, to redesignate current § 416.1321 as § 416.1320, and to add a new section § 416.1321, Suspension for not giving us permission to contact financial institutions, to Subpart M as a reason for suspending SSI benefits.

Regulatory Procedures

Executive Order 12866

The Office of Management and Budget (OMB) has reviewed these proposed rules in accordance with Executive Order (E.O.) 12866.

Clarity of these Proposed Rules

Executive Order 12866 requires each agency to write all rules in plain language. We invite your comments on how to make these proposed rules easier to understand. For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules 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 rules easier to understand?

Regulatory Flexibility Act

We certify that these proposed regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These proposed rules contain reporting requirements at § 416.207 and § 416.1321. The public reporting burden is accounted for in the Information Collection Requests for the various forms that the public uses to submit the information to SSA. Consequently, a 1-hour placeholder burden is being assigned to the specific reporting requirement(s) contained in these rules. We are seeking clearance of the burden referenced in these rules because the rules were not considered during the clearance of the forms. An Information Collection Request has been submitted to OMB. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Comments should be submitted to the Social Security Administration at the following address:

Social Security Administration, Attn: SSA Reports Clearance Officer, Rm. 1–A–20 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235–6401.

Comments can be received for between 30 and 60 days after publication of this notice and will be most useful if received by SSA within 30 days of publication.

(Catalog of Federal Domestic Assistance Program Nos. 96–001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; and 96.006, Supplemental Security Income)

Lists of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public Assistance programs, reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: January 28, 2002.

Jo Anne B. Barnhart,

Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend part 416, subparts B and M of Chapter III, Title 20 Code of Federal Regulations to read as follows:

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart B—[Amended]

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

Authority: Secs.702(a)(5), 1110(b), 1602, 1611, 1614, 1615(c), 1619(a), 1631, and 1634 of the Social Security Act (42 U.S.C. 902(a)(5), 1310(b), 1381a, 1382, 1382c, 1382d(c), 1382h(a), 1383, and 1383c); secs. 211 and 212, Pub. L. 93–66, 87 Stat. 154 and 155 (42 U.S.C. 1382 note); sec. 502(a), Pub. L. 94–241, 90 Stat. 268 (48 U.S.C. 1681 note); sec. 2, Pub. L. 99–643, 100 Stat. 3574 (42 U.S.C. 1382h note).

2. Revise the last sentence of § 416.200 to read as follows:

§ 416.200 Introduction.

* * * * *

You continue to be eligible unless you lose your eligibility because you no longer meet the basic requirements or because of one of the reasons given in §§ 416.207 through 416.216.

3. Add new § 416.207 under the undesignated center heading REASONS WHY YOU MAY NOT GET SSI BENEFITS FOR WHICH YOU ARE OTHERWISE ELIGIBLE, to read as follows:

§ 416.207 You do not give us permission to contact financial institutions.

(a) To be eligible for SSI payments you must give SSA permission to contact any financial institution and request any financial records the financial institution may have about you. You must give us this permission when you apply for SSI payments or when we ask for it at a later time. You must also provide us with permission from anyone whose income and resources we consider as being available to you (*see* §§ 416.1160, 416.1202, 416.1203, and 416.1204).

(b) *Financial institution* means any:

(1) Bank,

(2) Savings bank,
(3) Credit card issuer,
(4) Industrial loan company,
(5) Trust company,
(6) Savings association,
(7) Building and loan,
(8) Homestead association,
(9) Credit union,
(10) Consumer finance institution, or
(11) Any other financial institution as defined in section 1101(1) of the Right to Financial Privacy Act.

(c) *Financial record* means an original of, a copy of, or information known to have been derived from any record held by the financial institution pertaining to your relationship with the financial institution.

(d) We may ask any financial institution for information on any financial account concerning you. We may also ask for information on any financial accounts for anyone whose income and resources we consider as being available to you (*see* §§ 416.1160, 416.1202, 416.1203, and 416.1204).

(e) We ask financial institutions for this information when we think that it is necessary to determine your SSI eligibility or payment amount.

(f) Your permission to contact financial institutions, and the permission of anyone whose income and resources we consider as being available to you (*see* §§ 416.1160, 416.1202, 416.1203, and 416.1204), lasts until one of the following happens:

(1) You cancel your permission in writing and provide the writing to us.

(2) Anyone whose income and resources we consider as being available to you (*see* §§ 416.1160, 416.1202, 416.1203, and 416.1204) cancels their permission in writing and provides the writing to us.

(3) Your application for SSI is denied, and the denial is final. A denial is final when made, unless you appeal the denial timely as described in §§ 416.1400 through 416.1499.

(4) You are no longer eligible for SSI as described in §§ 416.1331 through 416.1335.

(g) If you don't give SSA permission to contact any financial institution and request any financial records about you when we think it is necessary to determine your SSI eligibility or payment amount, or if you cancel the permission, you cannot be eligible for SSI payments. Also, if anyone whose income and resources we consider as being available to you (*see* §§ 416.1160, 416.1202, 416.1203, and 416.1204) doesn't give SSA permission to contact any financial institution and request any financial records about that person when we think it is necessary to determine your eligibility or payment amount, or if that person cancels the permission, you cannot be eligible for SSI payments. This means that if you are applying for SSI payments, you cannot receive them. If you are receiving SSI payments, we will stop your payments.

Subpart M—[Amended]

4. The authority citation for subpart M of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1611–1615, 1619, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1382–1382d, 1382h, and 1383.

5. Redesignate § 416.1321 as § 416.1320 and add new § 416.1321 to read as follows:

§ 416.1321 Suspension for not giving us permission to contact financial institutions.

(a) If you don't give us permission to contact any financial institution and request any financial records about you when we think it is necessary to determine your SSI eligibility or payment amount, or if you cancel the permission, you cannot be eligible for SSI payments (*see* § 416.207) and we will stop your payments. Also, if anyone whose income and resources we consider as being available to you (*see* §§ 416.1160, 416.1202, 416.1203 and 416.1204) doesn't give us permission to contact any financial institution and request any financial records about that person when we think it is necessary to determine your SSI eligibility or payment amount, or that person cancels the permission, you cannot be eligible for SSI payments and we will stop your payments.

(b) We will suspend your payments starting with the month after the month in which we notify you in writing that:

(1) You failed to give us permission to contact any financial institution and request any financial records about you, or

(2) The person(s) whose income and resources we consider as being available to you failed to give us such permission.

(c) If you are otherwise eligible, we will start your benefits in the month following the month in which:

(1) You give us permission to contact any financial institution and request any financial records about you, or

(2) The person(s) whose income and resources we consider as being available to you gives us such permission.

6. Revise references from ''§ 416.1321'' to read ''§ 416.1320'' in the following sections:

a. § 416.421(a);
b. § 416.640(e)(5)(iii);
c. § 416.1231(b)(9);
d. § 416.1242(d);
e. § 416.1245(b)(5);
f. § 416.1247(b);
g. § 416.1335;
h. § 416.1337(b)(3)(ii);
i. § 416.1618(d)(3)(i);
j. § 416.1618(d)(3)(ii); and
k. § 416.1618(d)(3)(iv).

[FR Doc. 02–10842 Filed 5–1–02; 8:45 am]
BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD05–02–013]

RIN 2115–AE46

Special Local Regulations for Marine Events; Nanticoke River, Sharptown, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish temporary special local regulations for the Sharptown Outboard Regatta, a marine event to be held on the waters of the Nanticoke River, near Sharptown, Maryland on June 29 and 30, 2002. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the Nanticoke River during the event.

DATES: Comments and related material must reach the Coast Guard on or before June 3, 2002.

ADDRESSES: You may mail comments and related material to Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, hand-deliver them to Room 119 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, or fax them to (757) 398–6203. The Operations Oversight Branch, Auxiliary and Recreational Boating Safety Section, Fifth Coast Guard District, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S.L. Phillips, Project Manager, Auxiliary and Recreational Boating Safety Section, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–02–013), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them. We anticipate not being able to publish a final rule 30 days before the start of the event. If this will create any particular hardship, please specify this in your comments.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address listed under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The North-South Racing Association will sponsor the Sharptown Outboard Regatta on June 29 and 30, 2002. The event consists of approximately 50 hydroplanes and runabouts conducting high-speed competitive races on the waters of the Nanticoke River between the Maryland S.R. 313 Bridge at Sharptown, Maryland and the Nanticoke River Light 43 (LLN–24175). A fleet of spectator vessels normally gathers nearby to view the event. Due to the need for vessel control during the races, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

Discussion of Proposed Rule

The Coast Guard proposes to establish temporary special local regulations on specified waters of the Nanticoke River. The regulated area would include waters of the Nanticoke River between the Maryland S.R. 313 Bridge at Sharptown, Maryland and the Nanticoke River Light 43 (LLN–24175). The proposed special local regulations would be enforced from 11 a.m. to 6 p.m. local time on June 29 and 30, 2002, and would restrict general navigation in the regulated area during the event. Except for participants in the Sharptown Outboard Regatta and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel would be permitted to enter or remain in the regulated area. The Patrol Commander would allow non-participating vessels to transit the proposed regulated area between races, when it is safe to do so. The proposed regulated area is needed to control vessel traffic during the event to enhance the safety of participants, spectators, and transiting vessels.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this proposed regulation would prevent traffic from transiting a portion of the Nanticoke River during the event, the effect of this proposed regulation would not be significant due to the limited duration that the regulated area would be in effect and the extensive advance notifications that would be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners could adjust their plans accordingly. Additionally, the proposed regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. The Patrol Commander would also allow non-participating vessels to transit the regulated area between races, whenever safe to do so.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605 (b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. Although this proposed regulation would prevent traffic from transiting a portion of the Nanticoke River during the event, the effect of this proposed regulation would not be significant because of the limited duration that the regulated area would be in effect and the extensive advance notifications that would be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners could adjust their plans accordingly. Additionally, the proposed regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. The Patrol Commander would also allow non-participating vessels to transit the regulated area between races, whenever it is safe to do so.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment to the address under **ADDRESSES** explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Assistance for Small Entities

Under section 213 (a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES.**

Collection of Information

This proposed rule would call 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 proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

This proposed 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 proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more 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. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

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

Environment

We prepared an ''Environmental Assessment'' in accordance with Commandant Instruction M16475.1C, and determined that this rule will not significantly affect the quality of the human environment. The ''Environmental Assessment'' and ''Finding of No Significant Impact'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

2. From 11 a.m. on June 29 to 6 p.m. on June 30, add a temporary § 100.35–T05–013 to read as follows:

§ 100.35–T05–013, Nanticoke River, Sharptown, Maryland.

(a) Definitions.

Coast Guard Patrol Commander means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Activities Baltimore.

Official Patrol means any vessel assigned or approved by Commander, Coast Guard Activities Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(b) *Regulated area.* Includes all waters of the Nanticoke River, near Sharptown, Maryland, between Maryland S.R. 313 Bridge and the Nanticoke River Light 43 (LLN–24175), bounded by a line drawn between the following points: southeasterly from latitude 38°32′46″ N, longitude 075°43′14″ W; to latitude 38°32′42″ N, longitude 75°43′09″ W; thence northeasterly to latitude 38°33′04″ N, longitude 075°42′39″ W; thence northwesterly to latitude 38°33′09″ N, longitude 75°42′44″ W; thence southwesterly to latitude 38°32′46″ N, longitude 75°43′14″ W. All coordinates reference Datum NAD 1983.

(c) Special local regulations.

(1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in this area shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign; and

(ii) Proceed as directed by any Official Patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(d) *Enforcement period.* This section will be enforced from 11 a.m. to 6 p.m. local time on June 29 and 30, 2002.

Dated: April 16, 2002.

Thad W. Allen,

Vice Admiral, Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 02–10933 Filed 5–1–02; 8:45 am]

BILLING CODE 4910–15–U

POSTAL SERVICE

39 CFR Part 501

Authorization To Manufacture and Distribute Postage Meters

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends the regulations for checking postage meters out of service and for handling faulty meters.

DATES: The Postal Service must receive your comments on or before June 3, 2002.

ADDRESSES: Mail or deliver written comments to Manager, Postage Technology Management, 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 at 703–292–3704 or by fax at 703–292–4050.

SUPPLEMENTARY INFORMATION: The United States Postal Service is seeking to improve the secure handling of faulty postage meters by the approved postage meter providers and to enhance the accuracy of determinations by the

postage meter providers of the proper amounts of postage to be refunded from faulty postage meters. We are proposing to amend the regulations for checking postage meters out of service and for handling faulty meters to address these concerns and to align the regulations with changes to the *Domestic Mail Manual* (DMM) regarding postage meters published in the **Federal Register** (66 FR 56432–56447) on November 8, 2001. Additionally, we deleted references to mechanical meters from the amended section since all mechanical postage meters have been decertified since 1999 and should no longer be in service. We will amend the remaining sections of CFR part 501 in the near future so that they all reflect the changes in the postage meter population and changes in the DMM.

List of Subjects in 39 CFR Part 501

Administrative practice and procedure, Postal Service.

Notice and Comment

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comments on the following proposed amendments to the *Code of Federal Regulations* (CFR). For the reasons set out in this document, the Postal Service is proposing to amend 39 CFR part 501 as follows:

PART 501—AUTHORIZATION TO MANUFACTURE AND DISTRIBUTE POSTAGE METERS

1. The authority citation for part 501 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 410, 2601, 2605; Inspector General Act of 1978, as amended (Public Law 95–452, as amended), 5 U.S.C. App. 3.

2. Revise paragraphs (g) and (h) of §501.23 to read as follows:

§ 501.23 Distribution controls.

* * * * *

(g) Check a nonfaulty meter out of service in accordance with the procedures that the Postal Service has approved for that meter when the meter is to be removed from service for any reason. Ensure that a Postal Service employee certifies the register readings and clears the descending register when the meter is checked out of service, unless the Postal Service has approved other procedures for the specific meter model. Complete the check-out process in a timely manner and transmit the required data to the appropriate Postal Service information systems. Ensure that no employee of the meter manufacturer or any third party changes, interferes with, or performs any element of the postal employee's established check-out and withdrawal process for any meter, unless approval for the change in procedures is granted in writing by the Postal Service.

(h) Handle faulty meters, including those that are misregistering, are defective, show any evidence of tampering, or are defective in any other way, as follows:

(1) Ensure that all functions required to handle faulty meters are completed in a timely manner and in accordance with Postal Service regulations and procedures.

(2) Ensure that faulty meters are not presented to the licensing Post Office for checkout or withdrawal.

(3) Begin the process to retrieve any faulty meter within 2 business days of being notified of a problem.

(4) Complete PS Form 3601–C, *Postage Meter Activity Report,* in the presence of the licensee and obtain the licensee's signature on the form confirming that the information is accurate.

(i) When the registers can be read, the manufacturer or the manufacturer's agent must include the register information on the form.

(ii) When the register values cannot be read, the manufacturer or the manufacturer's agent must print the system report, if available for the meter, and must attach the report to PS Form 3601–C.

(iii) When the register values cannot be read, the licensee must provide any original daily usage logs with PS Form 3601–C for refund calculation.

(5) Identify and tag the meter as faulty as soon as the manufacturer or the manufacturer's agent receives it from the customer. Keep the identification tag and the PS Form 3601–C completed under paragraph (h)(4) of this section with the faulty meter until processing is completed and the meter is returned to service or is scrapped.

(6) Secure all faulty meters and maintain the integrity of the meter and of the information residing on the meter.

(7) When there is evidence or suspicion of tampering, secure the meter and maintain it in its original state until it is returned for processing under paragraph (h)(10) of this section.

(8) Maintain a record of the faulty meter and all changes in its custody, state, and condition (including availability of register information) from the time the meter is reported as faulty until processing is completed under paragraphs (h)(13), (14), or (15) of this section. Make the record available to the Postal Service for its review upon request.

(9) Maintain a dedicated secure facility, approved by the Postal Service, for handling faulty meters.

(10) Have faulty meters returned directly to the dedicated secure facility described in paragraph (h)(9) of this section for processing. Have all faulty meters shipped via registered mail, Express Mail® service, or Priority Mail® service with Delivery Confirmation ™ service.

(11) Ensure that registers on a faulty meter are not cleared and no funds are refunded or transferred until after the meter is returned to the dedicated secure facility described in paragraph (h)(9) of this section and approved procedures are followed.

(12) Examine each meter withdrawn for faulty operation to determine if the registers can be read and if there is any evidence of tampering.

(13) If there is no evidence of tampering and the registers can be read or a summary report of the appropriate redundant electronic register memory readouts is available using Postal Service approved methods:

(i) Check out the meter and withdraw it from service under paragraph (g) of this section.

(ii) Submit a report to the Postal Service by the 15th of each month listing all faulty meters with readable displays received in the prior month, identifying the meter and including an explanation of the meter malfunction.

(14) If there is no evidence of tampering, if the meter registers cannot be read, and if a summary report of the appropriate redundant electronic register memory readouts cannot be retrieved:

(i) Develop other data to support the request for Postal Service approval of a postage adjustment amount, such as a manual calculation of the estimated value of the descending register based on estimated highest average daily usage, or applicable system-generated register documentation. Include the original daily usage logs maintained by the customer, if any, with the supporting data.

(ii) Furnish a report explaining the malfunction to the Postal Service within 5 days of receiving the meter. Accompany the report with a recommendation of the postage adjustment amount that includes all data developed to support the recommendation.

(iii) Maintain control of those meters that have unreadable registers and hold them in the manufacturer's dedicated secure facility described in paragraph

(h)(9) of this section until a representative of the Postal Service approves the postage adjustment amount or verifies the condition of the meter before proceeding with the meter repair or destruction.

(iv) Ensure that under no circumstance is a refund issued or funds transferred for any postage value said to remain in a meter that has unreadable registers until the Postal Service has reviewed and analyzed the manufacturer's report and determined the appropriate postage adjustment, if any.

(15) If there is evidence or suspicion of tampering:

(i) Maintain control of the meter and place it in a secure area.

(ii) Ensure that the meter is handled in a secure manner and maintained in its original state until the Postal Service or its agent can be present during the examination.

(iii) Ensure that under no circumstance is a refund issued or funds transferred for any postage value said to remain in a meter that shows evidence of tampering until the Postal Service has reviewed and analyzed the manufacturer's report and determined the appropriate postage adjustment, if any.

(iv) After examination, if approved by the Postal Service or its agent, process the meter under paragraphs (h)(13) or (14) of this section.

(16) In some instances, even though the registers can be read, there is information or other indication that the meter has some mechanical or electrical malfunction that affects the accuracy of the registers or the accuracy of the value printed. Such a meter must be handled under paragraph (h)(14) of this section.

(17) Issue the refund of any postage value said to remain in a faulty meter, after Postal Service approval of the amount of the refund, when the Postal Service requires it. Request reimbursement from the Postal Service for these refunds by periodically submitting a reimbursement request letter to the Postal Service. The letter must be accompanied by listings and support documentation for each refund and must indicate the cause of failure for each incident.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–10783 Filed 5–1–02; 8:45 am]

BILLING CODE 7710–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–919; MB Docket No. 02–79, RM–10424]

Radio Broadcasting Services; Park City and Miles City, MT, and Powell and Byron, WY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes four changes in the FM Table of Allotments in Park City and Miles City, MT and Powell and Byron, WY. The Commission requests comment on a petition filed by Chaparral Broadcasting, Inc., licensee of Station KLZY(FM), Powell, Wyoming, proposing the reallotment of Channel 223C from Powell to Park City, Montana, as potentially Park City's first local aural broadcast service, and downgrade of the channel allotment to 223C0. In order to facilitate that reallotment, petitioner proposes to substitute Channel 222C for Channel 223C at Miles City, Montana. Channel 222C can be allotted to Miles City in compliance with the Commission's minimum distance separation requirements at the current site location for Station KKRY(FM), now operating on Channel 223C at reference coordinates of 46–24–04 North Latitude and 105–39–06 West Longitude; accordingly, the licensee of KKRY was ordered to show cause why its license should not be changed to specify operation on Channel 222C in lieu of Channel 223C. With that substitution, Channel 223C0 can be allotted to Park City in compliance with the Commission's minimum distance separation requirements with a site restriction of 23.8 km (14.8 miles) southeast of Park City at reference coordinates of 45–32–24 North Latitude and 108–38–34 West Longitude. Petitioner also proposes the allotment of Channel 221C to Byron, Wyoming, as a first local aural service. Channel 221C could be allotted to Byron in compliance with the Commission's minimum distance separation requirements with a site restriction of 44.7 km (27.7 miles) southwest of Byron at reference coordinates of 44–38–08 North Latitude and 109–01–20 West Longitude.

DATES: Comments must be filed on or before June 10, 2002, and reply comments on or before June 25, 2002.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: David Tillotson, Law Offices of David Tillotson, 4606 Charleston Terrace, NW, Washington, DC 20007–1911.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making and Order to Show Cause, MB Docket No. 02–79; 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 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, SW, Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Montana, is amended by adding Park City, Channel 223C0, by removing Channel 223C at Miles City and adding Channel 222C at Miles City.

3. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by adding Byron, Channel 221C, and by removing Channel 233C at Powell.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 02–10837 Filed 5–1–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 107, 171, 172, and 177

[Docket No. RSPA–02–12064 (HM–232)]

RIN 2137–AD66

Hazardous Materials: Security Requirements for Offerors and Transporters of Hazardous Materials

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Research and Special Programs Administration is proposing new requirements to enhance the security of hazardous materials transported in commerce. Proposals include a requirement for motor carriers registered with the agency to maintain a copy of their current registration certificate on each motor vehicle. We further propose to require shipping papers to include the name and address of the consignor and consignee and the shipper's DOT Hazmat Registration number, if applicable. In addition, we propose to require shippers and carriers of certain highly hazardous materials to develop and implement security plans. We also propose to require hazardous materials shippers and carriers to assure that their employee training includes a security component.

DATES: Submit comments by June 3, 2002. To the extent possible, we will consider late-filed comments as we develop a final rule.

ADDRESSES: Submit comments to the Dockets Management System, U.S. Department of Transportation, Room PL 401, 400 Seventh Street, SW, Washington, DC 20590–0001. Comments should identify Docket Number RSPA–02–12064 (HM–232) and be submitted in two copies. If you wish to receive confirmation of receipt of your written comments, include a self-addressed, stamped postcard. You may also submit comments by e-mail by accessing the Dockets Management System web site at ''*http://dms.dot.gov/*'' and following the instructions for submitting a document electronically.

The Dockets Management System is located on the Plaza level of the Nassif Building at the Department of Transportation at the above address. You can review public dockets there between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. You can also review comments on-line at the DOT Dockets Management System web site at ''*http://dms.dot.gov/*.''

FOR FURTHER INFORMATION CONTACT: Susan Gorsky, (202) 366–8553, Office of Hazardous Materials Standards, Research and Special Programs Administration.

SUPPLEMENTARY INFORMATION:

I. Background

Hazardous materials are essential to the economy of the United States and the well-being of its people. Hazardous materials fuel cars and trucks, and heat and cool homes and offices. Hazardous materials are used for farming and medical applications and in manufacturing, mining, and other industrial processes. Millions of tons of explosive, poisonous, corrosive, flammable, and radioactive materials are transported every day. Hazardous materials move by plane, train, truck, or vessel in quantities ranging from several ounces to many thousands of gallons. The vast majority of hazardous materials shipments arrive safely at their destinations. Most incidents that do occur involve small releases of material and present no serious threat to life or property.

RSPA's hazardous materials transportation safety program has historically focused on reducing risks related to the unintentional release of hazardous materials. The hazardous materials regulations (HMR; 49 CFR Parts 171–180) are designed to achieve two goals: (1) To ensure that hazardous materials are packaged and handled safely during transportation, thus minimizing the possibility of their release should an incident occur, and (2) to effectively communicate to carriers, transportation workers, and emergency responders the hazards of the materials being transported. The HMR specify how to classify and package a hazardous material. Further, the HMR prescribe a system of hazard communication using placards, labels, package markings, and shipping papers. In addition, the HMR prescribe training requirements for persons who prepare hazardous materials for shipment or transport hazardous materials. The HMR also include operational requirements applicable to each mode of transportation.

In the wrong hands, hazardous materials can pose a significant security threat. Hazardous materials in transportation are particularly vulnerable to sabotage or misuse. Security of hazardous materials in the transportation environment poses unique challenges as compared to security at fixed facilities. Hazardous materials are frequently transported in substantial quantities. Such materials are already mobile and are frequently transported in proximity to large population centers. Further, hazardous materials in transportation are often clearly identified to ensure safe and appropriate handling during transportation and to facilitate effective emergency response in the event of an accidental release. While the HMR provide for a high degree of safety with respect to avoiding and mitigating unintentional releases of hazardous materials during transportation, the HMR do not specifically address security threats.

As a result of the terrorist attacks of September 11, 2001, and subsequent threats related to biological and other hazardous materials, the Research and Special Programs Administration (RSPA, we) has undertaken a broad review of government and industry hazardous materials transportation safety and security programs. As part of this review, we established the Hazardous Materials Direct Action Group (Hazmat DAG). The Hazmat DAG met with representatives of the hazardous materials industry, emergency response community, and state governments to discuss transportation security issues in the wake of the September 11 attacks and continuing terrorist threats. In addition, we created a DOT Intermodal Hazardous Materials Transportation Security Task Force, which considered attack or sabotage vulnerabilities, existing security measures, and potential ways to reduce vulnerabilities. The Task Force included representatives from the Federal Motor Carrier Safety Administration, Federal Railroad Administration, Federal Aviation Administration, U.S. Coast Guard (USCG), and Office of the Secretary.

Based in part on discussions in the Hazmat DAG and on the results of the Task Force review, on February 14, 2002, we published an advisory notice to inform shippers and carriers of voluntary measures that can enhance the security of hazardous materials shipments during transportation (67 FR 6963). The notice addresses personnel, facility, and en route security issues and includes contact points for obtaining additional, more detailed information.

In addition, we identified a number of regulatory measures that, when implemented, will improve the security of hazardous materials in transportation. In this NPRM, we are proposing to revise requirements in the HMR applicable to registration certificates, shipping documentation, and training. We also propose to establish a new requirement for certain hazardous materials shippers and carriers to have plans in place to assure the security of shipments during transportation.

Many of these proposed requirements already are being implemented voluntarily by the hazardous materials industry, particularly by shippers and carriers of certain highly hazardous materials. If adopted, the measures proposed in this NPRM will facilitate monitoring and tracking of hazardous materials shipments by shippers, carriers, and enforcement authorities; reduce the potential for certain hazardous materials to be targets for terrorists or saboteurs; and increase security awareness for hazardous materials employees. Specific provisions of this NPRM are discussed below.

A. Registration Certificates

Currently, each motor carrier transporting placarded quantities of certain classes or divisions of hazardous materials is required to file with RSPA a registration statement and pay an annual fee (49 CFR Part 107). A Certificate of Registration (certificate), which includes a U.S. DOT Hazmat Registration Number, is then issued by RSPA to the carrier. A carrier must display its registration number on a document carried on each motor vehicle, but need not maintain a copy of the certificate itself on each vehicle.

The registration certificate can substantially assist state and local law enforcement personnel in determining whether a carrier is a legitimate transporter of hazardous materials. Therefore, in this NPRM, we propose to revise 49 CFR 107.620(b) and Part 177 of the HMR to require each motor carrier registered with RSPA to maintain a copy of its current certificate on each motor vehicle used to transport hazardous materials.

B. Shipping Papers

Many hazardous materials transported in commerce potentially may be used as weapons of mass destruction or weapons of convenience. It is critical to assuring the safety and security of these shipments that transportation of a hazardous material by an unauthorized carrier or vehicle operator is readily apparent to Federal, state, and local regulatory and law enforcement agencies. Shipping papers are an important tool for assisting law enforcement personnel to identify unusual or unauthorized activities involving drivers or vehicles.

Currently, the HMR generally require each person who offers a hazardous material for transportation to describe the material on a shipping paper. However, there is no requirement for a shipping paper to include the name and address of the person offering the shipment or the person to whom the shipment will be delivered. Further, there is no requirement for a shipping paper to include the U.S. DOT Hazmat Registration Number of the person offering the hazardous material for transportation. A requirement to include this information on a shipping paper will assist law enforcement personnel to promptly ascertain the legitimacy of hazardous materials shipments during routine or random roadside inspections and to identify suspicious or questionable situations where additional investigation may be necessary.

Therefore, in this NPRM, we propose to amend § 172.201 of the HMR to require each shipping paper to include the name of the shipment consignor and the address from which the shipment originates and the name and address of each person to whom the shipment will be delivered. In addition, we propose to require each shipping paper to include the U.S. DOT Hazmat Registration Number, if applicable, of the person offering the shipment for transportation. The names and addresses of the consignor and each consignee may be included in an attachment to the shipping paper. If contained in an attachment, the attachment would not be subject to the one-year retention requirement of 49 U.S.C. 5110(e). Note that the proposal requires a shipping paper to include the actual street address from which a shipment originates and the actual street address(es) to which a shipment will be delivered. A billing address, corporate headquarters address, or post office box number would not be acceptable. Moreover, each person who prepares a shipping paper for a given shipment must indicate the location from which the hazardous material will be transported and the destination to which the hazardous material will be delivered under that shipping paper. As an example, a shipment originates in New York City and is transported to a freight forwarder located in Baltimore to be consolidated with other materials and transported to Atlanta. In this case, the original shipper will complete a shipping paper that includes the origin address in New York City and the destination address in Baltimore. The freight forwarder will complete a new shipping paper for the consolidated shipment that includes the origin address in Baltimore and the destination address in Atlanta.

In this NPRM, we propose to except certain shipments from the requirement to include consignor/consignee names and addresses and U.S. DOT Registration Numbers on shipping papers. The exceptions would apply to limited quantities of hazardous materials and to materials described as: Battery powered equipment; Battery powered vehicle; Carbon dioxide, solid; Castor bean; Castor flake; Castor meal; Castor pomace; Consumer commodity; Dry ice; Engines, internal combustion; Fish meal, stabilized; Fish scrap, stabilized; Refrigerating machine; Vehicle, flammable gas powered; Vehicle, flammable liquid powered; and Wheelchair, electric. The proposed exceptions are identical to current exceptions from the requirement in Subpart G of Part 172 for emergency response information to accompany hazardous materials shipments. The listed materials do not pose a security risk in transportation.

C. Security Plans

Hazardous materials in transit are uniquely vulnerable to theft or attack. To assure public safety, shippers and carriers must take reasonable measures to plan for and implement procedures to prevent unauthorized persons from taking control of or attacking hazardous materials shipments. Therefore, in this NPRM, we propose a new Subpart I in Part 172 to require persons subject to the registration requirements in Subpart G of Part 107 and persons who offer or transport infectious substances listed as select agents by the Centers for Disease Control and Prevention (CDC) in 42 CFR Part 72 to develop and implement written plans to assure the security of hazardous materials shipments. Those persons required to register under Subpart G of Part 107 include persons who offer for transportation or transport: (1) A highway route-controlled quantity of a Class 7 (radioactive) material; (2) more than 25 kg (55 lbs) of a Division 1.1, 1.2, or 1.3 (explosive) material; (3) more than 1 L (1.06 qt) per package of a material poisonous by inhalation in Hazard Zone A; (4) a shipment in a bulk packaging with a capacity equal to or greater than 13,248 L (3,500 gal) for liquids or gases or greater than 13.24 cubic meters (468 cubic feet) for solids; and (5) a shipment that requires placarding. Select agents are infectious

substances identified by CDC as materials with the potential to have serious consequences for human health and safety if used illegitimately.

The requirements for a transportation security plan are in a new Subpart I of Part 172. In Subpart I, we propose to establish a general requirement for persons who offer hazardous materials for transportation and persons who transport hazardous materials in commerce to have written security plans. At a minimum, a security plan should use a risk management model to assess security risks and develop appropriate measures to reduce or eliminate risk. To assist shippers and carriers to perform appropriate risk assessments, we made a Risk Management Self-Evaluation Framework available on our website (*http://hazmat.dot.gov*). A number of industry associations have also developed guidelines for performing security risk assessments. See our February 14, 2002 advisory notice for a list of Federal agencies and industry associations and organizations that may be of help.

For hazardous materials transportation, a security plan should focus not only on the potential threats posed by the material, but on personnel, facility, and en route security issues, as well. This NPRM does not include a laundry list of actions that must be included in a security plan. Rather, a company should implement a plan that is appropriate to its individual circumstances, considering the types and amounts of hazardous materials shipped or transported and the modes used for transportation.

It is our understanding that the USCG and the International Maritime Organization (IMO) are considering broad, comprehensive security-related requirements for vessels and port facilities. The requirements under consideration would address all vessel and port facility operations, not merely those involving hazardous materials. In addition, the Environmental Protection Agency (EPA) is considering security requirements for fixed facilities that handle hazardous materials. It is not our intention to require shippers or carriers to develop several different security plans in order to comply with regulations that may be issued by other Federal or international entities. Therefore, in this NPRM, we include language to specify that security plans that conform to requirements issued by other Federal or international agencies may be used to satisfy the requirement proposed for the HMR, provided the security plans address the components specified.

D. Training

The HMR currently require hazmat employees to be trained so they: (1) Are familiar with the general provisions of the HMR and can recognize and identify hazardous materials; (2) are knowledgeable about specific HMR requirements applicable to functions performed; and (3) are knowledgeable about emergency response information, self-protection measures, and accident prevention methods. A hazmat employee is one who directly affects hazardous materials transportation safety (§ 171.8). Hazmat employers must ensure that their hazmat employees are trained. For new employees, training must be completed within 90 days after employment or a change in job function. All hazmat employees must receive recurrent training every three years.

The safety training provided by hazmat employers may include the physical security of hazardous materials and ways to prevent vandalism and theft. However, such training may not be adequate to meet current threats. Because many hazardous materials transported in commerce may potentially be used as weapons of mass destruction or weapons of convenience, it is critical to the assurance of public safety that training for persons who offer and transport hazardous materials in commerce include a security component. Therefore, in this NPRM, we are proposing to add a provision to § 172.704 to require the training of each hazmat employee to include a security component. Under this proposal, hazmat employees of persons required to have a security plan under the provisions of this NPRM must be trained in the plan's specifics. All hazmat employees must receive training that provides an awareness of the security issues associated with hazardous materials transportation and possible methods to enhance transportation security. This training must also include a component covering how to recognize and respond to possible security threats. As proposed in this NPRM, all hazmat employees would be required to be trained within three months of issuance of a final rule.

As discussed above under ''Security Plans,'' we are aware that the USCG, IMO, and EPA are considering comprehensive security requirements for operations and facilities under their respective jurisdictions. To the extent that regulations promulgated by other agencies may include security training, such training may be used to satisfy the training requirements proposed in this NPRM, provided the training covers the components specified in this NPRM.

II. Comments on the NPRM

The threat to this Nation's security posed by possible intentional misuse of hazardous materials in transportation in commerce is ongoing and significant. Those responsible for the September 11 attacks on the World Trade Center and the Pentagon are affiliated with an organization possessing a near-global terrorist network. The leaders of the groups constituting this organization have publicly stated that they will attack the United States for incarcerating their members. These groups are also vehemently opposed to U.S. foreign policy and presence in the Middle East. They appear to be willing to and may well be capable of conducting bombings, hijackings, and suicide attacks against domestic U.S. targets. Hazardous materials shippers and carriers must take action to enhance hazardous materials transportation security. Therefore, we are issuing this NPRM with a very short comment period. We encourage persons to participate in this rulemaking by submitting comments containing relevant information, data, or views. We also invite comments concerning the costs and benefits that may result from the provisions of this NPRM and particularly the costs that may be incurred by small businesses. We will consider all comments received on or before the closing date for comments. We will consider late-filed comments to the extent practicable.

III. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This NPRM is not considered a significant regulatory action under Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This NPRM is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034). The costs and benefits associated with the proposals in this NPRM are discussed below.

Although many hazardous materials shippers and carriers have already implemented many of the actions proposed in this NPRM, we recognize that the proposals may impose additional costs on them. Most compliance costs resulting from this NPRM will result from the new requirements for certain shippers and carriers to develop and implement security plans and for hazmat employee training to include a security component.

Security plans. The proposed security plan requirement applies to shippers

and carriers who are required to register with RSPA under Subpart G of 49 CFR part 107 or persons who offer or transport infectious substances listed as select agents by the Centers for Disease Control and Prevention (CDC) in 42 CFR part 72. Those persons required to register under Subpart G of Part 107 include persons who offer for transportation or transport: (1) A highway route-controlled quantity of a Class 7 (radioactive) material; (2) more than 25 kg (55 lbs) of a Division 1.1, 1.2, or 1.3 (explosive) material; (3) more than 1 L (1.06 qt) per package of a material poisonous by inhalation in hazard zone A; (4) a shipment in a bulk packaging with a capacity equal to or greater than 13,248 L (3,500 gal) for liquids or gases or greater than 13.24 cubic meters (468 cubic feet) for solids; and (5) a shipment that requires placarding. Select agents are infectious substances identified by CDC as materials with the potential to have serious consequences for human health and safety if used illegitimately.

About 43,000 shippers and carriers are registered with DOT under the provisions of 49 CFR Part 107 (FY 2000, most recent year available). In addition, about 1,000 shippers apply to CDC each year for permission to transport select agents (OMB Control No. 0920–0199). We estimate that development of a security plan from the ground up would require about 40 hours for all persons (management and technical personnel) involved. However, many industry associations have developed guidance and model security plans for use by their members. As a result, most companies already have implemented many of the elements of a security plan either as part of their standard operating procedures or in response to the events of September 11. Further, to assist hazardous materials shippers and transporters in evaluating risks and implementing measures to reduce those risks, we designed a security template for the Risk Management Self-Evaluation Framework (RMSEF). RMSEF is a tool we developed through a public process to assist regulators, shippers, carriers, and emergency response personnel to examine their operations, and consider how they assess and manage risk. The security template illustrates how risk management methodology can be used to identify points in the transportation process where security procedures should be enhanced within the context of an overall risk management strategy. The RMSEF security template is posted on our website at *http://hazmat.dot.gov/rmsef.htm.*

We estimate that most companies would require about 20 hours to develop and implement a security plan that conforms to the new regulatory requirements. Maintaining and updating the plan as necessary would require about 1 hour each year after the plan is implemented. Using Bureau of Labor Statistics information on employee compensation (March 2001), we estimate that the cost per hour of developing and updating a security plan is $30.00. The industry would thus incur an estimated $26,400,000 in first-year compliance costs, or about $600 per entity (44,000 affected entities × 20 hrs × $30.00/hr = $26,400,000). In subsequent years, we estimate that 200 new entrants would be subject to the security plan requirement, incurring compliance costs estimated at $120,000. Companies required to update and maintain security plans would incur compliance costs of about $1,320,000, or $30 per entity.

Security training. The proposed requirement for security training applies to all hazmat employees, defined in § 171.8 of the HMR as persons employed by a company that offers or transports hazardous materials in commerce (hazmat employer) that directly affect hazardous materials safety. Based on information in the 1997 Economic Census, we estimate that firms involved with the transportation of hazardous materials employ a total of 6 million individuals. Of these, perhaps 5 percent are hazmat employees, as defined in the HMR. Thus, about 300,000 hazmat employees will be subject to the new requirement for security training.

The training requirements in the HMR can be met in a number of ways—classroom instruction, self-instruction, on-the-job training, etc. This flexibility helps to minimize the cost to hazmat employers and allows use of the most efficient, effective training methods to meet the basic requirements. To assist hazmat employers to meet any new security training requirements, we are developing a Hazardous Materials Transportation Security Awareness Training Module directed at law enforcement, industry, and the hazmat community. The training module will be web-based, posted on the HMS website, and presented at multimodal seminars.

We estimate that, on average, a hazmat employee would require one hour of security training to meet the new requirements. The costs of training would vary, depending on the method used. For example, the security training module we are developing will be provided free of charge. The current cost of CDROM hazmat training modules is $25 per module. Classroom training may cost as much as $75 per hour. We estimate that the average training cost for one hour of security training will be $15. Thus, the industry would incur costs of about $4,500,000 in first-year compliance costs (300,000 hazmat employees × one hour of training × $15/hour = $4,500,000). Hazmat employees must be trained at least once every three years. Thus, in subsequent years the industry would incur about $1,500,000 in recurrent training costs.

The benefits of the security programs proposed in this NPRM are difficult to quantify. However, the cost of one devastating terrorist attack caused by a crude bomb made from commonly available hazardous materials is illustrative. On April 19, 1995, Timothy McVeigh blew up the Murrah Federal Building in Oklahoma City with a bomb made from fertilizer and fuel oil. The bomb killed 168 people, including 19 children, injured 500 more people, and caused more than $1 billion in property and economic damage. If the measures proposed in this NPRM prevent even one such terrorist act, the potential costs industry will incur will be more than offset by the benefits.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. We have determined that, while the requirements in this NPRM apply to a substantial number of small entities, there will not be a significant economic impact on those small entities.

Need for the NPRM. RSPA's hazardous materials transportation safety program has historically focused on reducing risks related to the unintentional release of hazardous materials. The HMR have provided a high degree of safety with respect to incidents that occur during transportation. However, in the wake of September 11, we face a heightened security environment. The risk of hazardous materials falling into the wrong hands poses a significant security challenge.

Description of Actions. In this NPRM, we propose to amend the HMR to:

- Require motor carriers registered with DOT to maintain a copy of their current registration certificate on each motor vehicle.
- Require shipping papers to include the name and address of the shipment consignor and consignee and the

shipper's DOT Hazmat Registration Number, if applicable.

- Require shippers and carriers of certain highly hazardous materials to develop and implement security plans.
- Require hazardous materials shippers and carriers to assure that employee training includes a security component.

Identification of potentially affected small entities. Businesses likely to be affected by the proposals in this NPRM are persons who offer and transport hazardous materials in commerce. We estimate there are approximately 400,000 persons who offer or transport hazardous materials in commerce subject to requirements in the HMR who will be affected by the proposals involving shipping documentation and security training. Approximately 44,000 entities will be subject to the proposed requirement for security plans.

Unless alternative definitions have been established by the agency in consultation with the Small Business Administration (SBA), the definition of ''small business'' has the same meaning as under the Small Business Act. Since no such special definition has been established, we employ the thresholds published by SBA for industries subject to the HMR. Based on data for 1997 compiled by the U.S. Census Bureau, it appears that upwards of 95 percent of firms subject to the requirements proposed in this NPRM are small businesses.

Reporting and recordkeeping requirements. This NPRM proposes several new or modified recordkeeping requirements. These are detailed in the section of this preamble entitled ''Paperwork Reduction Act.'' We have built flexibility into the proposed requirements, so that entities can choose the method by which they comply with the proposals. For example, there is no prescribed form for shipping papers. Shippers are permitted to use waybills, bills of lading, and other types of shipping documents provided they include the information required in the HMR. Similarly, there is no form prescribed for security plans. Entities can assess their own situations and tailor the requirements to fit them.

Related Federal rules and regulations. With respect to the security of hazardous materials transported in commerce, there are no related rules or regulations issued by other departments or agencies of the Federal government. However, it is our understanding that certain Federal agencies (such as the USCG and EPA) and international standards-setting organizations (such as IMO) are considering comprehensive security requirements for the entities under their jurisdiction. This NPRM includes language to permit programs implemented in conformance with other Federal or international requirements to be used to comply with the requirements in this NPRM, provided the specific components in this NPRM are covered.

Alternate proposals for small businesses. The Regulatory Flexibility Act directs agencies to establish exceptions and differing compliance standards for small businesses, where it is possible to do so and still meet the objectives of applicable regulatory statutes. In the case of the security of hazardous materials transported in commerce, it is not possible to establish exceptions or differing standards and still accomplish the objectives of Federal hazmat law.

We developed this NPRM under the assumption that small businesses make up the overwhelming majority of entities that will be subject to its provisions. Thus, we considered how to minimize expected compliance costs as we developed this NPRM.

Conclusion. Based on the discussion of the potential costs of this NPRM in the section of this preamble entitled ''Executive Order 12866 and DOT Regulatory Policies and Procedures,'' we conclude that, while this NPRM applies to a substantial number of small entities, there will not be a significant economic impact on those small entities. We estimate the cost of developing and implementing a security plan to be about $600 per company. Updating and maintaining a security plan would cost about $30 per entity. The costs incurred for providing security training to hazmat employees would be about $15 per employee.

C. Executive Order 13132

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This NPRM preempts state, local, and Indian tribe requirements but does not propose any regulation with substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Federal hazardous materials transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) preempting state, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This NPRM addresses covered subject item 3 above and preempts state, local, and Indian tribe requirements not meeting the ''substantively the same'' standard. This NPRM is necessary to assure the security of hazardous materials transported in commerce.

Federal hazardous materials transportation law provides at § 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of a final rule and not later than two years after the date of issuance. We propose that the effective date of Federal preemption will be 90 days from publication of a final rule in the **Federal Register**.

We invite comments on whether, and to what extent, state or local governments or Indian tribes should be permitted to impose similar additional requirements to those proposed in this rulemaking. For example, should a state be allowed to require all shippers and carriers of hazardous materials to have security plans?

D. Executive Order 13175

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this NPRM does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Unfunded Mandates Reform Act of 1995

This NPRM does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more, in the aggregate, to any of the following: state, local, or Indian tribal governments, or the private sector. This rule is the least burdensome alternative to achieve the objective of the rule.

F. Paperwork Reduction Act

We submitted the information collection and recordkeeping requirements contained in this NPRM to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995, Section 1320.8(d). Title 5, Code of Federal Regulations requires us to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. Under the Paperwork Reduction Act, no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number.

RSPA currently has an approved information collection under OMB Control No. 2137–0034, ''Hazardous Materials Shipping Papers & Emergency Response Information'' with 6,500,000 burden hours and $6,500,000 cost. There will be an increase in the burden for OMB Control No. 2137–0034 due to additional information this NPRM requires to be included on shipping papers. In addition, there will be a new information collection burden for a new requirement for a security plan. This new information collection, ''Hazardous Materials Security Plans'', will be assigned an OMB control number after review and approval by OMB.

We estimate that the new total information collection and recordkeeping burden resulting from the additional information required on shipping papers and for the development and maintenance of security plans under this rule are as follows.

Hazardous Materials Shipping Papers & Emergency Response Information

[OMB No. 2137–0034]

Total Annual Number of Respondents: 250,000.

Total Annual Responses: 260,000,000.

Total Annual Burden Hours: 6,861,111.

Total Annual Burden Cost: $6,929,722.11.

Hazardous Materials Security Plans

[OMB No. 2137–xxxx]

First Year Annual Burden:

Total Annual Number of Respondents: 44,000.

Total Annual Responses: 44,000.

Total Annual Burden Hours: 880,000.

Total Annual Burden Cost: $26,400,000.00.

Subsequent Year Burden:

Total Annual Number of Respondents: 44,200.

Total Annual Responses: 44,200.

Total Annual Burden Hours: 48,000.

Total Annual Burden Cost: $1,440,000.00.

Requests for a copy of this information collection should be directed to Deborah Boothe, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8422, 400 Seventh Street, SW, Washington, DC 20590–0001. Telephone (202) 366–8553. Written comments should be addressed to the Dockets Unit as identified in the **ADDRESSES** section of this rulemaking. We will publish a notice advising interested parties of the OMB control number for this information collection when assigned by OMB.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Environmental Assessment

There are no significant environmental impacts associated with this NPRM.

List of Subjects

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, we propose to amend Title 49, Chapter I, Subchapters A and C, of the Code of Federal Regulations, as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; Sec. 212–213, Pub. L. 104–121, 110 Stat. 857; 49 CFR 1.45, 1.53.

2. In § 107.620, paragraph (b) would be revised to read as follows:

§ 107.620 Recordkeeping requirements.

* * * * *

(b) Each motor carrier subject to the requirements of this subpart must carry a copy of its current Certificate of Registration issued by RSPA on board each truck and truck tractor (not including trailers and semi-trailers) used to transport hazardous materials subject to the requirements of this subpart. The Certificate of Registration must immediately be made available, upon request, to enforcement personnel.

* * * * *

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

3. The authority citation for part 171 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR part 1.

4. In § 171.11, paragraph (d)(18) would be added to read as follows:

§ 171.11 Use of ICAO Technical Instructions.

* * * * *

(d) * * *

(18) The shipping paper must include the name of the consignor and the complete address from which the shipment originates, and the name and complete address of each person to whom the hazardous material will be delivered (consignee), in accordance with § 172.201(e) of this subchapter. If the person offering the hazardous material for transportation is subject to the requirements of subpart G of 49 CFR part 107, the shipping paper must include the person's current registration number, identified as ''U.S. DOT Hazmat Reg. No.'' in accordance with § 172.201(f) of this subchapter. The

requirements of this paragraph (d)(18) do not apply to shipments excepted under § 172.201(g) of this subchapter.

5. In § 171.12, paragraph (b)(21) would be added to read as follows:

§ 171.12 Import and export shipments.

* * * * *

(b) * * *

(21) The shipping paper must include the name of the consignor and the complete address from which the shipment originates, and the name and complete address of each person to whom the hazardous material will be delivered (consignee), in accordance with § 172.201(e) of this subchapter. If the person offering the hazardous material for transportation is subject to the requirements of subpart G of 49 CFR part 107, the shipping paper must include the person's current registration number, identified as ''U.S. DOT Hazmat Reg. No.'' in accordance with § 172.201(f) of this subchapter. The requirements of this paragraph (b)(21) do not apply to shipments excepted under § 172.201(g) of this subchapter.

* * * * *

6. In § 171.12a, paragraph (b)(19) would be added to read as follows:

§ 171.12a Canadian shipments and packagings.

* * * * *

(b) * * *

(19) The shipping paper must include the name of the consignor and the complete address from which the shipment originates, and the name and complete address of each person to whom the hazardous material will be delivered (consignee), in accordance with § 172.201(e) of this subchapter. If the person offering the hazardous material for transportation is subject to the requirements of subpart G of 49 CFR part 107, the shipping paper must include the person's current registration number, identified as ''U.S. DOT Hazmat Reg. No.'' in accordance with § 172.201(f) of this subchapter. The requirements of this paragraph (b)(19) do not apply to shipments excepted under § 172.201(g) of this subchapter.

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

7. The authority citation for part 172 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

8. In § 172.201, paragraphs (e), (f), and (g) would be added to read as follows:

§ 172.201 General entries.

* * * * *

(e) *Consignor and consignee name and address.* After [date 20 days after effective date of final rule], a shipping paper must include the name of the consignor and the complete address from which the shipment originates, and the name and complete address of each person to whom the hazardous material will be delivered (consignee). The names and addresses may be included on an attachment to the shipping paper.

(f) *Registration number.* After [date 20 days after effective date of final rule], if the person offering a hazardous material for transportation is subject to the requirements of subpart G of 49 CFR part 107, the shipping paper must include the person's current registration number, identified as ''U.S. DOT Hazmat Reg. No.''

(g) *Exceptions.* The requirements of paragraphs (e) and (f) of this section do not apply to—

(1) Hazardous materials that are offered for transportation under the provisions of this subchapter applicable to limited quantities; and

(2) Materials properly described under the following shipping names:

Battery powered equipment
Battery powered vehicle
Carbon dioxide, solid
Castor bean
Castor flake
Castor meal
Castor pomace
Consumer commodity
Dry ice
Engines, internal combustion
Fish meal, stabilized
Fish scrap, stabilized
Refrigerating machine
Vehicle, flammable gas powered
Vehicle, flammable liquid powered
Wheelchair, electric

§ 172.203 [Amended]

9. In § 172.203, paragraph (i)(4) would be removed, and paragraphs (i)(5) and (i)(6) would be redesignated as paragraphs (i)(4) and (i)(5), respectively.

10. In § 172.704, paragraph (a) introductory text would be revised and paragraph (a)(4) would be added, and paragraph (b) would be revised to read as follows:

§ 172.704 Training requirements.

(a) Hazmat employee training must include the following:

* * * * *

(4) *Security training.* By [date three months after effective date of final rule], each hazmat employee must receive training on how to assure the security of hazardous materials that are transported in commerce.

(i) For each hazmat employee, security training must provide an awareness of the security issues associated with hazardous materials transportation and methods designed to assure transportation security. This training must also include a component covering how to recognize and respond to possible security threats.

(ii) Each hazmat employee of a person required to have a security plan that conforms to § 173.14 of this subchapter must be familiar with the security plan and its implementation. Security training must include company security objectives, specific security procedures, employee responsibilities, actions to take in the event of a security breach, and the organizational security structure.

(b) *OSHA, EPA, and other training.* Training conducted by employers to comply with the hazard communication programs required by the Occupational Safety and Health Administration of the Department of Labor (29 CFR 1910.120 or 1910.1200) or the Environmental Protection Agency (40 CFR 311.1), or training conducted by employers to comply with security training programs required by other Federal or international agencies, may be used to satisfy the training requirements in paragraph (a) of this section to the extent that such training addresses the training components specified in paragraph (a) of this section.

* * * * *

11. Subpart I would be added to read as follows:

Subpart I—Security Plans

Sec.
172.800 Purpose and applicability.
172.802 Components of a security plan.
172.804 Relationship to other Federal requirements.

§ 172.800 Purpose and applicability.

(a) *Purpose.* This subpart prescribes requirements for shippers and carriers to develop and implement plans to assure the security of hazardous materials transported in commerce.

(b) *Applicability.* Each person subject to the registration requirements of subpart G of 49 CFR part 107 and each person who offers for transportation or transports in commerce a Division 6.2 material, other than a diagnostic specimen, listed as a select agent in 42 CFR part 72 must develop and adhere to a security plan that conforms to the requirements of this subpart.

§ 172.802 Components of a security plan.

A security plan must be written, and must be retained for as long as it remains in effect. Copies of the security

plan must be available to the employees who are responsible for implementing it. When the security plan is updated or revised, all copies of the plan must be maintained as of the date of the most recent revision. The security plan must include an assessment of possible transportation security risks and appropriate measures to reduce or eliminate the risks. Specific operational details of the security plan may vary commensurate with the level of threat at a particular time. At a minimum, a security plan must include the following elements:

(a) *Personnel security.* A process to verify the information provided by job applicants on application forms or resumes.

(b) *Unauthorized access.* A process to assure that unauthorized personnel do not have access to hazardous materials or transport conveyances being prepared for transportation of hazardous materials.

(c) *En route security.* A process to assure the security of hazardous materials shipments en route from origin to destination, including shipments stored incidental to movement. This process may include one or more of the following elements, as appropriate:

(1) An assessment of the transportation modes or combinations of modes available for transporting specific materials and selection of the most appropriate method of transportation to assure efficient and secure movement of product.

(2) A system for verifying that the carriers used to transport hazardous materials have an on-going transportation security program.

(3) For highway shipments, a system to verify the identity of the carrier and driver prior to releasing a hazardous material for transportation in commerce.

(4) Identification of preferred and alternative routing, including acceptable deviations. Routes should minimize product exposures to populated areas and avoid tunnels and bridges, where possible. Transportation of a shipment to its destination should be accomplished without unnecessary delays or layovers.

(5) A system for communicating with a transport vehicle or its operator.

(6) A system for a customer to alert the shipper if a hazardous material is not received when expected.

§ 172.804 Relationship to other Federal requirements.

To avoid unnecessary duplication of security requirements, security plans that conform to regulations issued by other Federal or international agencies may be used to satisfy the requirements in this subpart, provided such security plans address the requirements specified in this subpart.

PART 177—CARRIAGE BY PUBLIC HIGHWAY

12. The authority citation for part 177 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

13. In § 177.817, paragraph (e) introductory text would be revised to read as follows:

§ 177.817 Shipping papers.

* * * * *

(e) *Shipping paper accessibility—accident or inspection.* A driver of a motor vehicle containing a hazardous material, and each carrier using such a vehicle, must ensure that the shipping paper required by this section, including an attachment prepared in accordance with § 172.201(e) of this subchapter, is readily available to, and recognizable by, authorities in the event of accident or inspection. Specifically, the driver and carrier must:

* * * * *

14. In subpart A, § 177.820 would be added to read as follows:

§ 177.820 Certificates of registration.

Each motor carrier subject to the requirements of subpart G of part 107 of this chapter must carry a copy of its current Certificate of Registration issued by RSPA on board each truck and truck tractor (not including trailers and semi-trailers) used to transport hazardous materials subject to the requirements of this subchapter. The Certificate of Registration must immediately be made available, upon request, to enforcement personnel.

Issued in Washington, DC on April 23, 2002 under authority delegated in 49 CFR part 106.

Frits Wybenga,

Deputy Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration.

[FR Doc. 02–10405 Filed 5–1–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 042402C]

New England Fishery Management Council; Public Meeting

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

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a one-day Council meeting on May 16, 2002, to consider actions affecting New England fisheries in the U.S. exclusive economic zone (EEZ).

DATES: The meeting will be held on Thursday, May 16, 2002. The meeting will begin at 9 a.m.

ADDRESSES: The meeting will be held at the Sheraton Ferncroft Hotel, 50 Ferncroft Road, Danvers, MA 01923; telephone (978) 777–2500. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council, (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Thursday, May 16, 2002

Following introductions, the Council will receive a briefing from NOAA General Counsel and NMFS about litigation concerning Framework Adjustment 33 to the Northeast Multispecies Fishery Management Plan (FMP). Following this report, the Council will provide time on the agenda for public comments on any issues that are relevant to fisheries management and Council business. The Council's Groundfish Committee then will review progress to date on the development of Amendment 13 to the FMP. This will include a discussion of the timeline for amendment development, identification of a range of potential management programs, review and approval of, for purposes of analysis, the delineation of discrete management areas and preliminary biological objectives for the areas, and a report on the recently held recreational and area management meetings. Finally, the Council also may develop and approve area management measures, for purposes of analysis and

further Council consideration. The meeting will adjourn after discussing any other business before the Council.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

The Council will consider public comments at a minimum of two Council meetings before making recommendations to the NMFS Regional Administrator on any framework adjustment to a fishery management plan. If the Regional Administrator concurs with the adjustment proposed by the Council, the Regional Administrator may publish the action either as proposed or final regulations in the Federal Register. Documents pertaining to framework adjustments are available for public review 7 days prior to a final vote by the Council.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: April 26, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–10950 Filed 5–1–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 67, No. 85

Thursday, May 2, 2002

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 02–035–1]

Availability of an Environmental Assessment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that an environmental assessment has been prepared by the Animal and Plant Health Inspection Service relative to the control of cycad scale, *Aulacaspis yasumatsui*. The environmental assessment considers the effects of, and alternatives to, the release of nonindigenous organisms into the environment for use as biological control agents to reduce the severity of cycad scale infestations. We are making this environmental assessment available to the public for review and comment.

DATES: We will consider all comments we receive that are postmarked, delivered, or e-mailed by June 3, 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. 02–035–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–035–1. If you use e-mail, address your comment to regulations@aphis.usda.gov. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 02–035–1'' on the subject line.

You may read any comments that we receive on the environmental assessment 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. Dale Meyerdirk, Agriculturist, PPQ, APHIS, 4700 River Road Unit 135, Riverdale, MD 20737–1236; (301) 734–5220.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) is proposing to release nonindigenous species of parasitic wasps in the genus *Coccobius* (Hymenoptera: Encyrtidae) and *Encarsia* (Hymenoptera: Aphelinidae), as well as the predaceous beetle *Cybocephalus binotatus* (Coleoptera: Nitidulidae), in the continental United States and U.S. territories in the Caribbean to reduce the severity of cycad scale infestations.

Cycad scale (CS) is a devastating pest of cycads. Cycads are horticulturally important and endangered plant species. CS damages all cycads, both endemic and introduced species, as well as ornamental cycads. Since its arrival, CS has damaged cycad ecosystems in Florida, Georgia, Puerto Rico, and the U.S. Virgin Islands. CS has also caused significant economic losses to the cycad industry in Florida and it has the potential to completely disrupt the horticultural trade in cycads.

APHIS has completed an environmental assessment that considers the effects of, and alternatives to, releasing parasitic wasps of two genera and a species of predaceous beetle into the environment. The purpose of the proposed release is to reduce the severity of CS infestations. There is no evidence that the release of these biological control agents will adversely affect threatened and endangered species or their habitat. Over a period of decades, several species of both *Coccobius* and *Encarsia* have been successfully introduced into the continental United States for effective control of other pest scales, with no adverse impacts reported from these introductions. The biological characteristics of wasps in the genus *Coccobius* and *Encarsia*, and of the predaceous beetle *Cybocephalus binotatus*, preclude any possibility of harmful effects on human health.

APHIS' review and analysis of the potential environmental impacts associated with releasing these biological control agents into the environment are documented in detail in an environmental assessment entitled ''Control of Cycad Scale, *Aulacaspis yasumatsui* (Homoptera: Diaspididae)'' (February 2002). We are making this environmental assessment available to the public for review and comment. We will consider all comments that we receive by the date listed under the heading DATES at the beginning of this notice.

You may request copies of the environmental assessment by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the environmental assessment when requesting copies. The environmental assessment 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 notice.)

The environmental assessment has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

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

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–10884 Filed 5–1–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 02–034–1]

Availability of a Supplemental Environmental Assessment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that a supplemental environmental assessment has been prepared by the Animal and Plant Health Inspection Service relative to the control of pink hibiscus mealybug, *Maconellicoccus hirsutus*. The supplemental environmental assessment considers the effects of, and alternatives to, the release of nonindigenous organisms into the environment for use as biological control agents to suppress pink hibiscus mealybug infestations. We are making this environmental assessment available to the public for review and comment.

DATES: We will consider all comments we receive that are postmarked, delivered, or e-mailed by June 3, 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. 02–034–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–034–1. If you use e-mail, address your comment to regulations@aphis.usda.gov. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 02–034–1'' on the subject line.

You may read any comments that we receive on the supplemental environmental assessment 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. Dale Meyerdirk, Agriculturist, PPQ, APHIS, 4700 River Road Unit 135, Riverdale, MD 20737–1236; (301) 734–5220.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) is proposing to release nonindigenous species of parasitic wasps in the genus *Allotropa* (Hymenoptera: Platygasteridae) in the continental United States and U.S. territories in the Caribbean to control pink hibiscus mealybug, *Maconellicoccus hirsutus.*

Pink hibiscus mealybug (PHM) is a foreign plant pest that attacks a wide variety of agricultural and ornamental plant hosts. It has invaded areas in Guam, Hawaii, California, the U.S. Virgin Islands, and Puerto Rico, and it is expected that PHM will invade the southern regions of the United States. The purpose of the proposed release is to suppress PHM infestations.

APHIS' current PHM control program involves the release of three other varieties of parasitic wasps. On June 24, 1997, we published a notice in the **Federal Register** (62 FR 34043–34044, Docket No. 97–054–1) in which we announced the availability of an environmental assessment describing the impact and plant pest risk associated with releasing exotic species of parasitic wasps in the genera *Anagyrus* and *Gyranusoidea* (Hymenoptera: Encyrtidae) into the environment to control PHM. Similarly, on November 12, 1997, we published a notice in the **Federal Register** (62 FR 60683, Docket No. 97–106–1) in which we announced the availability of an environmental assessment describing the environmental impact and plant pest risk associated with releasing exotic species of parasitic wasps in the genus *Leptomastix* (Hymenoptera: Encyrtidae) into the environment to control PHM.

APHIS has completed a supplemental environmental assessment that considers the effects of, and alternatives to, releasing parasitic wasps in a fourth genus, *Allotropa* (Hymenoptera: Platygasteridae), into the environment. Mealybugs are the only known hosts of the species of *Allotropa* (except for a suspect report a century ago) that are candidates for introduction in the United States. There is no evidence that the release of this biological control agent will adversely affect threatened and endangered species or their habitat. The biological characteristics of wasps in the genus *Allotropa* preclude any possibility of harmful effects on human health.

APHIS' review and analysis of the potential environmental impacts associated with releasing this biological control agent into the environment are documented in detail in a supplemental environmental assessment entitled ''Control of Pink Hibiscus Mealybug, *Maconellicoccus hirsutus* (Homoptera: Pseudococcidae)'' (February 2002). We are making this environmental assessment available to the public for review and comment. We will consider all comments that we receive by the date listed under the heading DATES at the beginning of this notice.

You may request copies of the supplemental environmental assessment by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT.** Please refer to the title of the supplemental environmental assessment when requesting copies. The supplemental environmental assessment 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 notice.)

The supplemental environmental assessment has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

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

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–10883 Filed 5–1–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 02–039–1]

National Poultry Improvement Plan; General Conference Committee Meeting and Biennial Conference

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the General Conference Committee of the National Poultry Improvement Plan and of the Biennial Conference.

DATES: The General Conference Committee will meet on May 30, 2002, from 8:30 a.m. to noon. The Biennial Conference will meet on May 31, 2002, from 8 a.m. to 5 p.m. and on June 1, 2002, from 8 a.m. to noon.

ADDRESSES: The meeting will be held at the Holiday Inn Riverwalk, 217 N. St. Mary's Street, San Antonio, TX.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew R. Rhorer, Senior Coordinator, National Poultry Improvement Plan, VS, APHIS, 1498 Klondike Road, Suite 200, Conyers, GA 30094–1231; (770) 922–3496.

SUPPLEMENTARY INFORMATION: The General Conference Committee (the Committee) of the National Poultry Improvement Plan (NPIP), representing cooperating State agencies and poultry industry members, serves an essential function by acting as liaison between the poultry industry and the Department in matters pertaining to poultry health. In addition, this Committee assists the Department in planning, organizing, and conducting the NPIP Biennial Conference.

Topics for discussion at the upcoming meetings include:

1. Minimum State standards for emergency poultry disease control.
2. Testing recommendations for *Mycoplasma gallisepticum* and *M. synoviae* when dealing with spike males.
3. Establishment of a ''U.S. Salmonella Typhimurium DT 104 Clean'' program for egg-type chickens.
4. Establishment of a ''U.S. Avian Influenza Clean'' program for turkeys.
5. Establishment of a ''U.S. Avian Influenza Clean'' program for exhibition poultry and game birds.
6. Establishment of a model State program for poultry disease prevention; and
7. Establishment of a ''U.S. Salmonella Enteritidis Clean State'' classification for egg-type chickens.

The meetings will be open to the public. The sessions held on May 31 and June 1, 2002, will include delegates to the NPIP Biennial Conference, representing State officials and poultry industry personnel from the 48 cooperating States. However, due to time constraints, the public will not be allowed to participate in the discussions during either of the meetings. Written statements on meeting topics may be filed with the Committee before or after the meetings by sending them to the person listed under **FOR FURTHER INFORMATION CONTACT**. Written statements may also be filed at the meetings. Please refer to Docket No. 02–039–1 when submitting your statements.

This notice of meeting is given pursuant to section 10 of the Federal Advisory Committee Act.

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

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–10885 Filed 5–1–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Revised Land and Resource Management Plan for the Finger Lakes National Forest, NY

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement and a revised Land and Resource Management Plan for the Finger Lakes National Forest located in Schuyler and Seneca Counties, New York.

SUMMARY: The USDA Forest Service intends to prepare an Environmental Impact Statement (EIS) for revising the Finger Lakes National Forest Land and Resource Management Plan (Forest Plan or Plan) pursuant to 16 U.S.C. 1604[f][5] and USDA Forest Service National Forest System Land and Resource Management Planning regulations 36 CFR 219.12. The revised Forest Plan will supersede the current Forest Plan, which the Regional Forester approved January 15, 1987. The Finger Lakes National Forest Plan has been amended three times. This notice describes the focus areas of change, estimated dates for filing the EIS, information concerning public participation, and names and addresses of the responsible agency official and the individual who can provide additional information.

DATES: Comments concerning the scope of the analysis must be received by 60 days after the date it is published in the **Federal Register**. Comments should focus on (1) the proposal for revising the Forest Plan and (2) possible alternatives for addressing issues associated with the proposal. The Draft EIS is expected January 2004 and the Final EIS and revised Forest Plan are expected December 2004.

ADDRESSES: Send written comments to: NOI–FL Forest Plan Revision, Green Mountain and Finger Lakes National Forest, 231 North Main Street, Rutland, VT 05701.

FOR FURTHER INFORMATION CONTACT: For further information on the Finger Lakes National Forest Plan revision, mail correspondence to Michael Dockry, Assistant Forest Planner, 5218 State Route 414, Hector, NY 14841–9707 or call 607–546–4470 ext. 316 TTY 607–546–4476; or send electronic mail to: <*mdockry@fs.fed.us*>. For general information on the Forest Plan revision process, access the forest web page at: <*www.fs.fed.us/r9/gmfl*>.

SUPPLEMENTARY INFORMATION: The Regional Forester for the Eastern Region gives notice of the agency's intent to prepare an EIS to revise the Finger Lakes National Forest Plan. A Notice of Intent to prepare an EIS legally marks the beginning of the planning process.

As explained in this notice, the Finger Lakes National Forest is planning to revise their Land and Resource Management Plan. The scope of the decision is limited to topics that need revision, updates, or corrections. In addition, changes in goals, objectives, management area descriptions, standards and/or guidelines, definitions, and monitoring requirements may be necessary. Some items are beyond the scope of what can be changed in a Revised Forest Plan. See the document titled ''Implementing the Finger Lakes National Forest Land and Resource Management Plan—A 15 Year Retrospective'' for more information.

The Finger Lakes National Forest Plan guides the overall management of the Finger Lakes National Forest. A Forest Plan is analogous to a county, city or municipal zoning plan. Forest Plans establish overall goals and objectives (or desired future resource conditions) that a National Forest will strive to achieve. This is done in order to contribute toward ecological sustainability as well as contribute to the economic and social sustainability of local communities affected by National Forest management activities. Decisions made in the Forest Plan do not compel the agency to undertake particular site-specific projects and thus do not normally make any irreversible or irretrievable commitment of resources. Forest Plans also establish limitations on what actions may be authorized, and what conditions must be met during project decision-making. The following six decisions are made in a Forest Plan:

1. Forest-wide multiple-use goals and objectives (as required by 36 CFR 219.11[b])
2. Forest-wide management requirements (36 CFR 219.27)

3. Management area direction (36 CFR 219.11 [c])
4. Lands suited and not suited for timber management (36 CFR 219.14, 36 CFR 219.11 [b])
5. Monitoring and evaluation requirements (36 CFR 219.11 [d])
6. Recommendations to Congress (such as wilderness), if any (36 CFR 219.17)

Purpose and Need for Action: By the requirements of the National Forest Management Act, National Forests must revise their Forest Plan every 10 to 15 years, when conditions or demands in the area covered by the plan have changed significantly, when changes in agency policies, goals, or objectives would have a significant effect on forest level programs, or when monitoring and evaluation indicate that a revision is necessary (36 CFR 219.10[g]). At this time, there are three main reasons to revise the 1987 Forest Plan:

(1) It has been 15 years since the Regional Forester approved the original Forest Plan.

(2) Agency goals and objectives, along with other national guidance for strategic plans and programs, have changed.

(3) New issues and trends have been identified that could change the management goals; management areas; standards and guidelines; and monitoring and evaluation in the current Forest Plan.

Several sources have highlighted needed changes in the current Forest Plan:

(1) Public involvement has identified new information and public values.

(2) Monitoring and scientific research have identified new information and knowledge gained.

(3) Forest Plan implementation has led to the identification of management concerns and a need or desire to find better ways to accomplish desired future conditions.

(4) Changes in law, regulations and policies have taken place.

In addition to changing public views about how these lands should be managed, a significant change in the information and scientific understanding of these ecosystems has occurred. Some new information is a product of research, while other information has resulted from changes in technology. Furthermore, the agency's Government Performance and Results Act Strategic Plan (2000) has adjusted the agency program to focus on four goals: ecosystem health, multiple benefits to people, scientific and technical assistance, and effective public service. These goals come with new objectives and outcome-based measures that should be recognized and incorporated into the Plan revision process.

An interdisciplinary team is conducting the environmental analysis and will prepare an environmental impact statement associated with revision of the Forest Plan. This interdisciplinary team will also prepare the revised Forest Plan. In order to address these changes, the interdisciplinary team will work with the public to develop a list of forest wide goals, standards and/or guidelines; develop descriptions and definitions of management areas, desired condition statements, management area-specific standards and/or guidelines and identify draft management areas. These will then be used to develop alternatives to the proposed action for the Forest Plan.

Issues, Proposed Action, and Possible Alternatives: Through the Finger Lakes National Forest Plan revision process we propose to:

(1) Explore management issues in order to draft a wide range of alternative ways to manage the National Forest.

(2) Review all Forest Plan goals, objectives, standards and guidelines for desired direction, relevance, consistency and accuracy.

(3) Fix minor inconsistencies in the current Forest Plan.

We propose to narrow the scope of the Forest Plan revision by focusing on issues identified as being most critically in need of change. Issue topics to be addressed during the Forest Plan revision were identified through extensive work with the public, scientists, Forest Service employees, monitoring, evaluation, and review of regulations. A total of eighteen issues were identified through this process. The issues were grouped together to form a number of larger more comprehensive issues where possible. Each issue and the criteria used for grouping and sorting are fully described in the companion document, ''Implementing the Finger Lakes National Forest Land and Resource Management Plan—A 15 Year Retrospective.''

Issues in this notice are separated into two categories:

(1) Major issues that are likely to vary by alternative

(2) Issues that will be addressed during Forest Plan revision but are not likely to vary by alternative.

Issues were considered likely to vary by alternative based on the analysis of the effect the issues will have on the Forest Plan, the level of concern and those issues having the most pervasive impact on the management of the forest and direction of the Forest Plan (e.g. management area designations, goals, objectives, standards and/or guidelines). These issues were also those where the Forest Service and the public expressed the greatest need and/or desire for change.

Issues that were not considered likely to vary by alternative were those having a significant impact on management but having less of an effect on over all direction and management area designation. Many of these issues had a high to moderate level of interest and concern; however, they could be addressed the same under various alternatives through goals, objectives, standards, guidelines, or management areas.

Due to the holistic nature of natural resource planning, it is important to address all of the issues together during the planning process and not isolate individual issues. All issues are interrelated and affect each other. The challenge will be to look at the interrelationships among the issues that follow.

Additional detail is available on request, in the form of a document titled ''Implementing the Finger Lakes National Forest Land and Resource Management Plan—A 15 Year Retrospective.'' You are encouraged to review this document before commenting on this Notice of Intent. You may request additional information by calling the phone number listed in this notice, by writing or e-mailing to the addresses listed in this notice, or by accessing the forest web page at <*www.fs.fed.us/r9/gmfl*>.

Role of the Finger Lakes National Forest: The Finger Lakes National Forest is integral to the sense of place for communities across Central New York. There are different views of the role of the Finger Lakes National Forest.

Whatever the view, however, the role of the Forest should be evaluated in a regional context. The role of the Finger Lakes National Forest outlined in the 1987 Forest Plan emphasizes:

(1) Providing opportunities to observe and enjoy nature
(2) Providing opportunities to roam around in a large unrestricted land area
(3) Providing wood, forage, and other products
(4) Demonstrating multiple uses of the land without destroying long term productivity
(5) Balancing the production of commodities like timber and forage with important non-economic benefits like high quality recreation, diverse wildlife habitat and rare plants

(6) Demonstration and education
(7) Providing stewardship of the land for present and future generations
(8) Promoting an awareness of natural resource management and a strong conservation ethic

Some people believe that the role of the Finger Lakes National Forest is to provide unique opportunities like, continuous blocks of habitat, old growth, and biodiversity. Others believe that role of the National Forest is to provide high quality saw timber, grazing forage and wildlife habitat. Others believe that the Forest should focus on demonstration forestry and education. Still others believe that the role of the Finger Lakes National Forest should be a mixture of all of the above. People have different views about the role of the Finger Lakes National Forest and these will need to be explored.

It is important to note that each revision topic to follow will show specific areas of concern, and that they are all related to the role of the Forest. As stated previously, each issue is related and the role of the Finger Lakes National Forest is an over-arching issue that will guide decisions regarding other issues.

Major Issues Expected To Vary by Alternative

(1) Biodiversity and Ecosystem Management

This includes the issues of wildlife management, range and grazing, and fire management. These issues have to do with providing different types of habitat for different species, the conservation of biodiversity, management of threatened, endangered and sensitive species, and invasive species.

The 1987 Forest Plan addressed biodiversity primarily at small scales, such as tree and stand diversity (species, within-stand features like snags, vegetation composition objectives, and age of vegetation) and individual species (Endangered, Threatened, Sensitive and Indicator). The Plan revision will consider biodiversity and natural communities at a variety of landscape scales and landscape patterns.

We propose to build on the 1987 Forest Plan to:

- Provide for mixes of desired and viable plant and animal species populations, natural communities, and landscape patterns.
- Revise the FLNF's management indicators including Management Indicator Species.

(2) Recreation Management

The recreation issue centers on the mix of recreation opportunities including the number, location, and acceptable uses of trails, developed campsites, dispersed campsites, facilities, and accessibility. Some people believe that recreation opportunities and facilities could be improved or expanded. There has also been concern about the maintenance of existing trails and recreation information. It has been suggested that the revised Forest Plan outline a trail system that provides for the best mix of trail types in order to meet the needs of various users.

It is believed that there have been increases in many recreational uses during the life of the Forest Plan. People want to ensure that the Forest continues to place high emphasis on providing recreation opportunities. However, the appropriate mix of primitive, low-density recreation opportunities, more developed, higher density recreation opportunities, motorized (snow mobile and OHV) and un-motorized trail (ski, hike, mountain bike and horse) use is debatable. Some people want new or improved facilities for particular recreation activities and improved signage and information about recreation opportunities.

The revised Forest Plan should consider the effects of recreational use on the ecosystem as well as conflicting recreational uses. Furthermore, the analysis for the Forest Plan should consider current and projected use, carrying capacity and the economic value of recreation. We propose to:

- Provide for the appropriate mix of primitive, dispersed-use opportunities and more developed, higher density opportunities.
- Provide guidance for the use of mountain bikes and the use of motorized vehicles such as snowmobiles an off-highway vehicles.
- Provide guidance for the number, general location, and acceptable uses of trails, including separation of conflicting uses and accessibility.

(3) Timber Management

The current Finger Lakes National Forest Plan outlines that timber management could be used to maintain and enhance vegetative diversity, wildlife habitats, vistas, the health and condition of the forest ecosystem, and to produce high quality sawtimber. Timber harvesting could be done if it helps to achieve the recreation, visual, wildlife, timber, forest health and other objectives assigned to Management Areas.

Monitoring of the 1987 Forest Plan indicates that the amount of timber harvested in the Finger Lakes National Forest has been below that necessary to create desired future conditions outlined in the Plan. In addition, other goals that use timber management as a tool to achieve objectives, such as creation of habitat diversity for wildlife species, have also been well below desired levels due to their link to timber management.

There have been questions concerning the role of timber harvesting, the amount of timber cut, harvest methods, and management intensity. People have different views about these questions and these should be explored during the Forest Plan revision. Timber harvesting may vary by alternative.

We propose to:

- Determine the appropriate level for timber harvesting.
- Establish methods and uses for vegetation management.
- More clearly define the desired mix and location of various vegetative age and composition.

Issues not Expected to Vary by Alternative

1. Socio-Economic Concerns

The Finger Lakes National Forest Plan states that the Forest should promote economic stability of local communities. The Forest Plan also has the goal of providing a consistent flow of goods and services, which local communities depend on, and to minimize disruptions to local economics that may result from forest management decisions. The current Forest Plan was drafted, in part, to maximize net public benefits (both qualitative and quantitative in nature). The benefits range from increasing primitive and semi-primitive opportunities for recreation, to maintaining the annual amount of wood cut.

Some people believe that the Forest Service should recognize and address community concerns and opportunities, especially in the areas of tax loss from land acquisition, potential revenues and employment that could be generated from the Forest through resource management and regional tourism. Socio-economic concerns, impacts and benefits will be considered and evaluated in the analysis of each alternative. It may also influence the development of some alternatives.

2. Mineral Management—Oil and Gas Availability

Oil and gas leasing is an intended use of the National Forests, as stated in a number of public land laws. In 1987, Congress passed the Federal Onshore Oil and Gas Leasing Reform Act (FOOGLRA), setting forth the procedures by which the Forest Service and the Bureau of Land Management

(BLM) will carry out their statutory responsibilities in the issuance of oil and gas leases. The Forest Service developed implementing regulations for FOOGLRA, which defined the procedures and a three staged process to be used for the analysis and issuance of leases. The stages include:

(1) The determination of lands available for leasing

(2) The decision whether to lease specific lands

(3) An Application for Permit to Drill for exploratory wells

The decision for stage 1, availability, was made in the 1987 Finger Lakes National Forest Forest Plan. The decision for stage 2 was made in December 2001 when the Finger Lakes National Forest did not consent to lease the Forest for oil and gas development. The Forest can be ''available to lease'' as determined in the Forest Plan and the Forest can still make the subsequent decision ''not to consent to lease'' based upon the situation at the time.

During the Forest Plan revision process we propose to revise the 1987 decision as to whether or not the Finger Lakes National Forest will be available for oil and gas leasing (stage 1). Because this issue can be addressed through goals, objectives, standards, and/or guidelines, it is not likely to vary by alternative.

The following issues will be explored during the Forest Plan revision and may be addressed through goals, objectives, standards and guidelines in the Forest Plan. There may also be management areas devoted to the various issues. These issues are not likely to vary by alternative, rather they are likely to be treated the same in each alternative.

3. Land Adjustment

There has been concern about the acquisition of land for inclusion in the Finger Lakes National Forest. The issue of land adjustment may be discussed during the Forest Plan revision, however they have little effect on how the land will be managed. The Forest Plan can set goals for land acquisition but cannot determine whether or not land is acquired.

4. Special Use Management

This includes things like communication towers, large group gatherings, and special non-timber forest products. These uses can be addressed through goals, objectives, standards and guidelines in the Forest Plan. There may also be management areas devoted to special uses.

5. Areas of Significance—Special Designation Areas

Areas of significance, or special designation areas include things like Research Natural Areas, and special management areas.

6. Heritage Resources

Heritage resources include the archaeological sites, historic structures, and cultural landscapes that inform us about past people, environments, and their interactions. Management of heritage resources, including consistency with new federal laws and management of open wells, will be addressed during Forest Plan revision.

7. Information and Education

There is concern that the Finger Lakes National Forest provide more information, increase public involvement, conduct better education programs and increase partnerships and volunteers. There is also a concern for improved law enforcement.

8. Monitoring and Evaluation

Monitoring and evaluation are very important parts of a Forest Plan. Through monitoring and evaluation we are able to see if we are achieving the goals we set out to achieve. The outputs and monitoring approaches in the Forest Plan should be revised along with evaluation.

Range of Alternatives: We will consider a wide range of alternatives when revising the Forest Plan. The alternatives will address different options to resolve issues over the revision topics listed above and to fulfill the purpose and need. A ''no-action alternative'', meaning that management would continue under the existing Forest Plan, will be considered. No other alternative has been developed at this time, but other alternatives are likely to be based on the issues listed above. Other alternatives will provide different ways to address and respond to issues identified during the public involvement phase called, scoping. Public input, Forest Service input and information gathered in various assessments will guide the creation of a wide range of alternatives, may change forest goals, management areas, and monitoring and evaluation for a revised Forest Plan.

In preparing the EIS for revising the Forest Plan, the Forest Service will estimate the potential impacts of various management alternatives on the Forest's physical and biological resources, as well as the potential economic and social impacts on local communities, disadvantaged individuals, disadvantaged communities and the broader regional economy.

The alternatives will display different mixes of recreation opportunities and experiences. We will examine alternatives that address the public's concerns for less timber harvest, for greater timber harvest, and meeting currently planned harvest levels. We will examine alternatives that address ecosystem approaches focused on ecological processes and landscape patterns. The alternatives will display different mixes of plant and animal communities across the forest. The mix will vary by the objectives of the particular alternative, though each alternative will contain the habitat necessary to maintain viable populations of plant and animal species. Social and Economic impacts will also be evaluated for each alternative.

Scoping Process and Public Involvement

The Forest Service would like to create a collaborative relationship between the various stakeholders and themselves so that contentious issues may be discussed and eventually addressed through the revision of the Forest Plan. An atmosphere of openness is one of the objectives of the public involvement process, in which all members of the public have an opportunity to share information. To this end the Forest Service is seeking information, comments, and assistance from individuals, organizations, tribal governments, and federal, state, and local agencies who are interested in or may be affected by the proposed action (36 CFR 219.6). The Forest Service is also looking for collaborative approaches with members of the public who are interested in forest management. The range of alternatives to be considered in the DEIS will be based on public issues, management concerns, resource management opportunities and specific decisions to be made.

Public participation for the Finger Lakes National Forest Plan revision process will include (but will not be limited to) local planning groups in communities in and around the forest, educational forums will be held on various revision topics, field trips and other activities are also planned. All of this will be done to keep the public informed during the entire process and to gather public input on issues, the formulation of alternatives, the scope and nature of the decisions to be made, and to help address various management conflicts. Meeting dates and locations will be announced in the media and on the forest web page as

well as through flyers, mailings, and personal contacts.

Public participation will be sought throughout the entire revision process. The first formal opportunity to comment is during the scoping process (40 CFR 1501.7). Scoping includes:

(1) Verifying and refining potential issues listed in this notice
(2) Identifying significant issues of those that have been covered by prior environmental review
(3) Exploring alternatives in addition to No Action
(4) Identifying the potential environmental effects of the proposed action and alternatives.

Although Scoping is the first formal opportunity to comment, we chose to involve the public earlier in an effort to define the current situation before issuing this notice. We trust this will lead to improved information gathering and synthesis as well as provide more concise and specific public comments. This, in turn, will make it possible to develop more responsive alternatives to analyze in the Draft EIS which is expected to be completed in 2004. Review of the Draft EIS is another step where participation is important. Additional information concerning the scope of the revision will be provided through future mailings, news releases, public meetings and the internet.

Comment Requested: This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. The Forest Service is seeking information, comments, and assistance from individuals, organizations, tribal governments, and federal, state, and local agencies that are interested in or may be affected by the proposed action. Comments on the revision topics or potential additional issues, and possible solutions to these issues are requested. Comments should focus on (1) the proposal for revising the Forest Plan and (2) possible alternatives for addressing issues associated with the proposal. Comments should be sent to the address listed in this notice.

Availability of Public Comment: Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Persons may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality pursuant to 7 CFR 1.27(d). Persons requesting such confidentiality should be aware that under FOIA confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality and where the requester is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within 90 days.

Proposed New Planning Regulations: The Department of Agriculture expects to publish new planning regulations in 2003. Currently National Forests are operating under the 1982 planning regulations until the new ones are enacted. Therefore, the Finger Lakes National Forest Plan will be revised using the 1982 planning regulations.

Responsible Official: Randy Moore, Regional Forester, Eastern Region, 310 W. Wisconsin Ave, Milwaukee, Wisconsin 53203.

Release and Review of the Draft EIS: The Draft Environmental Impact Statement (DEIS) is expected to be filed with the Environmental Protection Agency and to be available for public comment in January 2004. At that time the EPA will publish a notice of availability for the DEIS in the **Federal Register**. The comment period on the DEIS 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 draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. City of Angoon v. Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986) and Wisconsin Heritages, Inc. v. Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 60 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement.

Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points (Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21).

Dated: April 26, 2002.

Donald L. Meyer,

Acting Regional Forester.

[FR Doc. 02–10822 Filed 5–1–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Revised Land and Resource Management Plan for the Green Mountain National Forest, VT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement and a revised Land and Resource Management Plan for the Green Mountain National Forest located in Addison, Bennington, Rutland, Washington, Windham, and Windsor counties, Vermont.

SUMMARY: The USDA Forest Service intends to prepare an Environmental Impact Statement (EIS) for revising the Green Mountain National Forest Land and Resource Management Plan (Forest Plan or Plan) pursuant to 16 U.S.C. 1604[f] [5] and USDA Forest Service National Forest System Land and Resource Management Planning regulations 36 CFR 219.12. The revised Forest Plan will supersede the current Forest Plan, which the Regional Forester approved January 15, 1987. The Green Mountain National Forest Plan has been amended nine times. This notice describes the focus areas of change, estimated dates for filing the EIS, information concerning public participation, and names and addresses of the responsible agency official and the individual who can provide additional information.

DATES: Comments concerning the scope of the analysis must be received by 60 days after the date it is published in the **Federal Register**. Comments should focus on (1) the proposal for revising the Forest Plan and (2) possible alternatives for addressing issues associated with the proposal. The Draft EIS is expected January 2004 and the Final EIS and revised Forest Plan are expected December 2004.

ADDRESSES: Send written comments to:NOI–GM Forest Plan Revision, Green Mountain and Finger Lakes National Forest, 231 North Main Street, Rutland, VT 05701.

FOR FURTHER INFORMATION CONTACT: For further information on the Green Mountain National Forest Plan revision, mail correspondence to Melissa Reichert, Forest Planner, 231 North Main Street, Rutland, VT 05701–2417 or call 802–747–6754, TTY 802–747–6765; or send electronic mail to: <*mmreichert@fs.fed.us*>. For general information on the Forest Plan revision process, access the forest Web page at: <*www.fs.fed.us/r9/gmfl*>.

SUPPLEMENTARY INFORMATION: The Regional Forester for the Eastern Region gives notice of the agency's intent to prepare an EIS to revise the Green Mountain National Forest Forest Plan. A Notice of Intent to prepare an EIS legally marks the beginning of the planning process.

As explained in this notice, the Green Mountain National Forest is planning to revise their Land and Resource Management Plan. The scope of the decision is limited to topics that need revision, updates, or corrections. In addition, changes in goals, objectives, management area descriptions, standards and/or guidelines, definitions, and monitoring requirements may be necessary. Some items are beyond the scope of what can be changed in a Revised Forest Plan. See the document titled ''Implementing the Green Mountain National Forest Land and Resource Management Plan—A 15 Year Retrospective'' for more information.

The Green Mountain National Forest Plan guides the overall management of the National Forest. A Forest Plan is analogous to a county, city or municipal zoning plan. Forest Plans establish overall goals and objectives (or desired future resource conditions) that a National Forest will strive to achieve. This is done in order to contribute toward ecological sustainability as well as contribute to the economic and social sustainability of local communities affected by National Forest management activities. Decisions made in the Forest Plan do not compel the agency to undertake particular site-specific projects and thus do not normally make any irreversible or irretrievable commitment of resources. Forest Plans also establish limitations on what actions may be authorized, and what conditions must be met during project decision-making. The following six decisions are made in a Forest Plan:

1. Forest-wide multiple-use goals and objectives (as required by 36 CFR 219.11[b]).
2. Forest-wide management requirements (36 CFR 219.27).
3. Management area direction (36 CFR 219.11 [c]).
4. Lands suited and not suited for timber management (36 CFR 219.14 and 36 CFR 219.11[b]).
5. Monitoring and evaluation requirements (36 CFR 219.11 [d]).
6. Recommendations to Congress (such as wilderness), if any (36 CFR 219.17).

Purpose and Need for Action

By the requirements of the National Forest Management Act, National Forests must revise their Forest Plan every 10 to 15 years, when conditions or demands in the area covered by the plan have changed significantly, when changes in agency policies, goals, or objectives would have a significant effect on forest level programs, or when monitoring and evaluation indicate that a revision is necessary (36 CFR 219.10[g]). At this time, there are three main reasons to revise the 1987 Forest Plan:

(1) It has been 15 years since the Regional Forester approved the original Forest Plan.

(2) Agency goals and objectives, along with other national guidance for strategic plans and programs, have changed.

(3) New issues and trends have been identified that could change the management goals; management areas; standards and guidelines; and monitoring and evaluation in the current Forest Plan.

Several sources have highlighted needed changes in the current Forest Plan:

(1) Public involvement has identified new information and public values.

(2) Monitoring and scientific research have identified new information and knowledge gained.

(3) Forest Plan implementation has led to the identification of management concerns and a need or desire to find better ways to accomplish desired future conditions.

(4) Changes in law, regulations and policies have taken place. In addition to changing public views about how these lands should be managed, a significant change in the information and scientific understanding of these ecosystems has occurred. Some new information is a product of research, while other information has resulted from changes in technology. Furthermore, the agency's Government Performance and Results Act Strategic Plan (2000) has adjusted the agency program to focus on four goals: ecosystem health, multiple benefits to people, scientific and technical assistance, and effective public service. These goals come with new objectives and outcome-based measures that should to be recognized and incorporated into the Plan revision process.

An interdisciplinary team is conducting the environmental analysis and will prepare an environmental impact statement associated with revision of the Forest Plan. This interdisciplinary team will also prepare the revised Forest Plan. In order to address these changes, the interdisciplinary team will work with the public to develop a list of forest wide goals, standards and/or guidelines; develop descriptions and definitions of management areas, desired condition statements, management area-specific standards and/or guidelines and identify draft management areas. These will then be used to develop alternatives to the proposed action for the Forest Plan.

Issues, Proposed Action, and Possible Alternatives

Through the Green Mountain National Forest Plan revision process we propose to:

(1) Explore management issues in order to draft a wide range of alternative ways to manage the National Forest.

(2) Review the Management Areas in the current Forest Plan and look at alternative ways to organize the management of the National Forest, for example management areas based on watersheds or ecological groupings.

(3) Review all Forest Plan goals, objectives, standards and guidelines for desired direction, relevance, consistency and accuracy.

(4) Fix minor inconsistencies in the current Forest Plan.

We propose to narrow the scope of the Forest Plan revision by focusing on issues identified as being most critically in need of change. Issue topics tol be addressed during the Forest Plan revision were identified through extensive work with the public, scientists, Forest Service employees, monitoring, evaluation, and review of regulations. A total of thirty-two issues were identified through this process.

The issues were grouped together to form a number of larger more comprehensive issues where possible. Each issue and the criteria used for grouping and sorting are fully described in the companion document, ''Implementing the Green Mountain National Forest Land and Resource Management Plan—A 15 Year Retrospective.''

Issues in this notice are separated into two categories:

(1) Major issues that are likely to vary by alternative.

(2) Issues that will be addressed during Forest Plan revision but are not likely to vary for each alternative.

Issues were considered likely to vary by alternative based on the analysis of the effect the issues will have on the Forest Plan, the level of concern and those issues having the most pervasive impact on the management of the forest and direction of the Forest Plan (e.g. management area designations, goals, objectives, standards and/or guidelines). These issues were also those where the Forest Service and the public expressed the greatest need and/or desire for change.

Issues that were not considered likely to vary by alternative were those having a significant impact on management but having less of an effect on over all direction and management area designation. Many of these issues had a high to moderate level of interest and concern; however, they could be addressed the same under various alternatives through goals, objectives, standards, guidelines, or management areas.

Due to the holistic nature of natural resource planning, it is important to address all of the issues together during the planning process, and not isolate individual issues. All issues are interrelated and affect each other. The challenge will be to look at the interrelationships among the issues that follow.

Additional detail is available on request, in the form of a document titled ''Implementing the Green Mountain National Forest Land and Resource Management Plan—A 15 Year Retrospective.'' You are encouraged to review this document before commenting on the Notice of Intent. You may request additional information by calling the phone number listed in this notice, by writing or e-mailing to the addresses listed in this notice, or by accessing the forest Web page at <*www.fs.fed.us/r9/gmfl*>.

Role of the Green Mountain National Forest

The Green Mountain National Forest is integral to the sense of place for communities across Vermont. There are different views of the role of the Green Mountain National Forest. Whatever the view, however, the role of the Green Mountain National Forest should be evaluated in a regional context. The role of the Green Mountain National Forest outlined in the 1987 Forest Plan emphasizes:

(1) Resources and values not provided on private land in the Northeast.

(2) Maintenance of management options for present and future generations.

(3) Opportunities for back country recreation and Wilderness.

(4) Maintenance of scenery in areas visible to visitors.

(5) Providing a wide variety of wildlife and fish.

(6) Maintenance of soil productivity.

(7) Keeping streams free of sediments and pollutants.

(8) Maintenance of vegetative diversity.

(9) Maintenance of viable populations of wildlife species.

(10) Production of high quality sawtimber on productive and accessible lands.

(11) Research and demonstration of management techniques.

Some people believe that the role of the Green Mountain National Forest is to provide unique opportunities like Wilderness, backcountry recreation, continuous blocks of habitat, old growth, and biodiversity. Others believe that the role of the National Forest is to provide high quality sawtimber for the Vermont forest products industry as well as provide high quality wildlife habitat. Some people believe that in the face of decreasing access to private lands, the access and pressure on public lands needs to be addressed. Finally, many believe that the role of the Green Mountain National Forest should be a mixture of all of the above.

People have different views about the role of the Green Mountain National Forest and these will need to be explored. The role of the Green Mountain National Forest will be assessed during the Forest Plan revision process and will guide the formation of alternatives. Each issue is related and the role of the Green Mountain National Forest is an over-arching issue that will guide decisions regarding other issues.

Major Issues Expected To Vary By Alternative

(1) Special Designations

Wilderness, Wild and Scenic Rivers, National Recreation Areas and Research Natural Areas, among others, are all allocations of lands to specific uses; some requiring Congressional designation. These specially designated lands may not allow for or may have reduced levels of timber and wildlife management and may limit some forms of recreational access. The concern is while many people may want to see more land allocated to these areas, others may oppose such allocation and may even desire a reduction in the quantities currently established. Some believe that allocating lands for these special areas will negatively impact other resource areas. Existing Congressionally designated areas and existing Research Natural Areas will not be revisited during the Forest Plan revision.

We propose to:

- Determine the most appropriate mix of specially designated areas to promote ecological, social, and economic sustainability.
- Make recommendations to Congress on special area designations such as Wilderness.
- Make designations that are within the authority of the Forest Service such as Research Natural Areas.

(2) Biodiversity and Ecosystem Management

This issue concerns the restoration, protection, maintenance and enhancement of biological and ecological diversity by conservation of species, plant and animal communities, and ecosystems at a variety of scales. This includes topics such as old growth, wildlife and fisheries management, soils, air, botany, fire management, invasive species management, pest management and pesticides, and biological reserves. Biological diversity will be considered on a regional (New England/Adirondacks) or sub-regional (Northern New England) scale that includes other National Forests and public lands. The issue involves examining regional coordination between National Forests, neighboring lands and conservation partners to determine which ecosystems the Green Mountain National Forest can provide to best serve the conservation of biological and ecological diversity in the Northeast.

Some views expressed by the public on this issue include: protection of biological diversity, protection of ecological systems and processes,

maintenance of wildlife habitat for biological diversity, conservation of remote and unfragmented habitat to meet wildlife needs, maintenance of species population viability, defining the role of the Forest in biological diversity, increasing levels of protection for ecological integrity and complexity and biological diversity, and managing at the landscape level using principles of conservation biology including core areas, corridors and buffers. Still others are concerned that efforts to protect biological diversity may result in lower levels of timber production, limits on motorized access to some areas, or lower populations of some game animals.

The 1987 Forest Plan addressed biodiversity primarily at small scales, such as tree and stand diversity (species, within-stand features like snags, vegetation composition objectives, and age of vegetation) and individual species (Endangered, Threatened, Sensitive and Indicator). The Plan revision will consider biodiversity and natural communities at a variety of landscape scales and landscape patterns.

We propose to build on the 1987 Forest Plan to:

- Provide for mixes of desired and viable plant and animal species populations, natural communities, and landscape patterns.
- Revise the GMNF's management indicators including Management Indicator Species.

(3) Social and Economic Concerns

This issue involves people's desires for including, recognizing, and addressing community concerns and opportunities, economic impacts and benefits changing demographics in rural communities and providing multiple use management. The 1987 Green Mountain National Forest Plan states that the Forest should promote economic stability of local communities. The Forest Plan also talks about the goal of providing a consistent flow of goods and services on which local communities depend and to minimize disruptions to local economics that may result from forest management decisions.

The 1987 Forest Plan was created in part with a desire to ''maximize net public benefits.'' These benefits are both qualitative and quantitative in nature. The benefits range from increasing primitive and semi-primitive opportunities for recreation, to maintaining the annual amount of wood cut at or below present levels. The Forest Plan states that we need to consider the effects of management on local communities.

Some people believe that the Forest Service should recognize and address community concerns, opportunities, and sustainability especially in the areas of tax loss from land acquisition, potential revenues and employment that could be generated from the Forest through resource management and regional tourism. Socio-economic concerns, benefits and impacts will be considered and evaluated in the analysis of each alternative. It may also influence the development of some alternatives and may vary by alternative. We propose to:

- Provide for a mix of quantitative and qualitative socio-economic benefits provided by the Forest to the public and neighboring communities.

(4) Recreation Management

This issue centers on the mix of recreation opportunities offered on the Green Mountain National Forest including developed recreation facilities, trails and accessibility. People want to ensure that the Forest continues to place high emphasis on providing recreation opportunities. The appropriate mix of primitive, backcountry, low-density recreation opportunities, more developed, higher density recreation opportunities, motorized and un-motorized trail use is a concern. Some people want new or improved facilities for particular recreation activities and improved signage and information about recreation opportunities. It is believed that there have been increases in many recreational uses during the life of the Forest Plan. The effects of recreational use on the ecosystem as well as conflicting recreational uses need evaluation. Furthermore, the analysis for the Forest Plan should consider current and projected use, carrying capacity and the economic value of recreation.

The 1987 Forest Plan includes a full range of high quality recreation opportunities as a Forest goal. The Forest Plan also identifies backcountry recreation (including Wilderness, Primitive and Semi-primitive settings) as an emphasis for the management of the Green Mountain National Forest. There is discussion in the Forest Plan describing the role of the Forest in providing what private lands can not, including large, remote, unroaded settings for backcountry recreation, and the ever increasing demand for backcountry recreation due to increasing populations and shrinking supply of land capable of meeting backcountry demands. The Forest Plan does not, however, discuss the use of mountain bikes or allow for the use of Off Highway Vehicles on trails. We propose to:

- Provide for the appropriate mix of primitive, dispersed-use opportunities and more developed, higher density opportunities.
- Provide guidance for the use of mountain bikes and the use of motorized vehicles such as snowmobiles and off-highway vehicles.
- Identify the areas with opportunities for future trail development.

(5) Timber Management

The current Green Mountain National Forest Plan outlines that timber management could be used to maintain and enhance vegetative diversity, wildlife habitats, vistas, the health and condition of the forest ecosystem, and to produce high quality sawtimber. Timber harvesting could be done if it helps to achieve the recreation, visual, wildlife, timber, forest health and other objectives assigned to Management Areas.

Monitoring of the 1987 Forest Plan indicates that the amount of timber harvested in the Green Mountain National Forest has been below that necessary to create the desired future conditions outlined in the Plan. In addition, other goals that use timber management as a tool to achieve objectives, such as creation of habitat diversity for wildlife species, have also been well below desired levels due to their link to timber management.

There have been questions concerning the role of timber harvesting, the amount of timber cut, harvest methods, and management intensity. People have different views about these questions and these will all need to be explored during the Forest Plan revision. Timber harvesting may vary by alternative.

We propose to:

- Determine the appropriate level for timber harvesting.
- Establish methods and uses for vegetation management.
- More clearly define the desired mix and location of various vegetative age and composition.

Issues To Be Addressed But Not Expected To Vary by Alternative

The following issues will be explored during the Forest Plan revision and may be addressed through goals, objectives, standards and guidelines in the Forest Plan. There may also be management areas devoted to the various issues. These issues are not likely to vary by alternative, rather they are likely to be treated the same in each alternative.

1. Special Use Management

Special use management on the Green Mountain National Forest includes both recreational and non-recreational uses. These include things like outfitter guides, communication towers, windmills, large group gatherings, and special non-timber forest products.

2. Heritage Resources

Heritage resources include the archaeological sites, historic structures, and cultural landscapes that inform us about past people, environments, and their interactions. Management of heritage resources, including consistency with new federal laws, will be addressed during Forest Plan revision.

3. Road Management and Transportation Planning

This issue focuses on how the Green Mountain National Forest plans for and manages roads and transportation systems. This includes road maintenance, construction, usage, and closure.

4. Monitoring and Evaluation

Monitoring and evaluation are very important parts of a Forest Plan. Through monitoring and evaluation we are able to see if we are achieving the goals we set out to achieve. The outputs and monitoring approaches in the Forest Plan should be revised along with evaluation.

5. Information and Education

There is concern that the Green Mountain National Forest provide more information, increase public involvement, conduct better education programs and increase partnerships and volunteers.

6. Visual Quality and Scenery Management

This issue centers on the fact that some people want to see more emphasis on visual requirements during projects and some people want to see less emphasis on visual requirements. National Forests have been directed to incorporate the ''Scenery Management System'', a new method for the management of scenic values, into their revised Forest Plan. This system will be used to address this issue in the revised Forest Plan.

7. Coordination and Partnerships

There has been concern that the GMNF should maximize partnerships and cooperative efforts with federal, state, local agencies, local and tribal governments, and the community in order to increase the quantity and quality of resources available to manage and enjoy the National Forest.

8. Water Resources

This issue includes water quality, fisheries, and watershed planning. These are relatively new issues and should be explored during Forest Plan revision. Some believe that the Green Mountain National Forest should provide aquatic (fisheries) habitat to provide for viable populations of species.

9. Land Acquisition

There has been concern about the acquisition of land for inclusion in the Green Mountain National Forest. The Plan will guide priorities for land acquisition. Standards and Guidelines will be developed to place newly acquired lands into management areas.

Range of Alternatives

We will consider a wide range of alternatives when revising the Forest Plan. The alternatives will address different options to resolve issues over the revision topics listed above and to fulfill the purpose and need. A ''no-action alternative'', meaning that management would continue under the existing Forest Plan, will be considered. No other alternative has been developed at this time, but other alternatives are likely to be based on the issues listed above. Other alternatives will provide different ways to address and respond to issues identified during the public involvement phase called, scoping. Public input, Forest Service input and information gathered in various assessments will guide the creation of a wide range of alternatives, may change forest goals, management areas, and monitoring and evaluation for a revised Forest Plan.

In preparing the EIS for revising the Forest Plan, the Forest Service will estimate the potential impacts of various management alternatives on the Forest's physical and biological resources, as well as the potential economic and social impacts on local communities, disadvantaged individuals, disadvantaged communities and the broader regional economy.

The alternatives will display different mixes of recreation opportunities and experiences. We will examine alternatives that address the public's concerns for less timber harvest, for greater timber harvest, and meeting currently planned harvest levels. We will examine alternatives that address ecosystem approaches focused on ecological processes and landscape patterns. The alternatives will display different mixes of plant and animal communities across the forest. The mix will vary by the objectives of the particular alternative, though each alternative will contain the habitat necessary to maintain viable populations of plant and animal species. Social and Economic impacts will also be evaluated for each alternative.

The Forest Service may also make other minor changes to the Forest Plan as needed. The USDA Forest Service proposal may change forest goals, standards and/or guidelines, management areas, and monitoring and evaluation.

Scoping Process and Public Involvement

The Forest Service would like to create a collaborative relationship between the various stakeholders and the agency so that contentious issues may be discussed and eventually addressed through the revision of the Forest Plan. An atmosphere of openness is one of the objectives of the public involvement process, in which all members of the public have an opportunity to share information. To this end the Forest Service is seeking information, comments, and assistance from individuals, organizations, tribal governments, and federal, state, and local agencies who are interested in or may be affected by the proposed action (36 CFR 219.6). The Forest Service is also looking for collaborative approaches with members of the public who are interested in forest management. The range of alternatives to be considered in the DEIS will be based on public issues, management concerns, resource management opportunities and specific decisions to be made.

Public participation for the Green Mountain National Forest Plan revision process will include (but will not be limited to) local planning groups in communities in and around the forest, educational forums various revision topics; field trips and other activities are also planned. All of this will be done to keep the public informed during the entire process and to gather public input on issues, the formulation of alternatives, the scope and nature of the decisions to be made, and to help address various management conflicts. Meeting dates and locations will be announced in the media and on the forest web page as well as through flyers, mailings, and personal contacts.

Public participation will be sought throughout the entire revision process. The first formal opportunity to comment is during the scoping process (40 CFR 1501.7). Scoping includes:

(1) Identifying potential issues.

(2) Identifying significant issues of those that have been covered by prior environmental review.

(3) Exploring alternatives in addition to No Action.

(4) Identifying the potential environmental effects of the proposed action and alternatives.

Although Scoping is the first formal opportunity to comment, we chose to involve the public earlier in an effort to define the current situation before issuing this notice. We trust this will lead to improved information gathering and synthesis as well as provide more concise and specific public comments. This, in turn, will make it possible to develop more responsive alternatives to analyze in the Draft EIS, which is expected to be completed in January 2004. Review of the Draft EIS is another step where public participation is important. Additional information concerning the scope of the revision will be provided through future mailings, news releases, public meetings and the Internet.

Comment Requested

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. The Forest Service is seeking information, comments, and assistance from individuals, organizations, tribal governments, and federal, state, and local agencies that are interested in or may be affected by the proposed action. Comments on the revision topics or potential additional issues, and possible solutions to these issues are requested. Comments should focus on (1) the proposal for revising the Forest Plan and (2) possible alternatives for addressing issues associated with the proposal. Comments should be sent to the address listed in this notice.

Availability of Public Comment

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Persons may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality pursuant to 7 CFR 1.27(d). Persons requesting such confidentiality should be aware that under FOIA confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality and where the requester is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within 90 days.

Proposed New Planning Regulations

The Department of Agriculture expects to publish new planning regulations in 2003. Currently National Forests are operating under the 1982 planning regulations until the new ones are enacted. Therefore, the Green Mountain National Forest Plan will be revised using the 1982 planning regulations.

Responsible Official

Randy Moore, Regional Forester, Eastern Region, 310 W. Wisconsin Ave, Milwaukee, Wisconsin 53203.

Release and Review of the Draft EIS

The Draft Environmental Impact Statement (DEIS) is expected to be filed with the Environmental Protection Agency and to be available for public comment in January 2004. At that time the EPA will publish a notice of availability for the DEIS in the **Federal Register**. The comment period on the DEIS 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 draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 60 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

(**Authority:** 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21).

Dated: April 26, 2002.

Donald L. Meyer,

Acting Regional Forester.

[FR Doc. 02–10826 Filed 5–01–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Tamarack Quarry Expansion, Mt. Hood National Forest, Clackamas County, OR

AGENCY: Forest Service, USDA.

ACTION: Revision of a notice of intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the Forest Service, USDA, will modify the title of the Palmer Quarry Expansion Environmental Impact Statement (EIS). This modification is the result of a name change of the quarry from Palmer to Tamarack. Therefore, the title of the EIS of this project, which was listed in the Notice of Intent published in the **Federal Register** on January 15, 2002 (67 FR 1955), is revised to ''Tamarack Quarry Expansion''. No other changes are made.

FOR FURTHER INFORMATION CONTACT: Questions about the Notice of Intent and its modification should be directed to Mike Redmond, Environmental Coordination, 16400 Champion Way, Sandy, Oregon 97055–7248 (phone: 503–668–1776).

Dated: May 22, 2002.

Gary L. Larsen,

Forest Supervisor.

[FR Doc. 02–10830 Filed 5–1–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Bear Knoll Timber Management Project, Mt. Hood National Forest, Wasco County, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Forest Service, USDA, will prepare an environmental impact statement (EIS) on a proposal to improve forest health on approximately 821 acres of land. The proposal includes using six specific silvicultural treatments, construction 4.3 miles of temporary roads, reconstructing approximately 3.2 miles of roads, and closing approximately 7.2 miles of roads within the planning area. The Proposed Action would be in compliance with the 1990 Mt. Hood National Forest Land and Resource Management Plan (Forest Plan), as amended by the Northwest Forest Plan, which provides the overall guidance for management of this area. The Proposed Action is within the White River watershed on the Hood River Ranger District and is scheduled for implementation in fiscal years 2003 and 2004. The Mt. Hood National Forest invites written comments and suggestions on the scope of the analysis. The agency will give notice of the full environmental analysis and decision-making process so interested and affected people may be able to participate and contribute in the final decision.

DATES: Comments concerning the scope of the analysis should be postmarked by June 1, 2002.

ADDRESSES: Send written comments and suggestions concerning the proposed action in this area to Art Guertin, 6780 Highway 35, Mt. Hood/Parkdale, OR, 97041 (phone: 541–352–6002). Comments may also be sent by FAX (541–352–7365). Include your name and mailing address with your comments so documents pertaining to this project may be mailed to you.

FOR FURTHER INFORMATION CONTACT: Question about the Proposed Action and EIS should be directed to Art Guertin (address and phone number listed above), or to Mike Redmond, Environmental Coordinator, 16400 Champion Way, Sandy, OR, 97055–7248 (phone: 503–668–1776).

SUPPLEMENTARY INFORMATION: The Proposed Action would promote density management on approximately 564 acres by removing trees from stands currently declining in growth and health because the stands are overstocked with too many trees and are dominated by western hemlock, which is susceptible to the Indian Paint Fungus (*Echinodontium tinctorium*). Treatment of these stands would help reach the goal of providing healthy, vigorous stands, which contain a diversity of tree species and visually appealing forest scenery, as defined by the Mt. Hood Forest Plan. The proposal also regenerates approximately 217 acres where the stands have reached/surpassed the culmination of mean annual increment and are infected with Indian Paint Fungus. Treating these stands would help meet the goal of re-establishing healthy, disease resistant timber stands. The proposal also removes the overstory trees and thins the understory trees on approximately 21 acres where the overstory pine trees, believed to have come from Idaho, were planted over 30 years ago and are now showing signs of environmental stress and damage. Treating this stand would help meet the goal of promoting ecosystem health by ensuring plants are not weakened by mal-adaptation and overcome by environmental stress. Commercial thinning and restoration projects on approximately 19 acres, within riparian reserves, are also proposed. Treating these stands would help restore and maintain the ecological health of the watershed and aquatic ecosystems.

Approximately 4.3 miles of temporary roads would be constructed where access is needed to implement the proposed action. In addition, approximately 3.2 miles would be reconstructed for log haul. Approximately 7.2 miles of roads not needed for future management and currently causing wildlife harassment, would be closed as would the 4.3 miles of temporary roads.

The planning area is located in portions of Sections 2, 3, & 4 of T.5 S., R.9 E., and portions of Sections 23, 24, 25, 26, 27, 28, 29, 33, 34, 35, & 36, of T.4S., R. 9 E., Willamette Meridian, Wasco County, Oregon. This analysis will evaluate a range of alternatives for implementation of the project activities included a non-action alternative. The planning area does not include any wilderness, RARE II, or other inventoried roadless land. The planning area is identified as a Tier 2 Key Watershed in the Northwest Forest Plan.

The Bear Knoll Planning Area is included in the C–1, Timber Emphasis, area of the Mt. Hood National Forest Land and Resource Management Plan. The B–2, Scenic Viewshed land allocation also occurs in the planning area along the corridor of State Highway 26.

Responsible Official

The responsible official is Mt. Hood National Forest Supervisor, Gary Larsen. The responsible official will decide which, if any, of the alternatives will be implemented. His decision and rationale for the decision will be documented in a Record of Decision, which will be subject to Forest Service Appeal Regulations (36 CFR part 215).

Preliminary Issues

Three preliminary issues have been identified; impacts from conversion of a portion of the existing old growth forest to a younger, non-old growth condition, impacts from constructing new temporary roads to implement the proposed action, and impacts from entering/cutting in riparian reserves.

Public Involvement, Rationale, and Public Meetings

Since the Fall issue of 1998, the Bear Knoll Planning Area has been identified in Sprouts, the Mt. Hood National Forest quarterly publication that lists upcoming actions. An initial scoping letter was sent out in 1999 to approximately 165 individuals, agencies, and organizations that might have an interest in the proposed activities within the Bear Knoll Planning Area. There has also been a field trip with interested public groups in 2001. Future scoping will include continued inclusion in Sprouts, and continued identification and clarification of issues, identification of key issues to be analyzed in depth, and identification of potential environmental effects of the Proposed Action.

The Forest Service is seeking information, comments, and assistance from other agencies, organizations, Indian Tribes, and individuals who may be interested in or affected by the Proposed Action. This input will be used in preparation of the draft EIS. Your comments are appreciated throughout the analysis process.

Estimated Dates for Filing

The draft EIS is planned to be filed with the Environmental Protection Agency (EPA) and available for public review by July 15, 2002. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, Indian Tribes, and members of the public for their review and comment. The EPA will publish a Notice of Availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be

45 days from the date the EPA notice appears in the **Federal Register**. It is important that those interested in this proposal on the Mt. Hood National Forest participate at that time.

The final EIS is scheduled to be available by September 1, 2002. In the final EIS, the Forest Service is required to respond to substantive comments received during the comment period for the draft EIS.

The Reviewers Obligation to Comment

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 f. 2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this Proposed Action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the Proposed Action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: May 22, 2002.

Gary L. Larsen,

Forest Supervisor.

[FR Doc. 02–10831 Filed 5–1–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou County Resource Advisory Committee; Notice of Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siskiyou County Resource Advisory Committee (RAC) will meet on May 20, 2002, in Yreka, California. The purpose of the meeting is to discuss the following topics: Approval of Previous Meeting Minutes. Peg Boland's approval of recommended 2001 Proposals. Letters to successful proponents for 2001 projects. Schedule workshop with successful applicants to discuss administrative processes. Have 2001 applicants come in for presentations to encourage discussion about their proposals and their priorities. Funding projects for 2002—Choose from existing 52 proposals? Review of Rating Criteria for next fall 2003 proposal solicitations. Overhead and RAC Costs Discussion. Merchantable material in legislation directs 15% proposal to these products the first year. NEPA/CEQA compliance before funding.

DATES: The meetings will be held May 20, 2002 from 4 p.m. to 7 p.m.

ADDRESSES: The meeting will be held at the Yreka High School Library, Preece Way, Yreka, California.

FOR FURTHER INFORMATION CONTACT: Heidi Perry, Meeting Coordinator, USDA, Klamath National Forest, 1312 Fairlane Road, Yreka, California 96097, (530) 841–4468; e-mail *hperry@fs.fed.us*.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public comment opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: April 23, 2002.

Margaret J. Boland,

Forest Supervisor.

[FR Doc. 02–10803 Filed 5–1–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

South Mt. Baker-Snoqualmie Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The South Mt. Baker-Snoqualmie Resource Advisory Committee (RAC) will meet Thursday, May 16, 2002, and Monday, June 10, 2002. Both meetings will be held at the Washington State University Puyallup Research and Extension Center, Allmendinger Center, 7612 E. Pioneer Way, Puyallup, WA 98371–4998.

Both meetings will begin at 9 a.m. and continue until about 3 p.m. Agenda items to be covered at the May 16 meeting include: (1) Resource Advisory Committee Bylaws; (2) Title II project ranking criteria; and (3) Title II project evaluation. The June 10 meeting will focus primarily on Title II project evaluation.

All South Mt. Baker-Snoqualmie Resource Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

The South Mt. Baker-Snoqualmie Resource Advisory Committee advises King and Pierce Counties on projects, reviews project proposals, and makes recommendations to the Forest Supervisor for projects to be funded by Title II dollars. The South Mt. Baker-Snoqualmie Resource Advisory Committee was established to carry out the requirements of the Secure Rural Schools and Community Self-Determination Act of 2000.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Penny Sundblad, Management Specialist, USDA Forest Service, Mt. Baker-Snoqualmie National Forest, 810 State Route 20, Sedro Woolley, Washington 98284 (360–856–5700, Extension 321).

Dated: April 26, 2002.

Lorette Ray,

Acting Designated Federal Official.

[FR Doc. 02–10827 Filed 5–1–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Southwest Idaho Resource Advisory Committee, Boise, ID; USDA, Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Boise and Payette National Forests' Southwest Idaho Resource Advisory Committee will meet Wednesday, May 15, 2002 in Boise, Idaho for a business meeting. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on May 15, begins at 10 a.m., at the Idaho Counties Risk Management Program Building, 3100 South Vista Avenue, Boise, Idaho. Agenda topics will include review and approval of project proposals, a guest speaker and an open public forum.

FOR FURTHER INFORMATION CONTACT: Randy Swick, McCall District Ranger and Designated Federal Officer, at (208) 634–0400.

Dated: April 24, 2002.

Randall Swick,

Designated Federal Officer, Payette National Forest.

[FR Doc. 02–10829 Filed 5–1–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's intention to request an extension for a currently approved information collection in support of the program for the Guaranteed Rural Rental Housing Program.

DATES: Comments on this notice must be received by July 1, 2002 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Joyce Allen, Deputy Director, Multi-Family Housing Processing Guaranteed Loan Division, Rural Housing Service, USDA, Room 1263, Stop 0781, 1400 Independence Avenue SW, Washington, DC 20250, telephone, (202) 690–4499.

SUPPLEMENTARY INFORMATION:

Title: Guaranteed Rural Rental Housing Program.

OMB Number: 0575–0174.

Expiration Date of Approval: July 31, 2002.

Type of Request: Extension of a Currently Approved Information Collection.

Abstract: On March 28, 1996, President Clinton signed the ''Housing Opportunity Program Extension Act of 1996.'' One of the provisions of the Act was the authorization of the Section 538 Guaranteed Rural Rental Housing Loan Program, adding the program to the Housing Act of 1949. The program has been designed to increase the supply of affordable multifamily housing through partnerships between RHS and major lending sources, as well as State and local housing finance agencies and bond issuers. Qualified lenders will be authorized to originate, underwrite, and close loans for multifamily housing projects requiring new construction or acquisition with rehabilitation of at least $15,000 per unit will be considered.

The housing must be available for occupancy only by low or moderate income families or persons, whose incomes at the time of initial occupancy do not exceed 115 percent of the median income of the area. After initial occupancy, a tenant's income may exceed these limits; however, rents, including utilities, are restricted to no more than 30 percent of the 115 percent of area Median Income for the term of the loan.

The Secretary is authorized under Section 510 (k) to prescribe regulations to ensure that these federally funded loans are made to eligible applicants for authorized purposes. The lender must evaluate the eligibility, cost, benefits, feasibility, and financial performance of the proposed project. The information submitted by the lender to the Agency is used by the Agency to manage, plan, evaluate, and account for Government resources. This information is required to ensure the proper and judicious use of public funds.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .53 man hours per response.

Respondents: Nonprofit and for-profit lending corporations and public bodies.

Estimated Number of Respondents: 50.

Estimated Number of Responses per Respondent: 60.

Estimated Number of Responses: 3005.

Estimated Total Annual Burden on Respondents: 1,581 hours.

Copies of this information collection can be obtained from Tracy Gillin, Regulations and Paperwork Management Branch, at (202) 692–0039.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Tracy Gillin, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW, Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: April 19, 2002.

Arthur A. Garcia,

Administrator, Rural Housing Service.

[FR Doc. 02–10838 Filed 5–1–02; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Advanced Technology Program Advisory Committee

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Advanced Technology Program Advisory Committee, National Institute of Standards and Technology (NIST), will meet Tuesday, May 14, 2002, from 8:45 a.m. to 3:45 p.m. The Advanced Technology Program Advisory Committee is composed of eight members appointed by the Director of NIST; who are eminent in such fields as business, research, new product development, engineering, education, and management consulting. The purpose of this meeting is to review and make recommendations regarding general policy for the Advanced Technology Program (ATP), its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include a discussion on universities and R&D technology issues, a presentation on the In-Q-Tel, a venture capital organization (tentative), an update on the ATP competition, and a presentation on a study on the ATP Computer Based Software Focus

Program. Discussions scheduled to begin at 8:45 a.m. and to end at 9:50 a.m. and to begin at 3 p.m. and to end at 3:45 p.m. on May 14, 2002 on the ATP budget issues and staffing of positions will be closed. All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Please submit your name, time of arrival, email address and phone number to Carolyn Stull no later than Thursday, May 9, 2002, and she will provide you with instructions for admittance. Ms. Stull's e-mail address is *carolyn.stull@nist.gov* and her phone number is 301/975–5607.

DATES: The meeting will convene May 14, 2002, at 8:45 a.m. and will adjourn at 3:45 p.m. on May 14, 2002.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Lecture Room A, Gaithersburg, Maryland 20899. Please note admittance instructions under SUMMARY paragraph.

FOR FURTHER INFORMATION CONTACT: Carolyn J. Stull, National Institute of Standards and Technology, Gaithersburg, Maryland 20899–1004, telephone number (301) 975–5607.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 3, 2002, that portions of the meeting of the Advanced Technology Program Advisory Committee which involve discussion of proposed funding of the Advanced Technology Program may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because those portions of the meetings will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions; and that portions of meetings which involve discussion of staffing of positions in ATP may be closed in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in those portions of the meetings is likely to reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Dated: April 25, 2002.

Arden L. Bement, Jr.,

Director.

[FR Doc. 02–10955 Filed 5–1–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042602G]

Marine Mammals; File No. 984–1587–01

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

ACTION: Issuance of permit amendment.

SUMMARY: SUMMARY: Notice is hereby given that Dr. Terrie Williams, Department of Biology, University of California at Santa Cruz, Santa Cruz, CA 95064 has been issued a minor amendment to scientific research Permit No. 984–1587–00.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 et seq.), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

This amendment extends the expiration date for holding and conducting research on three California sea lions (*Zalophus californianus*) from April 30, 2002, to September 30, 2002.

Dated: April 26, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–10951 Filed 5–1–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Proposed Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the USPTO

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of availability.

SUMMARY: This document announces the availability of the agency's draft report providing guidelines to ensure and maximize the quality, objectivity, utility, and integrity of information disseminated by the agency. These guidelines also detail the administrative mechanisms developed by the USPTO 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. This notice and guidelines are required by section 515 of the Treasury and General Government Appropriations Act for FY 2001 (Pub. L. 106–554) and the OMB Guidelines published on January 3, 2002, at 67 FR 369–378 (reprinted February 5, 2002, at 67 FR 5365). This notice also provides an opportunity for public comment. To be considered, comments must be received by May 31, 2002, at the address set forth below.

ADDRESSES: USPTO's draft report is available for public inspection and comment at USPTO's Web site, *www.uspto.gov.*

FOR FURTHER INFORMATION CONTACT: Bruce Cox, Director, Information Products Division, *Bruce.Cox@uspto.gov* (703) 306–2606; or Christopher Leithiser, Information Products Division, *Chris.Leithiser@uspto.gov* (703) 306–2622.

Dated: April 26, 2002.

James E. Rogan,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 02–10853 Filed 5–1–02; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–16]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of

Representatives, Transmittal 02–16 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: April 26, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

10 APR 2002
In reply refer to:
I-02/001557

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 02-16, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Oman for defense articles and services estimated to cost $42 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 02-16

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser**: Oman

(ii) **Total Estimated Value**:

Major Defense Equipment*	$ 36 million
Other	$ 6 million
TOTAL	$ 42 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase**: 50,000 20mm high explosive projectiles, 50,000 20mm training projectiles, 300 MK-82 500 lb general purpose bombs, 200 MK-83 1,000 lb general purpose bombs, 100 enhanced GBU-12 Paveway II 500 lb laser guided bomb kits, 50 GBU-31(v)3/B Joint Direct Attack Munitions, 50 CBU-97/105 sensor fuzed weapon, 20,000 RR-170 self-protection chaff, 20,000 MJU-7B self-protection flares, support equipment, software development/integration, modification kits, spares and repair parts, flight test instrumentation, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical and logistics personnel services, and other related elements of logistical and program support.

(iv) **Military Department**: Air Force (YXX)

(v) **Prior Related Cases, if any**: none

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid**: none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold**: See Annex attached

(viii) **Date Report Delivered to Congress**: 10 APR 2002

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Oman – Munitions in Support of F-16C/D Aircraft

The Government of Oman has requested a possible sale of 50,000 20mm high explosive projectiles, 50,000 20mm training projectiles, 300 MK-82 500 lb general purpose bombs, 200 MK-83 1,000 lb general purpose bombs, 100 enhanced GBU-12 Paveway II 500 lb laser guided bomb kits, 50 GBU-31(v)3/B Joint Direct Attack Munitions, 50 CBU-97/105 sensor fuzed weapon, 20,000 RR-170 self-protection chaff, 20,000 MJU-7B self-protection flares, support equipment, software development/integration, modification kits, spares and repair parts, flight test instrumentation, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical and logistics personnel services, and other related elements of logistical and program support. The estimated cost is $42 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

Oman requires a multi-role fighter aircraft and the appropriate munitions capable of performing all missions while maintaining readiness with an efficient maintenance and support infrastructure. The Royal Air Force of Oman must be capable of countering a large-scale maritime attack, to protect its coastline, desalinization plants, and oil fields. The proposed sale of the systems will enhance Oman's defensive capability against hostile attack and it will have no difficulty absorbing these weapons/munitions into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be Raytheon Company of Goeleta, California and The Boeing Company of St. Charles, Missouri. There are no offset agreements proposed in connection with this potential sale.

Implementation of this sale will require five U.S. Government and three contractor representatives for one-week intervals, twice annually, to participate in program management and technical reviews. Contractor representatives specializing in various skills and disciplines will be required to provide in-country support for an short period of time. The specific requirements for this support will be established during program definition between representatives of the USG and Oman.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 02-16

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The 20mm projectiles are improved ammunition specifically for U.S. high-performance aircraft cannon. The rimless, bottlenecked case may be of brass or steel and is electrically primed using the M52A3B1 primer. Projectiles are of conventional pattern and weigh from 98 to 105 g, the IMR 7013, WC 870 or WC 872 propellant charge being regulated to give a muzzle velocity of 1,030 m/s. Data on these projectiles is Unclassified.

2. The GBU-12 500 lb weapon contains laser guidance kit and tail assembly for MK-82 general-purpose bomb. The hardware is Unclassified and the ballistics are Confidential. The laser seeker allows the user to select a unique code for use in a multi-laser environment and reduce the probability of interference among multiple weapons.

3. The GBU-31(v)3/B Joint Direct Attack Munition (JDAM) is a tail kit under development to produce a weapon with high accuracy, all-weather, autonomous, conventional bombing capability. JDAM will upgrade the existing inventory of general purpose and penetrator unitary bombs, and a product improvement may add a terminal seeker to improve accuracy. Information on JDAM ranges in classification from Unclassified to Confidential.

4. The RR-170 Self-protection chaff is a passive expendable for self-protection of fighter aircraft to counter radar guided missiles. The data on the exact makeup of the chaff bundle ar Confidential, as are the techniques associated with countering various radars.

5. The MJU-7B Self- protection flare is an expendable for protection of fighter aircraft from heat-seeking air-to-air or surface to-air-missiles. The flare provides an alternate heat source for the missiles to track. The exact performance data of the flare are Confidential, as are the techniques for countering the various infrared missiles.

6. The MK-82 and MK-83 General purpose bombs are free-fall, unguided bombs used on a variety of fighter and bomber aircraft. These weapons rely on blast, fragmentation, and incendiary effects to neutralize ground-based targets. The data on these weapons are Unclassified.

7. The CBU-97/105 Sensor Fuzed Weapon is a cluster bomb weapon for use against light armor. This weapon utilizes "smart" technology to identify vehicles and equipment, and directs individual "bomblets" toward those particular targets. This leaves a "clean" battlefield for follow-on troops. The data on this weapon range from Unclassified to Confidential.

8. If a technologically advanced adversary were to obtain knowledge of the specific hardware in this proposed sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advance capabilities.

9. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification. Moreover, the benefits to be derived from this proposed sale, as outlined in the Policy Justification, outweigh the potential damage that could result if the sensitive technology were revealed to unauthorized persons.

[FR Doc. 02–10847 Filed 5–1–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–18]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–18 with attached transmittal and policy justification.

Dated: April 26, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

16 APR 2002
In reply refer to:
I-02/004293

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 02-18 and under separate cover, the classified documents thereto. This Transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Brazil for defense articles and service estimated to cost $909 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended, requires a description of any offset agreement with respect to this proposed sale. Section 36(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale is described in the enclosed confidential attachment.

Sincerely,

Richard J. Millies
Acting Director

Attachment
As stated

Separate Cover:
Classified Annex
Offset certificate

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 02-18

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser: Brazil**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$627 million
Other	$282 million
TOTAL	$909 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 12 F-16C/D Block 50+ aircraft with either the F100-PW-229 or F110-GE-129 engine and APG-68(V)9 FMS radars, two spare F100-PW-229 or two spare F110-GE-129 engines, 14 LANTIRN Targeting Pods (FMS variant), 14 LANTIRN Navigation Pods with Terrain Following Radar (TFR), 48 AIM-120C Advanced Medium Range Air-to-Air Missiles (AMRAAM), four AMRAAM training missiles, 12 M61 Vulcan cannon, 48 LAU-129 launchers, eight AN/ALQ-131 Countermeasures, LANTIRN Night Vision Goggle compatible cockpits, the capability to employ a wide variety of munitions, support equipment, software development/integration, modification kits, spares and repair parts, flight test instrumentation, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical and logistics personnel services, and other related requirements to ensure full program supportability**

(iv) **Military Department: Air Force (SRA)**

(v) **Prior Related Cases, if any: none**

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex under separate cover**

(viii) **Date Report Delivered to Congress: 17 APR 2002**

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Brazil – F-16C/D Block 50+ Aircraft

The Government of Brazil (GOB) has requested a possible sale of 12 F-16C/D Block 50+ aircraft with either the F100-PW-229 or F110-GE-129 engine and APG-68(V)9 FMS radars, two spare F100-PW-229 or two spare F110-GE-129 engines, 14 LANTIRN Targeting Pods (FMS variant), 14 LANTIRN Navigation Pods with Terrain Following Radar (TFR), 48 AIM-120C Advanced Medium Range Air-to-Air Missiles (AMRAAM) and four AMRAAM training missiles, 12 M61 Vulcan cannon, 48 LAU-129 launchers, eight AN/ALQ-131 Countermeasures, LANTIRN Night Vision Goggle compatible cockpits, the capability to employ a wide variety of munitions, support equipment, software development/integration, modification kits, spares and repair parts, flight test instrumentation, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical and logistics personnel services, and other related requirements to ensure full program supportability. The estimated cost is $909 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in Latin America.

The proposed sale of these F-16 aircraft will allow the Brazilian Air Force to maintain a strong defense while it continues its plans to modernize its shrinking inventory of aging aircraft. Operation of the F-16 will ensure a dramatic increase in exchange and interoperability opportunities between the Brazilian and US Air Forces. The GOB does not have the F-16 aircraft system capability currently in its inventory.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Lockheed Martin Tactical Aircraft Systems of Fort Worth, Texas. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this proposed sale will require the assignment of approximately five U.S. Government representatives to Brazil for approximately two years to assist in the delivery, acceptance, and deployment of the aircraft. There will be five U.S. Government and three contractor representatives for one-week intervals, twice annually, to participate in program management and technical reviews.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 02–10848 Filed 5–1–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Department of the Air Force HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the Study on Time Critical Targets. The purpose of the meeting is to allow the SAB and study leadership to meet with the leadership of AFRL's Directed Energy Division to discuss directed energy programs. The meeting will be closed under the provisions of Section 552b of Title 5, United States Code, because of the discussion of classified and contractor-proprietary information.

DATES: 3 May 2002.

ADDRESSES: Building 405, Air Force Research Laboratory, Kirtland, AFB NM 87117.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Ripperger, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington DC 20330–1180, (703) 697–4811.

Pamela D. Fitzgerald,
Air Force Federal Register Liaison Officer.

[FR Doc. 02–10823 Filed 5–1–02; 8:45 am]
BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the Predictive Battlespace Awareness (PBA) Study Information Integration Panel. The purpose of the meeting is to allow the SAB and study leadership to gather information from the Naval Warfare Defense Center and MITRE Corporation related to PBA information integration. Because of meeting classification level, this meeting will be closed to the public.

DATES: 10 May 2002, 1000–1430L.

ADDRESSES: MITRE Corporation, 202 Burlington Road, Bedford MA 01730.

FOR FURTHER INFORMATION CONTACT: Colonel Marian Alexander, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington DC 20330–1180, (703) 697–4811.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02–10824 Filed 5–1–02; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the Predictive Battlespace Awareness (PBA) Study Information Integration and Prediction/Confirmation Tools Panels. The purpose of the meeting is to allow the SAB and study leadership to gather information from JWAC related to PBA information integration and prediction/confirmation tools. Because of meeting classification level, this meeting will be closed to the public.

DATES: 2 May 2002, 1200–1600L.

ADDRESSES: JWAC, 1838 Frontage Road, Dahlgren VA 22448.

FOR FURTHER INFORMATION CONTACT: Colonel Marian Alexander, Air Force Scientific Advisory Board Secretariat, 1180 AirForce Pentagon, Rm 5D982, Washington DC 20330–1180, (703) 697–4811.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02–10825 Filed 5–1–02; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507(j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by April 29, 2002. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before July 1, 2002.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Karen_F._Lee@omb.eop.gov.* .

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (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, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. 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. ED 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 respondents, including through the use of information technology.

Dated: April 29, 2002.

John D. Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Reinstatement.

Title: Consolidated State Application/Consolidated State Annual Report.

Abstract: This information collection package describes the proposed critieria and procedures that govern the consolidated State application under which State educational agencies will apply to obtain funds for implementing Elementary and Secondary Education Act (ESEA) programs. The option of submitting a consolidated application for obtaining federal formula program grant funds is provided for in the reauthorized ESEA (No Child Left Behind—NCLB) Sections 9301–9306. This information collection package will guide the States in identifying the information and data required in the application.

Additional Information: An emergency clearance was sought for the Consolidated Application because grant funds need to be awarded to States on July 1, 2002 or soon thereafter. In order for the Department to award funds by July 1, an application must be made available to the States next week. If States do not have funds by the July 1, 2002 date, hardships will be imposed on States' educational planning and service delivery to local schools. In the Department's view, harm to the public would thus occur if this clearance was

not approved on an emergency basis. Although OMB has granted provisional clearance for this Consolidated Application under this emergency collection, the public may still provide comments regarding the Consolidated Application to OMB.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 52.

Burden Hours: 7,800.

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 1943. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address vivan.reese@ed.gov. 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 Kathy Axt at her internet address Kathy.Axt@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. 02–10956 Filed 5–1–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 3, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Karen_F._Lee@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: April 29, 2002.

John D. Tressler,

Leader, Regulatory Information Management Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision.

Title: Public Libraries Survey, 2002–2004.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 2,520.

Abstract: Mandated under PL 103–382, this survey collects annual descriptive data on the universe of public libraries in the U.S. and the Outlying Areas. Information such as public service hours per year, circulation of library books, etc., number of librarians, population of legal service area, expenditures for library collection, staff salary data, and access to technology are collected.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 1931. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address vivan.reese@ed.gov. 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 Kathy Axt at her internet address Kathy.Axt@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. 02–10957 Filed 5–1–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 3, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process

would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: April 29, 2002.

John D. Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: New.

Title: State Progress Report—School Renovation, IDEA, and Technology Grants Program.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 112.

Abstract: ED will use the information collected from States and Outlying areas to report to Congress on the progress of the School Renovation Program in achieving the legislative goals of improving school facilities and ensuring the health and safety of students and staff.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 1919. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* 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 Kathy Axt at her internet address *Kathy.Axt@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. 02–10958 Filed 5–1–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Availability of a Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory, Department of Energy (DOE).

ACTION: Notice of availability of a Financial Assistance Solicitation.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation No. DE–PS26–02NT41432, entitled ''FY2002 Joint Office of Energy Efficiency and Renewable Energy (EERE) and Office of Fossil Energy (FE) Science Initiative.'' The major goal of the Science Initiative is to advance research and development (R&D) of energy technologies by exploring and exploiting synergies among different research fields, technologies, investigator communities, and end-use applications. This cross-cutting approach seeks to widen the Department's R&D activities between energy efficient technologies and clean energy. This approach seeks to expand and formalize existing cooperation between EERE and FE.

DATES: The solicitation will be available on the ''Industry Interactive Procurement System'' (IIPS) webpage located at *http://e-center.doe.gov* on or about May 15, 2002.

ADDRESSES: Applicants can obtain access to the solicitation from IIPS address provided above or through DOE/NETL's website at *http://www.netl.doe.gov/business.*

FOR FURTHER INFORMATION CONTACT: D. Denise Riggi, MS I07, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 880, 3610 Collins Ferry Road, Morgantown, WV 26507–0880. E-mail Address: *driggi@netl.doe.gov.* Telephone Number: (304) 285–4241.

SUPPLEMENTARY INFORMATION: The Science Initiative is intended to focus funding and effort on ''bridge'' R&D that falls between exploratory research, traditionally the province of university researchers, and pre-commercial applied R&D, where private sector firms and research institutions normally devote their efforts. Often this middle ground of research—crucial to identifying and proving the feasibility of multiple potential applications of a given fundamental scientific discovery—does not receive sufficient emphasis. For example, there are situations where an existing technology has obvious potential for significant performance and design gains, ''if only'' an identified hurdle can be overcome by a breakthrough in the application of the science underlying the technology. The primary objective of this solicitation is to pursue ''bridge'' research and development (R&D), of interest to EERE and FE, with ultimate applications that will promote energy efficiency and clean energy. This category of R&D occupies the spectrum between exploratory science and pre-commercial applied R&D. There are four general areas of interest (1) Materials Sciences; (2) Fuels and Chemical Sciences; (3) Sensors and Controls Sciences, and (4) Energy Conversion Sciences. Once released, the solicitation will be available for downloading from the IIPS Internet page. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function, call the IIPS Help Desk at (800) 683–0751 or E-mail the Help Desk personnel at *IIPS_HelpDesk@e-center.doe.gov.* The solicitation will only be made available in IIPS, no hard (paper) copies of the solicitation and related documents will be made available.

Prospective applicants who would like to be notified as soon as the solicitation is available should subscribe to the Business Alert Mailing List at *http://www.netl.doe.gov/business.* Once you subscribe, you will receive an announcement by E-mail that the solicitation has been released to the public. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The actual solicitation document will allow for requests for explanation and/or interpretation.

Issued in Morgantown, WV on April 24, 2002.

Dale A. Siciliano,

Deputy Director, Acquisition and Assistance Division.

[FR Doc. 02–10845 Filed 5–1–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, May 16, 2002, 5:30 p.m.–9 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky

FOR FURTHER INFORMATION CONTACT: W. Don Seaborg, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6806.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda

5:30 p.m.
Informal Discussion

6 p.m.
Call to Order, Introductions; Approve March Minutes; Review Agenda

6:10 p.m.
DDFO's Comments
- Action Items
- Budget Update
- EM Project Updates
- CAB Recommendation Status
- Other

6:30 p.m.
Ex-officio Comments

6:40 p.m.
Public Comments and Questions

6:50 p.m.
Review of Action Items

7:05 p.m.
Break

7:15 p.m.
Task Force and Subcommittee Reports
- Groundwater/Surface Water Operable Unit
- Waste Operations Task Force
- Long Range Strategy/Stewardship
- Community Concerns
- Public Involvement/Membership

8 p.m.
Administrative Issues
- Review of Workplan
- Review of Next Agenda
- Federal Coordinator Comments

8:15 p.m.
Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat J. Halsey at the address or by telephone at 1–800–382–6938, #5. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided at maximum of five minutes to present their comments as the first item of the meeting agenda.

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–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8 a.m. and 5 p.m. on Monday thru Friday or by writing to Pat J. Halsey, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling her at 1–800–382–6938, #5.

Issued at Washington, DC on April 24, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–10844 Filed 5–1–02; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–147–000]

ANR Pipeline Company; Notice To Convene Meeting

April 26, 2002.

On January 18, 2002, ANR Pipeline Company filed revised tariff sheets that limits the liability of ANR and its shippers to actual damages in certain circumstances. On February 28, 2002, the Commission accepted and suspended the tariff sheet to be effective on or earlier of August 1, 2002, or a date specified in a further order of the Commission, subject to refund and conditions. The Commission's Dispute Resolution Service (DRS) convened a meeting of the parties on March 13, 2002 regarding the proposed tariff sheet. The DRS conducted a second session on April 23, 2002.

The DRS is scheduling a third session on May 2, 2002, commencing at 10:00 a.m., in Room 3M–3 at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. At this session, the parties will attempt to achieve resolution on appropriate tariff language in the above-captioned docket through assisted negotiation. If a party has any questions, please call Deborah Osborne at (202) 208–0831.

Magalie R. Salas,

Secretary.

[FR Doc. 02–10865 Filed 5–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1626–000]

Arizona Public Service Company; Notice of Filing

April 26, 2002.

Take notice that on April 23, 2002, Arizona Public Service Company (APS) tendered for filing revisions to its Open Access Transmission Tariff (OATT) in order to conform with the changes made by the Arizona Independent Scheduling Administrator Association (AISA) in FERC Docket No. ER02–348–000. APS requests an effective date of December 15, 2001.

A copy of this filing has been served on the AISA, the Arizona Corporation Commission and all parties listed on the Service List.

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 7, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–10860 Filed 5–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ02–3–000]

Bonneville Power Administration; Notice of Filing

April 26, 2002.

Take notice that on February 21, 2002, Bonneville Power Administration (Bonneville) has replaced Attachment D, Methodology for Completing a System Impact Study, to Bonneville's Open Access Transmission Tariff (OATT). Bonneville now seeks a declaratory order finding that its OATT, with the replacement Attachment D, continues to maintain its reciprocity status.

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 7, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–10861 Filed 5–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TX02–2–000]

Kiowa Power Partners, LLC; Notice of Filing

April 26, 2002.

Take notice that on April 26, 2002, Kiowa Power Partners, LLC (KPP) submitted an application under Section 210, 211, and 212 of the Federal Power Act, together with an Offer of Settlement between Kiowa and Oncor Electric Delivery Company (Oncor) that has been executed by Kiowa, an unexecuted Interconnection Agreement between Kiowa and Oncor, and a proposed draft order, seeking an order from the Federal Energy Regulatory Commission (Commission) directing Oncor to provide a physical interconnection of facilities and transmission services for Kiowa's 1,220 MW (summer rating) electric generating facility currently under construction in Pittsburg County, Oklahoma and approving the Offer of Settlement.

Kiowa states that this filing has been served via facsimile or hand delivery upon Oncor, the Electric Reliability Council of Texas, and the Public Utility Commission of Texas.

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 6, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–10856 Filed 5–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–78–000]

New York Municipal Power Agency v. New York State Electric & Gas Corp.; Notice of Complaint

April 26, 2002.

Take notice that on April 25, 2002, New York Municipal Power Agency (NYMPA) tendered for filing a complaint alleging that the New York State Electric & Gas Corporation (NYSEG) has failed to pay NYMPA members for oversupply of energy delivered under Schedule 4 of NYSEG's Open Access Transmission Tariff (OATT), during the period commencing on July 1, 1998 and concluding on November 17, 1999.

Copies of the filing were served upon the NYSEG and other parties who NYMPA knew may be expected to be affected by the complaint.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before May 15, 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 proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before May 15, 2002. 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, interventions and answers 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. 02–10859 Filed 5–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–159–000]

Williston Basin Interstate Pipeline Company; Notice of Application

April 26, 2002.

Take notice that on April 15, 2002, Williston Basin Interstate Pipeline Company (Williston Basin), 1250 West Century Avenue, Bismark, North Dakota 58503, pursuant to Sections 7(c) and 7(b) of the Natural Gas Act and the Regulations of the Federal Energy Regulatory Commission, filed an application for a Certificate of Public Convenience and Necessity authorizing the construction and operation of three natural gas storage injection/withdrawal wells and for authorization to abandon three existing natural gas storage injection/withdrawal wells in the Cedar Creek (Baker) Storage Field, Fallon County, Montana. The construction of the three new wells and the abandonment of the three existing wells should not alter the field's capacity or deliverability. This project is a continuation of Williston Basin's gas storage well replacement program for the Cedar Creek (Baker) Storage Field, which began in 2001. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance).

Any questions regarding the application should be directed to Keith A. Tiggelaar, Director of Regulatory Affairs, Williston Basin Interstate Pipeline Company, P.O. Box 5601, Bismark, North Dakota 58506–5601, telephone (701) 530–1560, e-mail: *keith.tiggelaar@wbip.com.*

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before May 17, 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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–10858 Filed 5–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–65–000, et al.]

Erie Boulevard Hydropower, L.P., et al.; Electric Rate and Corporate Regulation Filings

April 25, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Erie Boulevard Hydropower, L.P.

[Docket No. EC02–65–000]

Take notice that on April 19, 2002, Erie Boulevard Hydropower, L.P. (Erie) pursuant to Section 203 of the Federal Power Act, filed with the Federal Energy Regulatory Commission (Commission) an application seeking an order authorizing the acquisition of the transmission facilities associated with the 2.2 MW Newton Falls hydroelectric project owned by Newton Falls Holdings, LLC. Erie is a Delaware limited partnership which owns and operates 70 hydroelectric developments in the State of New York with a total related capacity of approximately 650 MW. The facilities to be acquired are located on the Oswegatchie River in St. Lawrence County, NY.

Comment Date: May 10, 2002.

2. Coastal Power International IV, Ltd.

[Docket No. EG02–122–000]

Take notice that on April 19, 2002, Coastal Power International IV, Ltd. (Coastal Power) filed with the Federal Energy Regulatory Commission (Commission), an application for determination of exempt wholesale generator (EWG) status pursuant to Part 365 of the Commission's regulations.

Comment Date: May 16, 2002.

3. Generadora Eléctrica Occidental S.A.

[Docket No. EG02–123–000]

Take notice that on April 19, 2002, Generadora Eléctrica Occidental S.A. (GEOSA) filed with the Federal Energy Regulatory Commission (Commission), pursuant to Part 365 of the Commission's regulations an application for determination of exempt wholesale generator (EWG) status as of the date that Elusa Power Investment Ltd. has completed its proposed acquisition of GEOSA.

Comment Date: May 16, 2002.

4. FPLE Forney, L.P.

[Docket No. EG02–124–000]

Take notice that on April 16, 2002, FPLE Forney, L.P. (the Applicant), with its principal office at 700 Universe Blvd., Juno Beach, Florida 33408, filed with the Federal Energy Regulatory Commission (Commission), an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant states that it is a Delaware limited partnership engaged directly and exclusively in the business of constructing and operating an approximately 1,750 MW gas-fired cogeneration facility to be located in Kaufman County, Texas. Electric energy produced by the facility will be sold at wholesale.

Comment Date: May 16, 2002.

5. AES NY, L.L.C, AES Eastern Energy, L.P., AES Creative Resources, L.P. and AEE 2, L.L.C.

[Docket Nos. ER99–1761–001, ER99–1773–002, ER99–2284–002]

Take notice that on April 19, 2002, AES Eastern Energy, L.P., AES Creative Resources, L.P., and AEE 2, L.L.C. tendered for filing a triennial market power analysis in compliance with AES NY, L.L.C., 86 FERC ¶61,002 (1999); Letter Order, Docket No. ER99–1761–000, Mar. 16, 1999; and Letter Order, Docket No. ER99–2284–000, Apr. 23, 1999.

Comment Date: May 10, 2002.

6. California Independent System Operator Corporation, California Independent System Operator Corporation, San Diego Gas & Electric Company

[Docket Nos. ER01–889–012, ER01–3013–004, and EL00–95–059]

Take notice that on April 17, 2002, the California Independent System Operator Corporation (ISO) tendered for filing amendments to its Employee Code of Conduct and Governors Code of Conduct.

This ISO states that this filing has been served upon the Public Utilities Commission of california, the California Energy Commission, the California Electricity Oversight Board, and all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff.

Comment Date: May 8, 2002.

7. TransAlta Energy Marketing (US) Inc.

[Docket No. ER01–3148–001]

Take notice that on April 22, 2002, in compliance with the Commission's March 29, 2002 letter order in Docket No. ER01–3148–000, TransAlta Energy Marketing (US) Inc. (TEMUS) submitted a request that the Commission accept for filing changes in the designation of Merchant Energy Group of the Americas, Inc.''s (MEGA) Rate Schedule FERC No. 1 to reflect TEMUS's succession to MEGA's rate schedule.

Comment Date: May 13, 2002.

8. American Electric Power

[Docket No. ER02–282–002]

Take notice that on April 22, 2002, American Electric Power Service Corporation (AEPSC), tendered for filing with the Federal Energy Regulatory Commission (Commission) a Facilities, Operation and Maintenance Agreement (Facility Agreement) dated June 1, 2001, between AEP, agent for Columbus Southern Power Company (CSP) and Buckeye Rural Electric Cooperative, Inc. (BREC) and Buckeye Power, Inc. (Buckeye).

The Facility Agreement provides for the establishment of a new BREC delivery point, pursuant to provisions of the Power Delivery Agreement (PDA) between CSP, Buckeye, The Cincinnati Gas & Electric Company, The Dayton Power and Light Company, Monongahela Power Company, Ohio Power Company and Toledo Edison Company, dated January 1, 1968. AEP requested an effective date of June 8, 2001 for the Facility Agreement.

The Facility Agreement was accepted for filing effective June 8, 2001 by Order dated December 20, 2001. This filing complies with the Commission's subsequent Order issued March 22, 2002 rejecting AEP's request for waiver of certain filing requirements.

AEP states that copies of its compliance filing were served upon BREC, Buckeye and the Public Utilities Commission of Ohio.

Comment Date: May 13, 2002.

9. Duke Energy Marshall, LLC

[Docket No. ER02–530–002]

Take notice that on April 22, 2002, Duke Energy Marshall, 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 13, 2002.

10. DTE East China, LLC

[Docket No. ER02–971–000]

Take notice that on April 19, 2002, DTE East China, LLC tendered for filing under Section 205 of the Federal Power Act an amendment to its application in the above-referenced docket requesting that the Commission hold in abeyance its request for market-based rate authorization.

Comment Date: May 10, 2002.

11. Virginia Electric and Power Company

[Docket No. ER02–1474–002]

Take notice that on April 22, 2002, Virginia Electric and Power Company, doing business as Dominion Virginia Power, tendered for filing a revised cover sheet and Section 2.1 to modify the proposed effective date of an executed Generator Interconnection and Operating Agreement (Interconnection Agreement) between Dominion Virginia Power and Industrial Power Generating Corporation (Ingenco).

Dominion Virginia Power respectfully requests that the Commission allow the Interconnection Agreement, as revised, to become effective on June 1, 2002. Copies of the filing were served upon Ingenco and the Virginia State Corporation Commission.

Comment Date: May 13, 2002.

12. Virginia Electric and Power Company

[Docket No. ER02–1480–001]

Take notice that on April 22, 2002, Virginia Electric and Power Company, doing business as Dominion Virginia Power, tendered for filing a revised cover sheet and Section 2.1 to modify the proposed effective date of an executed Generator Interconnection and Operating Agreement (Interconnection Agreement) between Dominion Virginia Power and Industrial Power Generating Corporation (Ingenco).

Dominion Virginia Power respectfully requests that the Commission allow the Interconnection Agreement, as revised, to become effective on June 1, 2002. Copies of the filing were served upon Ingenco and the Virginia State Corporation Commission.

Comment Date: May 13, 2002.

13. Virginia Electric and Power Company

[Docket No. ER02–1601–000]

Take notice that on April 22, 2002, Virginia Electric and Power Company (Dominion Virginia Power) tendered for filing an executed Generator Interconnection and Operating Agreement (Interconnection Agreement) with Industrial Power Generating Corporation (Ingenco). The Interconnection Agreement sets forth the terms and conditions governing the interconnection between Ingenco's generating facility and Dominion Virginia Power's transmission system.

Dominion Virginia Power requests that the Commission waive its notice of filing requirements and accept this filing to make the Interconnection Agreement effective on July 1, 2002. Copies of the filing were served upon Ingenco and the Virginia State Corporation Commission.

Comment Date: May 13, 2002.

14. Virginia Electric and Power Company

[Docket No. ER02–1602–000]

Take notice that on April 22, 2002, Virginia Electric and Power Company (Dominion Virginia Power) tendered for filing an executed Generator Interconnection and Operating Agreement (Interconnection Agreement) with Industrial Power Generating Corporation (Ingenco). The Interconnection Agreement sets forth the terms and conditions governing the interconnection between Ingenco's generating facility and Dominion Virginia Power's transmission system.

Dominion Virginia Power requests that the Commission waive its notice of filing requirements and accept this filing to make the Interconnection Agreement effective on July 1, 2002. Copies of the filing were served upon Ingenco and the Virginia State Corporation Commission.

Comment Date: May 13, 2002.

15. Virginia Electric and Power Company

[Docket No. ER02–1603–000]

Take notice that on April 22, 2002, Virginia Electric and Power Company (Dominion Virginia Power) tendered for filing an executed Generator Interconnection and Operating Agreement (Interconnection Agreement) with Industrial Power Generating Corporation (Ingenco). The Interconnection Agreement sets forth the terms and conditions governing the interconnection between Ingenco's generating facility and Dominion Virginia Power's transmission system.

Dominion Virginia Power requests that the Commission waive its notice of filing requirements and accept this filing to make the Interconnection Agreement effective on July 1, 2002. Copies of the filing were served upon Ingenco and the Virginia State Corporation Commission.

Comment Date: May 13, 2002.

16. Virginia Electric and Power Company

[Docket No. ER02–1604–000]

Take notice that on April 22, 2002, Virginia Electric and Power Company (Dominion Virginia Power) tendered for filing an executed Generator Interconnection and Operating Agreement (Interconnection Agreement) with Industrial Power Generating Corporation (Ingenco). The Interconnection Agreement sets forth the terms and conditions governing the interconnection between Ingenco's generating facility and Dominion Virginia Power's transmission system.

Dominion Virginia Power requests that the Commission waive its notice of filing requirements and accept this filing to make the Interconnection Agreement effective on July 1, 2002. Copies of the filing were served upon Ingenco and the Virginia State Corporation Commission.

Comment Date: May 13, 2002.

17. AES Alamitos, L.L.C., AES Huntington Beach, L.L.C., and AES Redondo Beach, L.L.C.

[Docket No. ER02–1605–000]

Take notice that on April 19, 2002, pursuant to Section 205 of the Federal Power Act and the Commission's Orders in the referenced dockets, AES Alamitos, L.L.C., AES Huntington Beach, L.L.C., and AES Redondo Beach, L.L.C., filed Amendment No. 2 dated as of March 5, 2002, to the Capacity Sale and Tolling Agreement dated as of May 1, 1998 (Tolling Agreement), and filed executed Corporate Guarantees to replace Schedules 19.1 and 19.2 of the Tolling Agreement.

Comment Date: May 10, 2002.

18. Southern California Edison Company

[Docket No. ER02–1606–000]

Take notice, that on April 22, 2002, Southern California Edison Company (SCE) tendered for filing the Amended and Restated Letter Agreement (Amended Agreement) between SCE and Blythe Energy LLC (Blythe Energy). The Amended Agreement reflects SCE's and Blythe Energy's (Parties) negotiations to amend the original letter agreement in order to incorporate into the Amended Agreement an interim arrangement between the Parties pursuant to which SCE will engineer, design, procure, and commence construction and installation of system facilities to interconnect Blythe Energy's 520 MW generation project to the Western Area Power Administration's transmission system.

SCE requests the Commission to assign an effective date of April 11, 2002 to the Amended Agreement. Copies of this filing were served upon the Public Utilities Commission of the State of California and Blythe Energy.

Comment Date: May 13, 2002.

19. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1607–000]

Take notice that on April 22, 2002, Midwest Independent Transmission

System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) regulations, submitted for filing Service Agreements for the transmission service requested by Engage Energy America LLC.

A copy of this filing was sent to Engage Energy America LLC.

Comment Date: May 13, 2002.

20. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1608–000]

Take notice that on April 22, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) regulations, submitted for filing Service Agreements for the transmission service requested by Northern Indiana Public Service Company.

A copy of this filing was sent to Northern Indiana Public Service Company.

Comment Date: May 13, 2002.

21. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1609–000]

Take notice that on April 22, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) regulations, submitted for filing Service Agreements for the transmission service requested by Morgan Stanley Capital Group Inc.

A copy of this filing was sent to Morgan Stanley Capital Group Inc.

Comment Date: May 13, 2002.

22. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1610–000]

Take notice that on April 22, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) regulations, submitted for filing Service Agreements for the transmission service requested by City of Hamilton, Ohio.

A copy of this filing was sent to City of Hamilton, Ohio.

Comment Date: May 13, 2002.

23. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1611–000]

Take notice that on April 22, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) regulations, submitted for filing Service Agreements for the transmission service requested by J. Aron & Company.

A copy of this filing was sent to J. Aron & Company.

Comment Date: May 13, 2002.

24. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1612–000]

Take notice that on April 22, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) regulations, submitted for filing Service Agreements for the transmission service requested by Conectiv Energy Supply, Inc.

A copy of this filing was sent to Conectiv Energy Supply, Inc.

Comment Date: May 13, 2002.

25. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1613–000]

Take notice that on April 22, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) regulations, submitted for filing Service Agreements for the transmission service requested by IDACORP Energy L.P.

A copy of this filing was sent to IDACORP Energy L.P.

Comment Date: May 13, 2002.

26. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1614–000]

Take notice that on April 22, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) regulations, submitted for filing Service Agreements for the transmission service requested by Ohio Valley Power Scheduling.

A copy of this filing was sent to Ohio Valley Power Scheduling.

Comment Date: May 13, 2002.

27. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1615–000]

Take notice that on April 22, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) regulations, submitted for filing Service Agreements for the transmission service requested by Tractebel Energy Marketing, Inc.

A copy of this filing was sent to Tractebel Energy Marketing, Inc.

Comment Date: May 13, 2002.

28. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1616–000]

Take notice that on April 22, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) regulations, submitted for filing Service Agreements for the transmission service requested by TransCanada Power.

A copy of this filing was sent to TransCanada Power. *Comment Date*: May 13, 2002.

29. Southern Company Services, Inc.

[Docket No. ER02–1622–000]

Take notice that on April 22, 2002, Southern Company Services, Inc., tendered for filing a Service Agreement with Entergy Services, Inc. for long-term service between Southern Companies and Entergy Services, Inc. The service agreement has been entered into under Southern Companies' Market-Based Rate Tariff, Southern Company Services, Inc., FERC Electric Tariff Second Revised Volume No. 4, with an effective date of June 1, 2002.

Comment Date: May 13, 2002.

30. Alliant Energy Corporate Services, Inc.

[Docket No. ER02–1623–000]

Take notice that on April 22, 2002, Alliant Energy Corporate Services, Inc. (AECS) on behalf of Interstate Power Company (IPC), IES Utilities Inc. (IES) and Wisconsin Power and Light (WPL) tendered for filing a Negotiated Capacity Transaction (Agreement) between IPC and WPL for the period May 1, 2002 through April 30, 2003. The Agreement was negotiated to provide service under the Alliant Energy System Coordination and Operating Agreement among IES, IPC, WPL and Alliant Energy.

Comment Date: May 13, 2002.

31. PJM Interconnection, L.L.C.

[Docket No. RT01–98–007]

Take notice that on April 19, 2002, PJM Interconnection, L.L.C. (PJM) supplemented its March 28, 2002 filing in this docket with several additional conforming changes to the PJM Open Access Transmission Tariff (Tariff), Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (Operating Agreement), and PJM ''Transmission Owners Agreement'' that are necessary to reflect the April 1, 2002 implementation of the ''PJM West'' arrangement approved by the Commission in its July 12, 2001, January 30, 2002, and March 1, 2002 orders in this proceeding.

Copies of this filing have been served on all PJM Members and the state electric regulatory commissions in the PJM control area and Allegheny Power System service area.

Comment Date: May 28, 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. 02–10807 Filed 5–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–415–000]

East Tennessee Natural Gas Company; Notice of Availability of the Draft Environmental Impact Statement for the Proposed Patriot Pipeline Project

April 26, 2002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a Draft Environmental Impact Statement (DEIS) on the natural gas pipeline facilities proposed by East Tennessee Natural Gas Company (East Tennessee) in the above-referenced docket.

The DEIS was prepared to satisfy the requirements of the National Environmental Policy Act (NEPA) and the Commission's implementing regulations under Title 18, Code of Federal Regulations (CFR), Part 380. The staff concludes that approval of the proposed project with the appropriate mitigating measures as recommended, would have limited adverse environmental impact. The DEIS also evaluates alternatives to the proposed Project, and requests comments on them.

The DEIS addresses the potential environmental effects of the construction and operation of the Patriot Project which consists of two components, the Mainline Expansion and the Patriot Extension.

Mainline Expansion

- Construct approximately 87.3 miles of pipeline loops, ranging in size from 20 to 24 inches in diameter;
- Uprate approximately 77.2 miles of pipeline;
- Abandon and re-lay approximately 22.5 miles of pipeline;
- Construct five new compressor stations; and
- Modify 10 existing compressor stations;

Patriot Extension

- Construct approximately 99.7 miles of new pipeline (24- and 16-inch-diameter);
- Three new meter stations; and
- Associated mainline valves and appurtenant facilities in Virginia and North Carolina.

The staff has also evaluated 12 major route alternatives. Nine of these were removed from further consideration. The remaining three major route alternatives appear to have environmental benefits relative to the proposed route. We [1] are requesting public comment on these three major route alternatives. We analyzed seven route variations; five were removed from further consideration, and two are recommended over the proposed route. We examined four alternative compressor station sites; two were removed from consideration after our analyses and two are recommended over the proposed sites. We evaluated two alternative interconnect sites for the proposed Transco interconnect, both of which were removed from further consideration.

Comment Procedures and Public Meetings

Any person wishing to comment on the DEIS may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send one original and two copies of your comments to: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of the Gas Branch 2, PJ–11.2
- Reference Docket No. CP01–415–000
- Mail your comments so that they will be received in Washington, DC on or before June 17, 2002.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission encourages electronic filing of any comments or interventions or protests to this proceeding. Comments may also 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 Internet web site (*http://www.ferc.gov*) under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments, you will need to create an account, which can be created by clicking on ''Login to File'' and the ''New User Account.''

In addition to accepting written comments, the Commission will hold five public meetings at the times and locations shown below to receive

[1] ''We,''''us,'' and ''our'' refer to the environmental staff of the Office of Energy Projects, part of the Commission staff.

comments on this DEIS. Interested groups and individuals are encouraged to attend the meetings and comment on the environmental impacts described in the DEIS.

Date and time	Location	Phone
Tuesday, May 21, 2002 7 p.m	Patrick Henry Community College, Theatre, 645 Patriot Avenue, Martinsville, VA 24115.	(276) 638–8777
Wednesday, May 22, 2002 7 p.m	Patrick County Community Center, Rotary Field Memorial, Building Gymnasium, 420 Woodland Drive, Stuart, VA 24171.	(276) 694–3917
Thursday, May 23, 2002 7 p.m	Veterans of Foreign Wars, Grover King Post 1115, 701 West Stuart Drive, Hillsville, VA 24343.	(276) 728–2911
Wednesday, May 29, 2002 7 p.m	Mountain Arts Community Center Theater, 809 Kentucky Avenue.	(423) 886–1959
Thursday, May 30, 2002 7 p.m	Slater Community Center Auditorium, 325 McDowell Street, Bristol, TN 37620.	(423) 764–4023

After comments have been reviewed, any significant new issues will be investigated. When the DEIS has been modified as appropriate, the staff will publish and distribute a Final Environmental Impact Statement (FEIS). The FEIS will contain the staff's responses to timely comments filed on the DEIS.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a Motion to Intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (see 18 CFR 385.214).

Anyone may intervene in this proceeding based on this DEIS. You must file your request to intervene as specified above.[2] You do not need intervenor status to have your comments considered.

All intervenors, agencies, elected officials, local governments, special interest groups, Indian tribes, affected landowners, local libraries, media, and anyone providing written comments on the DEIS will receive a copy of the FEIS. If you do not wish to comment on the DEIS but wish to receive a copy of the FEIS, you must write to the Secretary of the Commission, indicating this request.

The DEIS has been placed in the public files of the FERC and is available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 208–1371.

A limited number of copies are available from the Public Reference and Files Maintenance Branch identified above. In addition, copies of the DEIS have been mailed to Federal, state, and local government agencies; elected officials, environmental and public interest groups; affected landowners who requested a copy of the DEIS; Native American tribes that might attach religious and cultural significance to historic properties in the area of potential effect; local libraries and newspapers; and the Commission's list of parties to this proceeding. Members of the public who signed petitions but did not request a copy of the DEIS were sent the Executive Summary. Additional information about the proposed project is available from the Commission's Office of External Affairs, at (202) 208–1088 or on the FERC Internet web site (*www.ferc.gov*), using the ''RIMS'' link to information in this docket number. Click on the ''RIMS'' link, select ''Docket #'' from the RIMS menu, and follow the instructions. For assistance with access to RIMS, the RIMS help line can be reached at (202) 208–2222.

Similarly, the ''CIPS'' link on the FERC Internet web site provides access to the texts of formal documents issued by the Commission with regard to this docket, such as orders, notices, and rulemakings. From the FERC Internet web site, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS help line can be reached at (202) 208–2222.

Magalie R. Salas,

Secretary.

[FR Doc. 02–10857 Filed 5–1–02; 8:45 am]

BILLING CODE 6717–01–P

[2] Interventions also may be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Scoping Meetings and Site Visit and Solicitation of Scoping Comments

April 26, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application*: New Major License.

b. *Project No.*: 233–081.

c. *Date Filed*: October 19, 2001.

d. *Applicant*: Pacific Gas and Electric Company.

e. *Name of Project*: Pit 3, 4, and 5 Hydroelectric Project.

f. *Location*: On the Pit River, in Shasta County, near the community of Burney and the Intermountain towns of Fall River Mills and McArthur, California. The project includes 746 acres of lands of the United States, which are administered by the Forest Supervisor of the Shasta Trinity National Forest and the Forest Supervisor of the Lassen National Forest.

g. *Filed Pursuant to*: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact*: Mr. Randal Livingston, Lead Director, Hydro Generation Department, Pacific Gas and Electric Company, P.O. Box 770000, N11C, San Francisco, CA 94177, (415) 973–6950.

i. *FERC Contact*: John Mudre, (202) 219–1208 or *john.mudre@ferc.gov*.

j. *Deadline for filing scoping comments*: June 24, 2002.

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. Scoping comments 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. This application is not ready for environmental analysis at this time.

l. The existing Pit 3, 4, 5 Project consists of three hydraulically-connected developments, with a total of four dams, four reservoirs, three powerhouses, associated tunnels, surge chambers and penstocks. The powerhouses contain nine generating units with a combined operating capacity of about 325 MW. No new construction is proposed.

The Pit 3 development consists of: 1) the 1,293-acre Pit 3 Reservoir, known as Lake Britton, with a gross storage capacity of 41,877 acre-feet at elevation 2,737.5 feet National Geodetic Vertical Datum (NGVD) and a useable capacity of 14,443 acre-feet; 2) the Pit 3 Dam, a concrete gravity structure with a crest length of 494 feet and a maximum height of 130 feet, which includes a 254-foot-wide ogee spillway with three bays that contain six-foot-high inflatable rubber gates and three low level outlets each with a 7-foot by 7-foot gate; 3) a reinforced concrete intake structure located upstream of the dam with steel trashracks and two 8-foot-wide by 18-foot-high slide gates; 4) a 19-foot-diameter concrete tunnel in two sections, with a total length of 21,203 feet; 5) a surge chamber that ranges from 64 to 94 feet in diameter and has a 10-foot-diameter riveted steel overflow pipe that extends to the river; 6) three penstocks, 9 to 11 feet in diameter and 600 feet in length; 7) an 84-feet by 194-foot reinforced concrete, multi-level powerhouse; 8) three generating units, driven by three vertical Francis turbines, each with a normal operating capacity of 23.3 MW for a total capacity of 69.9 MW; and 9) appurtenant facilities. One of the low level sluices has been modified to provide a minimum flow release.

The Pit 4 development consists of: (1) The 105-acre Pit 4 Reservoir, with a gross storage capacity of 1,970 acre-feet at elevation 2,422.5 feet NGVD and a useable storage of 1,382 acre-feet; (2) The Pit 4 Dam, consisting of a gravity-type overflow section, including a spillway with two drum gates, three 7-foot-wide by 7-foot-high low level sluice gates, and a 42-inch-diameter minimum flow outlet, 213 feet in length with a maximum height of 108 feet, and a slab-and-buttress-type section, 202 feet in length with a maximum height of 58 feet; (3) A reinforced concrete intake structure located upstream of the dam with steel trashracks and one 15-foot-wide by 19-foot-high roller gate; (4) A 19-foot-diameter pressure tunnel with a total length of 21,408 feet; (5) Two 12-foot-diameter, riveted pipe penstocks, 780 feet in length, that taper to 9 feet in diameter; (6) A 63-foot-diameter reinforced concrete surge chamber with a 16-foot-diameter central riser; (7) A four-level, 84.5-foot by 155-foot steel-framed, reinforced concrete powerhouse; 8) two generating units, driven by two vertical Francis turbines, each with a combined normal operating capacity of 47.5 MW for a total capacity of 95 MW; and (9) Appurtenant facilities.

The Pit 5 development consists of: (1) The 32-acre Pit 5 Reservoir, with a gross storage capacity of 314 acre-feet at elevation 2,040.5 feet NGVD and a useable storage capacity of 202 acre-feet; (2) The Pit 5 Dam, with a concrete gravity overflow structure 340 feet in length and a maximum height of 67 feet which includes four spill bays with 50-foot-wide by 26.3-foot-high steel wheel gates and a 30-inch diameter outlet for minimum flow releases; (3) A reinforced concrete intake structure located upstream of the dam with steel trashracks and a 15-foot-wide by 19-foot-high gate; (4) The 19-foot-diameter Tunnel No. 1 with a length of 5,109 feet; (5) The 48-acre Pit 5 Tunnel Reservoir (also known as the Open Conduit), with a gross storage capacity of 1,044 acre-feet at elevation 2,040.5 feet NGVD and a useable storage capacity of 645 acre-feet; (6) The Pit 5 Tunnel Reservoir Dam, a compacted earth fill embankment structure that is approximately 3,100 feet long and 66 feet high, and includes a reinforced concrete, siphon spillway with six 8-foot-wide by 3.5-foot-high barrels and a separate 30-inch diameter outlet pipe to drain the reservoir; (7) The 19-foot-diameter Pit 5 Tunnel No. 2 consisting of circular and horseshoe-shaped sections with a total length of 23,149 feet; (8) A reinforced concrete surge chamber that varies from 40 to 88 feet in diameter and has a 16-foot-diameter central riser; (9) Four penstocks that range from 7.5 to 9 feet in diameter that are 1,380 feet in length; (10) A 90-foot by 266.5-foot steel-framed, reinforced concrete, multi-level powerhouse; (11) Four generating units, driven by four vertical Francis turbines, each with a combined normal operating capacity of 40 MW for a total capacity of 160 MW; and 12) appurtenant facilities. The outlet of Tunnel No. 1 and the inlet for Tunnel No. 2 are located in the bed of the Tunnel Reservoir.

m. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link-select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. *Scoping Process*: The Commission intends to prepare an Environmental Assessment (EA) on the project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposes action.

Scoping Meetings

The Commission will hold three scoping meetings to solicit your comments, oral and written, on Scoping Document 1 and the overall scope of the EA. Two evening meetings will be held. The first evening meeting will be held on May 22, 2002, from 7:00 p.m. to 9:00 p.m. at the Burney Community Center at 37477 Main Street, Burney, California 96013. The second evening meeting will be held on May 23, 2002, from 7:00 p.m. to 9:00 p.m. at the Big Bend Community Center at 30284 Hot Springs Row, Big Bend, California 96011. A morning meeting will be held on May 23, 2002, from 9:30 a.m. to noon at the Best Western Hilltop Inn, 2300 Hilltop Drive, Redding, California 96002. We invite all interested agencies, non-governmental organizations, Native American tribes, and individuals to attend one or more of the meetings.

At the scoping meetings, the staff will (1) summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meetings participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public in issues that should by analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

The meetings will be recorded by a stenographer and will become part of the formal record for this Commission proceeding.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and assist the staff in defining and clarifying the issues to be addressed in the EA.

Site Visit

We also will visit the project site on May 22, 2002, at 8 a.m., meeting at the Jamo Boat Launch, off of High 89 at Lake Britton; the public is invited to attend. Individuals attending the site visit should provide their own transportation and bring a lunch. Anyone with questions about the site visit should contact Mr. Jim Holeman of PG&E at (415) 973–6891.

Magalie R. Salas,

Secretary.

[FR Doc. 02–10862 Filed 5–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of Licenses and Solicitation of Comments

April 26, 2002.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Application Type:* Transfer of Licenses.

b. *Project Nos:* 10822–003, 10823–003, 11143–013, 11168–012, and 11547–009.

c. *Date Filed:* April 15, 2002.

d. *Applicants:* Summit Hydropower and Summit Hydropower, Inc. (transferors) and Summit Hydro, LLC and Glen Falls Hydro, LLC (transferees).

e. *Project Names and Locations:* The Collinsville Upper and Lower Projects are on the Farmington River in Hartford County, Connecticut. The Glen Falls Project is on the Moosup River, the Dayville Pond Project is on the Five Mile River, and the Hale Project is on the Quinebaug River, all in Windham County, Connecticut. The projects do not occupy federal or tribal lands.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r)).

g. *Applicant Contact:* Duncan S. Broatch, Summit Hydro, LLC, 67 May Brook, Woodstock, CT 06281, (860) 928–1978.

h. *FERC Contact:* James Hunter, (202) 219–2839.

i. *Deadline for filing comments, protests, and interventions:* May 29, 2002.

All documents (original and eight copies) should be filed with: Magalie Roman 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 noted project numbers on any comments or motions filed.

j. *Description of Proposal:* The Applicants request approval for transfer of the licenses for Project Nos. 10822, 10823, 11168, and 11547 from Summit Hydropower to Summit Hydro, LLC and of the license for Project No. 11143 from Summit Hydropower to Glen Falls Hydro, LLC, in connection with the proposed reorganization of the licensee.

All five licenses were issued to ''Summit Hydropower,'' a partnership. However, on March 3, 1993, the partners formed Summit Hydropower, Inc. in place of the partnership, and the corporation then acquired all of the partnership's assets. As the licenses for Project Nos. 11143 and 11168 had been issued prior to March 3, 1993, the transfer applications for those two projects will also be considered requests for after-the-fact approval of the transfers that resulted from the partnership-to-corporation change. The remaining licenses were erroneously issued in the partnership's name after March 3, 1993.

k. 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). A copy is also available for inspection and reproduction at the address in item g above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

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.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

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. 02–10864 Filed 5–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2042–013]

PUD #1 of Pend Oreille County; Notice of Meeting for the Box Canyon Hydroelectric Project

April 26, 2002.

a. *Date and Time of Meeting:* May 16, 2002, 10 a.m. PST to 2 p.m. PST

b. *Place:* By copy of this notice we are inviting U.S. Forest Service, U.S. Department of the Interior, Washington Department of Fish & Wildlife and Idaho Department of Fish & Game, Kalispel Tribe of Indians, and other interested parties to participate in a conference, either in person at the Airport Ramada Inn, Spokane, WA, or via telephone from their location.

c. *FERC Contact:* Timothy Welch at (202) 219–2666: *timothy.welch@ferc.gov*.

d. *Purpose of the Meeting:* The Federal Energy Regulatory Commission seeks further clarification of resource agency comments, mandatory conditions, and recommended protection, mitigation, and enhancement measures filed in response to our Notice of Ready for Environmental Analysis issued September 4, 2002. At this time, we seek further clarification of estimated costs for implementation of these recommended measures in order to complete the developmental analysis required for our NEPA document.

e. *Agenda:* Clarification and confirmation of the assumptions underlying the estimated costs to implement the cited environmental measures.

f. All local, state, and federal agencies, Indian Tribes and interested parties, are hereby invited to participate in this meeting. Those wishing to audit by teleconference, may do so. In either case, please register with either Timothy Welch at the number listed above or with Leslie Smythe at (781) 444–3330 ext.481: *lsmythe@louisberger.com* No later than close of business May 14, 2002.

Magalie R. Salas,

Secretary.

[FR Doc. 02–10863 Filed 5–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD02–13–000]

Notice of Technical Conference and Agenda; Southeast Energy Infrastructure Conference

April 26, 2002.

As announced in the Notice of Conference issued on March 20, 2002, the Federal Energy Regulatory Commission (FERC) will hold a conference on May 9, 2002 to discuss issues regarding energy infrastructure in the southeastern states. These states include Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, Arkansas, and Tennessee. This one-day conference will begin at 10 a.m.[1] and conclude at approximately 5 p.m., and will be held at the Orlando World Center Marriott Resort and Conference Center, 8701 World Center Drive, Orlando, Florida (1–800–621–0638). All interested persons are invited to attend.

The conference will focus on the adequacy of the electric, gas and other energy infrastructure in the Southeast, and related matters. The FERC Commissioners will attend, and the Governors and state utility commissioners of the southeastern states have been invited to participate. The goal is to identify present infrastructure conditions, needs, investment and other barriers to expansion, and environmental and landowner concerns. We look forward to an informative discussion of the issues to clarify how the FERC can facilitate and enhance a comprehensive, collaborative approach to energy infrastructure development and reliability for the southeastern states. The Federal Energy Regulatory Commission believes that without a well-functioning infrastructure, our ability to meet America's energy needs could be compromised and, secondarily, the healthy, sustainable wholesale markets we are working toward cannot succeed.

The conference Agenda is appended to this Notice. As indicated, the purpose of the conference is to discuss regional infrastructure issues among the panelists, and federal and state officials. It is not intended to deal with issues pending in individually docketed cases before the Commission, such as applications involving hydropower, natural gas certificates, or the formation of Regional Transmission Organizations (RTOs). Therefore, all participants are requested to address the agenda topics and avoid discussing the merits of individual proceedings.

Opportunities for Listening to and Obtaining Transcripts of the Conference

The Capital Connection will offer this meeting live via telephone coverage for a fee. There will not be live video coverage or videotapes of the conference. For more information about Capitol Connection's phone bridge, contact David Reininger or Julia Morelli (703–993–3100), or go to *www.capitolconnection.gmu.edu*.

Audio tapes of the meeting will be available from VISCOM (703–715–7999).

Additionally, transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646), for a fee. They will be available for the public on the Commission's RIMS system two weeks after the conference.

* * * * *

A reminder to please register for the conference online on the Commission web site at http://www.ferc.gov/calendar/courses-outreach/coursesoutreach.htm. Scroll down and click on ''Southeast Energy Infrastructure Conference''. There is *no* registration fee.

Questions about the conference program should be directed to:

Carol Connors, Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, *carol.connors@ferc.gov*.

Magalie R. Salas,

Secretary.

Federal Energy Regulatory Commission

[Docket No. AD02–13–000]

Southeast Energy Infrastructure Conference; Conference Agenda

The Orlando World Center Marriott Resort and Conference Center, 8701 World Center Drive, Orlando, Florida, May 9, 2002.

I. Opening Remarks and Introductions—10 a.m. to 10:30 a.m.

Chairman Pat Wood, Commissioner
Nora Mead Brownell, Commissioner
William Massey and Commissioner
Linda Breathitt

II. Overview of Current Energy Infrastructure—10:30a.m. to 10:45 a.m.

- Jeff Wright, Office of Energy Projects, FERC

III. Forecasts for Future Energy Use and Economic Impacts of Energy—10:45 a.m. to 11:15 a.m.

What is the Southeast region's economic and demographic outlook over the coming decade?

What is the forecasted growth in energy needs?

How much energy is available and at what prices?

Where is additional energy needed?

- Mary Novak, Managing Director—Energy Consulting, DRI–WEFA
- Scott Sitzer, Director, Coal & Electric Power Div., EIA

IV. Near-term Energy Infrastructure Needs and Adequacy of Supplies—11:15 a.m. to 12:45 p.m.

What are the high priority infrastructure needs for today?

Where are additional transmission lines needed?

Can you identify areas or locations having infrastructure constraints that affect energy reliability?

What areas have a shortage of pipeline capacity? How often do customers' pipeline capacity needs go unsatisfied?

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[1] This reflects a change in starting time from the March 20, 2002 notice.

What are the ramifications if the high-priority infrastructure needs in the region are not built?

Roundtable discussion on infrastructure improvements needed in electric, hydroelectric, and natural gas facilities.

- Walter Revell, Chairman & CEO, H.J. Ross Associates, Inc.
- William K. Newman, Senior Vice President, Transmission Planning & Operations, Southern Company Services, Inc
- Terry Boston, Executive Vice President, Transmission/Power Supply Group, Tennessee Valley Authority
- David P. Pursell, Director of Research, Simmons & Company, International
- Toi Anderson, Manager, Project Development (Southern Markets) Williams Gas Pipeline
- Paula Rosput, Chairman & CEO, AGL Resources

Lunch Break—12:45 p.m. to 2 p.m.

V. Identifying Factors Affecting Adequate Energy Infrastructure, Investment, and Alternative Actions—2 p.m. to 3:30 p.m.

Why is needed infrastructure delayed or not being built?

What barriers have to be overcome?

What can state and federal governments do to overcome these barriers?

What planning process changes would you recommend to address the issues?

Do alternatives exist to new infrastructure projects?

Roundtable discussion of energy infrastructure barriers (e.g., barriers to siting, construction, or investment) and alternatives to construction.

- Frank Gallaher, President, Fossil Operations & Transmission, Entergy
- John Boone, Senior Vice President, Gulf South Pipeline Co.
- Hamilton ''Buck'' Oven, Administrator, Siting Coordination Office, Florida Department of Environmental Protection
- Gini Cooper, Chairman, Floyd Unified Landowners Association
- Richard Roos-Collins, Director, Dispute Resolution, Natural Heritage Institute
- Christine Tezak, Electricity Analyst, Washington Research Group, Schwab Capital Markets, L.P.
- Steven Gilliland, Senior Vice President, Asset Management, Duke Energy, N.A.

Break—3:30 p.m. to 3:45 p.m.

VI. Discussion by State and Federal Officials of Next Steps and Closing Remarks by FERC Commissioners—3:45 p.m. to 5:00 p.m.

- Braulio Baez, Commissioner, Florida Public Service Commission
- Michael Callahan, Chairman, Mississippi Public Service Commission
- Irma Muse Dixon, Commissioner, Louisiana Public Service Commission
- Samuel James ''Jimmy'' Ervin, IV, Commissioner, North Carolina Utilities Commission
- Sandra L. Hochstetter, Chairman, Arkansas Public Service Commission

* * * * *

[FR Doc. 02–10854 Filed 5–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

April 26, 2002.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. Copies of this filing are on file with the Commission and are available for public inspection. The documents may 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).

EXEMPT

Docket No.	Date filed	Presenter or requester
1. Docket No. CP98–150–000	4–12–02	Andrew J. Spano.
2. Project No. 2042–000	4–22–02	Mark Killgore.
3. Project Nos. 1932–004, 1933–010, 1934–010	4–22–02	Jon Cofrancesco.

Magalie R. Salas,
Secretary.

[FR Doc. 02–10855 Filed 5–1–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7203–1]

Agency Information Collection Activities: Proposed Collection; Comment Request; Report to Congress on Impacts and Control of Combined Sewer Overflows and Sanitary Sewer Overflows

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 proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Report to Congress on Impacts and Control of Combined Sewer Overflows and Sanitary Sewer Overflows (ICR Number 2063.01). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before July 1, 2002.

ADDRESSES: Send written comments to Environmental Protection Agency, Office of Wastewater Management, (MC 4203), EPA East Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Express mail and courier shipments should be sent to Environmental Protection Agency, Office of Wastewater Management, EPA East, 1201 Constitution Ave., NW, Seventh Floor (MC 4203), Washington, DC 20004. Comments may be sent electronically to *debell.kevin@epa.gov*. Interested persons may obtain a copy of the proposed ICR without charge by calling or writing to Kevin DeBell at the Office of Wastewater Management, MC 4203, EPA East Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 564–0040; e-mail *debell.kevin@epa.gov*.

FOR FURTHER INFORMATION CONTACT: Kevin DeBell, EPA, Office of Wastewater Management, MC 4203, EPA East Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 564–0040; fax (202) 564–6392; e-mail *debell.kevin@epa.gov*.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action include municipalities that have had either combined sewer overflows or sanitary sewer overflows.

Title: Report to Congress on Impacts and Control of Combined Sewer Overflows and Sanitary Sewer Overflows (ICR Number 2063.01).

Abstract: EPA is proposing this ICR to support the development of a Report to Congress that will summarize the extent of human health and environmental impacts caused by municipal combined sewer overflows (CSOs) and sanitary sewer overflows (SSOs), including the location of discharges causing such impacts, the volume of pollutants discharged, and the constituents discharged; the resources spent to address these impacts; and, an evaluation of the technologies used by municipalities to address these impacts. The requirement to develop this Report was included in the Consolidated Appropriations Act for Fiscal Year 2001, Public Law 106–554.

EPA has previously estimated that there are more than 19,000 publicly owned treatment works (POTWs) nationwide, providing municipal wastewater collection and/or treatment. Nearly all of these POTWs provide wastewater collection and/or treatment for areas served by separate sanitary sewer systems. SSOs, which are releases of raw sewage, occur when the separate sanitary sewer systems fail. A small subset, approximately 850 POTWs, transport and/or treat wastewater flow from areas served by combined sewer systems (CSSs). CSOs occur when the CSS overflows and discharges to receiving water prior to treatment.

EPA plans to collect data from state environmental agencies, state, county, and local health departments, and municipalities to support the development of this Report. Information collection activities will include: Site visits, interviews, and file review, as well as phone calls to a subset of POTWs and health departments nationwide. Responses to the collection of information are voluntary.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The estimated burden reflected in this ICR is 6,201 hours and a cost of $799,245. This burden will occur only once, and the collection of information should be completed by December 31, 2003.

Of this total, the portion for municipalities is 2,565 hours at a cost of $116,267. This burden includes numerous phone and on-site interviews needed to collect data on the human health and environmental impacts associated with CSOs and SSOs, as well as information related to technology performance and cost.

The estimated burden for Federal and States governments is 1,476 hours and $585,926 and 2,160 hours and $97,052, respectively. The estimated burden includes phone and on-site interviews with Federal and State officials to support the data collection effort. This estimate also includes burden associated with reviewing draft analyses prepared by the contractor. The estimated Federal cost burden includes substantial contractor support, which is not included in the hours burden.

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 19, 2002.

Pamela Barr,

Acting Director, Office of Wastewater Management.

[FR Doc. 02–10881 Filed 5–1–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7205–1]

Transfer of Confidential Business Information to Contractors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of transfer of data and request for comments.

SUMMARY: EPA will transfer Confidential Business Information (CBI) to its contractor, Industrial Economics, Inc., and its subcontractors: Allison Geoscience; APPL; Cambridge Planning; DPRA, Inc.; EERGC; Forum One; Ross & Associates; Science Applications International Corporation (SAIC); Science International; Tetra Tech, Inc. and Versar, Inc. that has been or will be submitted to EPA under section 3007 of the Resource Conservation and Recovery Act (RCRA). Under RCRA, EPA is involved in activities to support, expand and implement solid and hazardous waste regulations.

DATES: Access to confidential data submitted to EPA will occur no sooner than May 13, 2002.

ADDRESSES: Comments should be sent to Regina Magbie, Document Control Officer, Office of Solid Waste (5305W), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Comments should be identified as ''Access to Confidential Data.''

FOR FURTHER INFORMATION CONTACT: Regina Magbie, Document Control Officer, Office of Solid Waste (5305W), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, 703–308–7909.

SUPPLEMENTARY INFORMATION:

1. Transfer of Confidential Business Information

Under EPA Contract 68–W–02–007 Industrial Economics, Inc., and its subcontractors, will assist the Office of Solid Waste, Economics, Methods, and Risk Analysis Division, by providing technical and regulatory support for Data Collection and Management; Risk Assessment; Program Evaluation Support and Analysis Support Services. EPA has determined that Industrial Economics, Inc., and its subcontractors, will need access to RCRA CBI submitted to the Office of Solid Waste to complete this work. Specifically, Industrial Economics, Inc., and its subcontractors, need access to the CBI that EPA collects, under the authority of section 3007 of RCRA.

In accordance with 40 CFR 2.305(h), EPA has determined that Industrial Economics, Inc., and its subcontractors, require access to CBI submitted to EPA under the authority of RCRA to perform work satisfactorily under the above-noted contract. EPA is submitting this notice to inform all submitters of CBI of EPA's intent to transfer CBI to these firms on a need-to-know basis. Upon completing its review of materials submitted, Industrial Economics, Inc., and its subcontractors, will return all CBI to EPA.

EPA will authorize Industrial Economics, Inc., and its subcontractors, for access to CBI under the conditions and terms in EPA's ''Contractor Requirements for the Control and Security of RCRA Confidential Business Information Security Manual.'' Prior to transferring CBI to Industrial Economics, Inc., and its subcontractors, EPA will review and approve its security plans and Industrial Economics, Inc., and its subcontractors, will sign non-disclosure agreements.

Dated: April 10, 2002.

Elizabeth Cotsworth,

Director, Office of Solid Waste.

[FR Doc. 02–10876 Filed 5–1–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7204–9]

Equipment Containing Ozone Depleting Substances at Industrial Bakeries—Extension

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of bakery partnership program; extension of time.

SUMMARY: On February 6, 2002, EPA announced in a **Federal Register** notice the Bakery Partnership Program. Now, EPA is responding to a request from the baking industry for an extension of time to complete pollution prevention projects, namely substituting non-ozone depleting substances (non-ODS) for the refrigerants in certain baking equipment. Due to supply difficulties, suppliers of the alternative refrigerants can not complete delivery of the product for customers even though orders have been placed before the April 26, 2002 start date of this voluntary program. EPA has agreed to allow participating companies to qualify for a zero penalty status if they have in hand a binding purchase order by April 26, 2002 and complete the installation of the non-ODS system by May 31, 2002. Publication of this notice will complement other efforts of the baking industry and EPA to let participants know of this extension of time.

No comments are being sought on this notice.

FOR FURTHER INFORMATION CONTACT: Charles Garlow at EPA for further information at 202–564–1088 or *garlow.charlie@epa.gov*.

Dated: April 24, 2002.

Richard Biondi,

Associate Director, Air Enforcement Division.

April 17, 2002.
Anne Giesecke,
Vice President, Environmental Activities,
American Bakers Association,
1350 I Street NW, Suite 1290,
Washington DC 20005.
Dear Dr. Giesecke:

Thank you for continuing to work with us on the unforeseen problems that have arisen with the Bakery Partnership Program. You and your members have pointed out that several industrial suppliers of non-ozone depleting substances have been overwhelmed by the response to this Program and as a result are not able to service all the baking companies that want to install pollution preventing refrigerants in time for the April 26, 2002 deadline, in spite of their best efforts. The **Federal Register** notice of February 6, 2002, specified that those appliances converted to non-ODS systems prior to April 26, 2002 could avoid the $10,000 per appliance penalty. Thus, these Participating Companies facing supply problems would not be able to qualify for the waiver of the $10,000 per appliance penalty, as they had planned, unless some accommodation is made.

Therefore, in consultation with you and some of the suppliers of non-ODS refrigerants, we have agreed to the following: Participating Companies which have a binding purchase order or contract in hand by close of business April 26, 2002 for the conversion of an appliance to a non-ODS system will be treated as if the conversion had been completed by the April 26, 2002 deadline. The conversion to a non-ODS system must be completed and the non-ODS system must be fully operational by close of business on May 31, 2002 in order to qualify for this treatment. That is, the $10,000 per appliance penalty for such an appliance referenced here, will be waived as it is waived for those appliances that were fully converted to non-ODS systems prior to April 26, 2002 under the terms of the February 6, 2002 FR notice.

Baking companies that do not meet this new deadline for conversions to non-ODS systems will still be eligible to continue participating in the Partnership, but the appliances that do not meet the deadline will

have to pay the $10,000 penalty. Participating baking companies must submit Annex A by April 30, 2002. Appliances for which this extension is sought must be listed on Annex A as non-ODS appliances. If work is not completed on certain appliances by May 31, 2002 then a revised Annex A must be submitted by June 7, 2002. A copy of the binding purchase order or other binding contract for the work showing an order date on or before April 26, 2002 must be maintained by the company in their file.

Please call me or Charlie Garlow [202–564–1088] of my staff if you have further questions.

Sincerely,

Richard Biondi,

Associate Director Air Enforcement Division.

cc: Julius Banks, OAR, GPD

[FR Doc. 02–10877 Filed 5–1–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7205–3]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Republish Notice; Major Parties requested additional time to comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement concerning the Louisiana Oil Recycle & Reuse Site, Baton Rouge, Louisiana, with the parties referenced in the Supplementary Information portion of this notice.

The settlement requires the settling deminimis parties to pay a total of $73,176.87 as payment of past response costs to the Hazardous Substances Superfund. The settlement includes a covenant not to sue pursuant to sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, Dallas, Texas, 75202–2733.

DATES: Comments must be submitted on or before June 3, 2002.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at 1445 Ross Avenue, Dallas, Texas, 75202–2733. A copy of the proposed settlement may be obtained from Janice Bivens, 1445 Ross Avenue, Dallas, Texas, 75202–2733 at (214) 665–6717. Comments should reference the Louisiana Oil Recycle & Reuse Site, Baton Rouge, Louisiana, and EPA Docket Number 6–04–02, and should be addressed to Janice Bivens at the address listed above.

FOR FURTHER INFORMATION CONTACT: Amy McGee, 1445 Ross Avenue, Dallas, Texas, 75202–2733 at (214) 665.8063.

SUPPLEMENTARY INFORMATION:

Acadian Ambulance
American Manufacturing (American Cordage)
Ascension Parish (LA) Police Jury
Atlas Processing (Pennzoil Quaker State)
Atlas Wireline Service (Baker-Hughes)
Aviation Labs
B&B Auto
B.F. Goodrich Chemical
Bercen, Inc.
Bob Wall's Automotive
BP Oil Company, and Sohio
Brandt Company
C & L Supply
Cabot Corporation (Haynes International)
Caleb Brett Industries
Carboline, Inc.
Catalyst Recovery
CCL Custom Manuf. (Peterson Puritan, Inc.)
CENLA Ambulance (Rapides Regional Med. Ctr.)
Cherry Picker Parts & Service
Coastal Fluid (Coastal Chemical Co., L.L.C.)
Conoco, Inc.
Daniel Oil Tool (Emerson Process Mgmt.)
Don's Auto Shop
Dravo Lime
Dresser Industries/Dresser Pump
DSI Transport
Durametallic (FlowServe Corp.)
Enron Trading (EOTT)
Ferriday Farm Equipment
Francis Drilling Fluid
Futrell Chevrolet
General Electric
George Lato
G.N. Gonzales
Greenwell Springs Hospital (E. LA Mental Health System)
Groendyke Transport, Inc.
Halliburton Logging
Hammond (LA) State School
Highland Hardware
Howell Industries
I.E.W. Systems, Inc. (Universal Compression Inc.)
Iberville (LA) Police Jury
Ingersoll-Rand
Inspectorate American/Charles Martin
Intercontinental Terminals
International Paint (AKZO-Nobel)
Ken Coleman Equipment
Koch Pipeline Company, L.P.
KRC Southern (Voith Paper)
L & B Transportation Co., Inc.
Lincoln Big Three Inc.
Liquid Air Engineering Corp. (Air Liquide)
Liquid Carbonic (Praxair)
Lewis Grocer
Louisiana Community & Technical College
Louisiana Industries (TXI)
Luv-n-Care
M & L Industries
MacKenzie Chemical (Murdoch Corp.)
Melamine Chemical
N L McCullough Industries, Inc. (Baker-Atlas)
U.S. Navy
Occidental Chemical Corporation
Oddis Machine (Otis-Halliburton)
OHM Corporation
Our Lady of the Lake Hospital (Baton Rouge, LA)
P & H Tube
Pierce Properties
Purina Mills, Inc.
Quality Diesel
Raymond Pylant
Richard Oil Company
Rubicon, Inc.
Schuylkill Metals (Exide Technology)
SEPCO Industries (DPX Enterprises, Inc.)
Sewell Plastics (Crown Cork & Seal)
Shell Western E & P
Simmons Tractor
Solar Turbines
Southern Flo, Inc.
Southern Natural Gas (El Paso Corp.)
Southern Scrap Materials, Ltd.
Speciality Oil (Pennzoil-Quaker State)
Stupp Corporation
T.M.I.
Union Texas Petroleum (Williams Companies)
United States Postal Service (USPS)
University of Southeast Louisiana
University of Southwest Louisiana (Lafayette)
Valley Electric Corporation
Verret Shipyard
West Jefferson Levee District (LA)
Westinghouse (Siemens)
Woodward-Clyde Consultants
WY Tractor Company

Dated: April 22, 2002.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 02–10878 Filed 5–1–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7204–1]

Proposed Agreement Pursuant to Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act for the Tomah Armory Site

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

ACTION: Notice; request for public comment on proposed CERCLA 122(h)(1) agreement with the City of Tomah for the Tomah Armory Superfund Site.

SUMMARY: In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1984, as amended (''CERCLA''), notification is hereby given of a proposed administrative agreement concerning the Tomah Armory hazardous waste site on Woodward Avenue in Tomah, Wisconsin (the ''Site''). EPA proposes to enter into this agreement under the authority of section 122(h) and 107 of CERCLA. The proposed agreement has been executed by the City of Tomah (the ''Settling Party'').

Under the proposed agreement, the Settling Party will pay $20,000 to the Hazardous Substances Superfund to resolve EPA's claims against him for response costs incurred by EPA at the Site. EPA incurred response costs mitigating an imminent and substantial endangerment to human health or the environment present or threatened by hazardous substances present at the Site.

For thirty days following the date of publication of this notice, the Environmental Protection Agency will receive written comments relating to this proposed agreement. EPA will consider all comments received and may decide not to enter this proposed agreement if comments disclose facts or considerations which indicate that the proposed agreement is inappropriate, improper or inadequate.

DATES: Comments on the proposed agreement must be received by EPA on or before June 3, 2002.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590, and should refer to: In the Matter of Tomah Armory Superfund Site, Tomah, Wisconsin, U.S. EPA Docket No. V–W–.

FOR FURTHER INFORMATION CONTACT: Timothy J. Thurlow, U.S. Environmental Protection Agency, Office of Regional Counsel, C–14J, 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590, (312) 886–6623.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the EPA's Region 5 Office of Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590. Additional background information relating to the settlement is available for review at the EPA's Region 5 Office of Regional Counsel.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9601–9675.

Margaret Guerriero,

Acting Director, Superfund Division, Region 5.

[FR Doc. 02–10879 Filed 5–1–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7203–9]

Proposed Agreement Pursuant to Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act for the Tomah Fairgrounds Site

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

ACTION: Notice; request for public comment on proposed CERCLA 122(h)(1) agreement with the City of Tomah for the Tomah Fairgrounds Superfund Site.

SUMMARY: In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1984, as amended (''CERCLA''), notification is hereby given of a proposed administrative agreement concerning the Tomah Fairgrounds hazardous waste site on Fair Street in Tomah, Wisconsin (the ''Site''). EPA proposes to enter into this agreement under the authority of section 122(h) and 107 of CERCLA. The proposed agreement has been executed by the City of Tomah (the ''Settling Party'').

Under the proposed agreement, the Settling Party will pay $245,430 to the Hazardous Substances Superfund to resolve EPA's claims against him for response costs incurred by EPA at the Site. EPA incurred response costs mitigating an imminent and substantial endangerment to human health or the environment present or threatened by hazardous substances present at the Site.

For thirty days following the date of publication of this notice, the Environmental Protection Agency will receive written comments relating to this proposed agreement. EPA will consider all comments received and may decide not to enter this proposed agreement if comments disclose facts or considerations which indicate that the proposed agreement is inappropriate, improper or inadequate.

DATES: Comments on the proposed agreement must be received by EPA on or before June 3, 2002.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590, and should refer to: In the Matter of Tomah Fairgrounds Superfund Site, Tomah, Wisconsin, U.S. EPA Docket No. V–W–.

FOR FURTHER INFORMATION CONTACT: Timothy J. Thurlow, U.S. Environmental Protection Agency, Office of Regional Counsel, C–14J, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, (312) 886–6623.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the EPA's Region 5 Office of Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590. Additional background information relating to the settlement is available for review at the EPA's Region 5 Office of Regional Counsel.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9601–9675.

Margaret Guerriero,

Acting Director, Superfund Division, Region 5.

[FR Doc. 02–10880 Filed 5–1–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7204–8]

Clean Water Act Section 303(d): Final Agency Action on 88 Total Maximum Daily Loads (TMDLs)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces final agency action on 88 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 88 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 88 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 88 TMDLs

By this notice EPA is taking a final agency action on the following 88 TMDLs for waters located within the Mermentau and Vermilion/Teche basins:

Subsegment	Waterbody name	Pollutant
060205	Bayou Teche—Headwaters at Bayou Courtableau to I–10	Salinity/TDS.
060211	West Atchafalaya Borrow Pit Canal	Salinity/TDS.
060301	Bayou Teche—I–10 to Keystone Locks and Dam	Salinity/TDS, Chlorides.
050201	Bayou Plaquemine Brule—Headwaters to Bayou Descannes	Ammonia.
050401	Mermentau River—Origin to Lake Arthur	Ammonia.
060102	Cocodrie Lake	Noxious Aquatic Plants and Ammonia, Chlorides, Sulfates.
060204	Bayou Courtableau—Origin to West Atchafalaya Borrow Pit Canal	Ammonia, Salinity/TDS.
060203	Chicot Lake	Noxious Aquatic, Plants and Nutrients.
050101	Bayou Des Cannes—Headwaters to Mermentau River	Nutrients.
050301	Bayou Nezpipque—Headwaters to Mermentau River	Nutrients.
060202	Bayou Cocodrie Bayou Boeuf—Headwaters to Bayou Courtableau	Nutrients.
060211	West Atchafalaya Borrow Pit Canal	Sulfates.
060301	Bayou Teche—I–10 to Keystone Locks and Dam	Sulfates.
050101	Bayou Des Cannes—Headwaters to Mermentau River	Total Suspended Solids (TSS).
050102	Bayou Joe Marcel	TSS.
050103	Bayou Mallet	TSS.
050201	Bayou Plaquemine Brule—Headwaters to Bayou Des Cannes	Siltation, TSS.
050301	Bayou Nezpique—Headwaters to Mermentau River	Siltation, TSS.
050302	Mermentau River Basin	Siltation, TSS.
050401	Mermentau River—Origin to Lake Arthur	TSS.
050402	Lake Arthur and Lower Mermentau	TSS.
050501	Bayou Queue de Tortue—Headwaters to Mermentau River	TSS, Siltation.
050602	Intracoastal Waterway	TSS.
050701	Grand Lake	TSS.
050702	Intracoastal Waterway	TSS.
050703	White Lake	Siltation, TSS.
050901	Bays and Gulf Waters to State 3-mile Limit	Siltation, TSS.
060101	Spring Creek—Headwaters to Cocodrie Lake (Scenic)	TSS.
060102	Cocodrie Lake	Siltation.
060201	Bayou Cocodrie—From U.S. Hwy 167 to the Bayou Boeuf Cocodrie Canal	TSS.
060202	Bayou Cocodrie—Cocodrie Diversion Canal to intersection Bayou Boeuf	TSS, Siltation.
060203	Chicot Lake	TSS.
060204	Bayou Courtableau—Origin to West Atchafalaya Borrow Pit Canal	TSS.
060205	Bayou Teche—Headwaters at Bayou Courtableau to I–10	TSS.
060207	Bayou des Glaises Diversion Canal	TSS.
060208	Bayou Boeuf—Headwaters to Bayou Courtableau	TSS.
060210	Bayou Carron	TSS.
060211	West Atchafalaya Borrow Pit Canal	TSS.
060212	Chatlin Lake Canal and Bayou Dulac	TSS, Siltation.
060301	Bayou Teche—I–10 to Keystone Locks and Dam	Turbidity, TSS.
060401	Bayou Teche—Keystone Locks and Dam to Charenton Canal	TSS.
060501	Bayou Teche—Charenton Canal to Wax Lake Outlet	TSS.
060601	Charenton Canal	TSS.
060701	Tete Bayou	TSS.
060702	Lake Fausse Point and Dauterive Lake	TSS, Siltation.
060703	Bayou du Portage	TSS.
060906	Intracoastal Waterway	TSS.
060907	Franklin Canal	TSS, Turbidity.
060801	Vermilion River—Headwaters at Bayou Fusilier-Bourbeaux Junction to New Flanders (Ambassador Caffery Bridge at Hwy 3073).	TSS.
060802	Vermilion River—From New Flanders (Ambassador Caffery Bridge) at Hwy 3073 to Intracoastal Waterway.	TSS.
060803	Vermilion River Cutoff	TSS.
060804	Intracoastal Waterway	TSS.
060901	Bayou Petite Anse	TSS.
060902	Bayou Carlin (Delcambre Canal)—Lake Peigneur to Bayou Petite Anse (Estuarine).	TSS.

Subsegment	Waterbody name	Pollutant
060903	Bayou Tigre	TSS.
060904	Vermilion River B890 Basin New Iberia Drainage Canal	TSS.
060905	New Iberia Southern Drainage Canal	TSS, Turbidity.
060909	Lake Peigneur	Siltation, TSS.
060910	Boston Canal and Associated Canals (Estuarine)	Siltation, TSS, Turbidity.
060911	Vermilion-Teche River Basin	TSS Siltation, TSS, Turbidity.
061102	Intracoastal Waterway	TSS.
061103	Freshwater Bayou Canal	TSS, Turbidity.

EPA requested the public to provide EPA with any significant data or information that may impact the 88 TMDLs at 66 FR 368 (January 03, 2001). The comments received and EPA's response to comments may be found at *www.epa.gov/region6/water/tmdl.htm.*

Dated: April 23, 2002.

Sam Becker,

Acting Director, Water Quality Protection Division, Region 6.

[FR Doc. 02–10729 Filed 5–1–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7205–2]

Final Reissuance of General NPDES Permit (GP) for Alaskan Small Suction Dredging (Permit Number AKG–37–5000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Notice of reissuance of a general permit.

SUMMARY: This general permit was originally effective on April 7, 1997, and expired on April 9, 2002. On December 19, 2001, EPA proposed to reissue the general permit. There was a 45 day public comment period which ended on February 4, 2002. No comments were received on the general permit.

DATES: The general permit will be effective on June 3, 2002. All facilities that submitted a Notice of Intent (NOI) between December 19, 2001, and April 9, 2002, will be granted administratively extended coverage until the effective date of the new general permit. For these facilities, coverage under the new general permit will begin and the administrative extension under the previous general permit will end on the effective date. After the effective date, coverage will begin upon receipt of the NOI by EPA.

ADDRESSES: Copies of the General Permit are available upon request. Written requests may be submitted to EPA, Region 10, 1200 Sixth Avenue OW–130, Seattle, WA 98101. Electronic requests may be mailed to: *washington.audrey@epa.gov or godsey.cindi@epa.gov.*

FOR FURTHER INFORMATION CONTACT: The General Permit, Fact Sheet and Summary may be found on the Region 10 website at *www.epa.gov/r10earth/offices/water.htm* under the NPDES Permits section. Requests by telephone may be made to Audrey Washington at (206) 553–0523.

SUPPLEMENTARY INFORMATION:

Executive Order 12866: The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12866 pursuant to section 6 of that order.

The state of Alaska, Department of Environmental Conservation (ADEC), has certified that the subject discharges comply with the applicable provisions of sections 208(e), 301, 302, 306 and 307 of the Clean Water Act. The state of Alaska, Office of Management and Budget, Division of Governmental Coordination (ADGC), has conducted a review for consistency with the Alaska Coastal Management Program (ACMP) and has agreed with EPA's determination that the general permit is consistent with the ACMP.

Regulatory Flexibility Act: EPA has concluded that General NPDES permits are permits under the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, and thus not subject to APA rulemaking requirements or the Regulatory Flexibility Act.

Dated: April 22, 2002.

Michael A. Bussell,

Deputy Director, Office of Water, Region 10.

[FR Doc. 02–10875 Filed 5–1–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

April 24, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 1, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman or Leslie Smith, Federal Communications Commission, Room 1–C804 or Room 1–A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to *jboley@fcc.gov* or *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1004.

Title: E911 Waivers.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, and state, local or tribal governments.

Number of Respondents: 443.

Estimated Time Per Response: 5 hours.

Frequency of Response: Recordkeeping requirement; quarterly and semi-annual reporting requirements.

Total Annual Burden: 2,215 hours.

Total Annual Cost: N/A.

Needs and Uses: The quarterly and supplemental reports will be used by the Commission to monitor carrier progress in transition to E911, and thus ensure that this important effort will continue in an orderly and timely fashion.

The burden estimates in this notice include the information currently approved by OMB and additional information for the newly affected entities.

In February 2002, the Commission received emergency approval from the Office of Management and Budget (OMB) for reporting burdens contained in a series of Orders allowing seven carriers additional time to comply with the Commission's Enhanced 911 Phase II implementation schedule subject to certain reporting requirements. The Commission opened a period for comment on these burdens at 67 FR 14714, March 27, 2002. The period for comment ends on May 28, 2002. However, the Commission has revised the information contained in the announcement of the comment period in anticipation of other carriers who might also seek a waiver and be subject to the reporting requirement. So, the Commission revised its original notice and associated burden estimates and extends the public comment period for 60 days after publication in the **Federal Register**.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–10835 Filed 5–1–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission

April 25, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 3, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0169.

Title: Sections 43.51 and 43.53—Reports and Records of Communications Common Carriers and Affiliates.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 71 respondents; 374 responses.

Estimated Time Per Response: 83 hours to 100.7 hours.

Frequency of Response: On occasion and annual reporting requirements, recordkeeping requirement and third party disclosure requirement.

Total Annual Burden: 6,029 hours.

Total Annual Cost: N/A.

Needs and Uses: Sections 43.51 and 43.53 requires common carriers to submit reports so that the FCC can monitor various activities of these carriers to determine the impact on the just and reasonable rates required by the Communications Act of 1934, as amended. The information contained in these reports is used by FCC staff to determine whether the activities reported have affected or are likely to affect adversely the carrier's service to the public or whether these activities result in undue or unreasonable increases in charges. If this information were not reported, the FCC would be unable to ascertain the impact of these activities on the just and reasonable rates as required by the Act.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–10836 Filed 5–1–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

Previously Announced Date & Time: Thursday, April 18, 2002, 10 a.m. meeting open to the public:

The following item was withdrawn from the agenda: NPRM on 2002 Modifications to the Administrative Fines Program.

Previously Announced Date & Time: Tuesday, April 23, 2002, 10 A.M. meeting closed to the Public. This meeting was cancelled.

DATE & TIME: Tuesday, May 7, 2002 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: Thursday, May 9, 2002 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Draft Advisory Opinion 2002–05: Ann Hutchinson, Mayor of Bettenford, Iowa, by Gregory S. Jager, City Attorney. 2002 Legislative Recommendations.

Notice of Proposed Rulemaking on Soft Money.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 02–10990 Filed 4–30–02; 11:14 am]

BILLING CODE 6715–01–M

FEDERAL HOUSING FINANCE BOARD

Sunshine Act; Meeting

Announcing an Open Meeting of the Board

TIME AND DATE: 10 a.m., Wednesday, May 8, 2002.

PLACE: Board Room, Second Floor, Federal Housing Finance Board. 1777 F Street, NW., Washington, DC 20006.

STATUS: The entire meeting will be open to the public.

MATTER TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:

- Federal Home Loan Bank of Boston Capital Plan
- Federal Home Loan Bank of Pittsburgh Capital Plan
- Final Rule Amending the Definition of ''Non-Mortgage Assets'' for Purposes of the Leverage Limit Requirement of Section 966.3 of the Regulations
- Appointment of Public Interest Director

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

James L. Bothwell,

Managing Director.

[FR Doc. 02–10979 Filed 4–30–02; 10:14 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions By, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 28, 2002.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Access National Corporation, Chantilly, Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Access National Bank, Chantilly, Virginia.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Citizens Cumberland Bancshares, Inc., Burkesville, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Bank of Cumberland County, Inc., Burkesville, Kentucky.

C. Federal Reserve Bank of Minneapolis (Julie Stackhouse, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Wadena Bankshares, Inc., Wadena, Minnesota; to acquire 100 percent of the voting shares of Baron Bancshares II, Inc., White Bear Lake, Minnesota, and thereby indirectly acquire voting shares of Security State Bank of Deer Creek, Deer Creek, Minnesota.

D. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Meader Insurance Agency, Inc., Waverly, Kansas; to acquire up to 11 percent of the voting shares of 1st Financial Bancshares, Inc., Shawnee Mission, Kansas, and thereby indirectly acquire voting shares of 1st Financial Bank, Overland Park, Kansas, and Centerville State Bank, Centerville, Kansas.

In connection with this application, Applicant also has applied to indirectly acquire Sylvan Agency, Inc., Sylvan Grove, Kansas, and engage in general insurance activities in a place that has a population not exceeding 5,000, pursuant to § 225.28(b)(11)(iii)(A) of Regulation Y.

Board of Governors of the Federal Reserve System, April 26, 2002.

Margaret McCloskey Shanks,

Assistant Secretary of the Board.

[FR Doc. 02–10812 Filed 5–1–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 17, 2002.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. DMB Corporation, Inc., DeForest, Wisconsin; to acquire DMB LANtech Services, LLC, DeForest, Wisconsin, and thereby engage in data processing activities, pursuant to § 225.28(b)(14)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, April 26, 2002.

Margaret McCloskey Shanks,

Assistant Secretary of the Board.

[FR Doc.02–10813 Filed 5–1–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02097]

Hemophilia Prevention Education and Peer Support; 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 Hemophilia Prevention Education and Peer Support. This program addresses the ''Healthy People 2010'' focus area(s) of Disability and Secondary Conditions, HIV, Immunization and Infectious Diseases, and Educational and Community-Based Programs.

The purpose of the program is to enhance public health prevention practices for persons with bleeding disorders by: (1) Promoting peer-led prevention education, intervention and outreach activities; (2) developing and implementing programs that educate and encourage persons with bleeding disorders to make informed decisions regarding healthcare practices and to adopt behaviors that reduce or eliminate bleeding disorder complications; (3) promoting the professional development of health care providers by encouraging collaboration between providers and persons with bleeding disorders to enhance prevention efforts; and (4) disseminating prevention and intervention information and education materials to the bleeding disorders community.

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. Faith-based organizations are eligible for this award.

Note: Title II 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 $2,800,000 is available in FY 2002 to fund one award. It is expected that the award will begin on or about September 30, 2002 and will be made for a 12-month budget period within a project period of up to five years. The funding estimate may change.

Continuation awards within an approved project period will be on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Funding Preference

A funding preference may be given to the current recipient because they can demonstrate experience in conducting, developing, and evaluating peer led prevention interventions and national programs. They have effective and well-defined working relationships with partnering communities (including local consumer organizations and hemophilia treatment centers).

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. Collaborate with consumers and hemophilia care providers to develop user-centered educational programs and materials aimed at reducing or eliminating complications of bleeding disorders.

b. Evaluate the effectiveness of education programs and materials, identify gaps, and propose strategies to improve the quality and availability of educational resources and prevention information.

c. Develop strategies to increase collaboration between local community based organizations and hemophilia treatment centers (HTCs) to enhance prevention programs.

d. Maintain a comprehensive information clearinghouse for consumers and hemophilia care providers to disseminate information on health promotion, and prevention of complications for persons with bleeding disorders.

e. Coordinate a model demonstration project by developing education programs, communication strategies/methods, and outcome measures to deliver prevention messages aimed at helping individuals make informed decisions regarding their care and adapting behaviors to prevent the complications associated with bleeding disorders. This project should be evaluated by assessing outcome measures, and yield a data bank of effective programs that can be duplicated and disseminated for use in local settings.

f. Expand and enhance peer-based prevention and educational activities by supporting programs at the local level. Provide technical assistance and financial support for program planning, development, implementation, and evaluation of public health education for local peer-led activities to deliver prevention messages.

g. Provide opportunities for hemophilia care providers to receive prevention information and training. Collaborate with current hemophilia care providers to develop orientation training for new providers.

h. Promote programs for early diagnosis and management of women with bleeding disorders.

i. Collaborate with community-based hemophilia organizations to develop, implement, and evaluate outreach initiatives to increase access to healthcare and prevention services for under served groups with bleeding disorders.

j. Encourage the use of appropriate safety precautions to prevent the transmission of blood borne pathogens. Participate in a formal communication network with CDC, and other Federal agencies to address blood safety and availability issues when necessary. Encourage people with bleeding disorders to participate in blood safety monitoring efforts.

2. CDC Activities

a. Provide scientific and public health information regarding the prevention of complications of hemophilia, and other bleeding disorders. This includes reviewing educational and promotional materials developed by the proposed program.

b. Provide consultation and technical assistance for program planning, development, implementation, and evaluation, which may include consulting with committees or working

groups whose operations may impact the proposed programs.

c. Collaborate in the presentation, publication, and dissemination of information resulting from these activities.

d. Facilitate provider involvement and collaboration in consumer-based program activities between the recipient and the Regional HTC Programs.

e. Assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

E. Content

Letter of Intent (LOI)

An LOI is optional for this program. The narrative should be no more than three single-spaced pages, printed on one side, with one-inch margins, and unreduced font. Your letter of intent will be used to enable CDC to plan for the review, and should include the following information (1) the Program Announcement Number 02097, (2) name and address of institution, and (3) name, address, and telephone number of contact person. Notification can be provided by facsimile, postal mail, or electronic mail (E-mail).

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 25 double-spaced pages, printed on one side, with one-inch margins, and unreduced font.

The application should include:

1. Understanding of the Project

Describe the need for prevention information and education programs for the target population. Explain the basis for providing such programs, expected outcomes and the relevance to preventing complications, and promoting healthy behaviors among people with bleeding disorders.

2. Objectives

Establish long-range (five year) and short-term (one year) objectives for programmatic plans. Objectives should be specific, measurable, time-phased and realistic.

3. Operational Plan

Describe the methods by which the objectives will be achieved, including their sequence.

4. Evaluation Plan

Describe the plans to monitor the progress of the program, as well to evaluate the outcomes of the proposed activities.

5. Program Management

Describe the roles and responsibilities of all project staff in the proposed project. The description should include their titles, qualifications, and experience, as well as the percentage of time each will devote to the project, and the portions of their salaries to be paid by the cooperative agreement.

6. Collaboration with Local Organizations and HTCs

Describe plans to include local organizations and HTCs in the program.

7. Budget

A detailed first year's budget for the cooperative agreement with projections for the next four additional years.

F. Submission and Deadline

Letter of Intent (LOI)

On or before June 15, 2002, submit the Letter of Intent to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

On or before July 15, 2002, submit the application to: Technical Information Management—PA02097, 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. Understanding of the Project (15 points)

The extent to which the applicant understands the requirements, problems, objectives and complexities of the project.

2. Objectives (15 points)

The degree to which the proposed objectives are clearly stated, realistic, time-phased, and related to the purpose of the project.

3. Operational Plan (Total 25 points)

a. The extent to which the applicant provides a detailed plan of proposed activities which are likely to achieve each objective and overall program goals. The extent to which the applicant provides a reasonable and complete schedule for implementing activities of the program. (20 points)

b. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) The proposed justification when representation is limited or absent; (3) A statement as to whether the design of the study is adequate to measure differences when warranted; and (4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits. (5 points)

4. Evaluation Plan (15 points)

The extent to which the proposed evaluation plan is detailed, addresses goals and objectives of the program, and will document the program process, effectiveness and outcome. The extent to which a feasible plan for reporting evaluation results and using evaluation information for programmatic decisions is present.

5. Program Management (25 total points)

a. The extent to which the applicant proposes potentially effective collaborations with local organizations and HTCs. (15 points)

b. The extent to which professional personnel proposed to be involved in this project are qualified, including evidence of past achievements appropriate to this project. (10 points)

6. Measures of Effectiveness (5 points)

The extent to which the applicant provide Measures of Effectiveness that will demonstrate the accomplishment of

the various identified objectives of the grant. Are the measures objective/quantitative and do they adequately measure the intended outcome?

7. Budget (Not Scored)

The extent to which the applicant provides a detailed budget and narrative justification consistent with stated objectives and planned program activities.

8. Human Subjects (Not Scored)

Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects?

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 report and performance report, 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.

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–10 Smoke-Free Workplace Requirements

AR–11 Healthy People 2010

AR–12 Lobbying Restrictions

AR–15 Proof of Non-Profit Status

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) [42 U.S.C. 241(a)] and 317 (k)(2) [42 U.S.C. 247b(k)(2)] of the Public Health Service Act, 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: Merlin Williams, Grants Management Specialist, Acquisition and Assistance, Branch B, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Mailstop K–75, Atlanta, GA 30341–4146, Telephone number: 770–488–2765, E-mail address: *mwilliams2@cdc.gov.*

For program technical assistance, contact: Sally Crudder, Acting Deputy Chief, Hematologic Diseases Branch, National Center for Infectious Diseases, Centers for Disease Control and Prevention, 1600 Clifton Road, MS E64, Atlanta, Georgia 30333, Telephone number: 404–371–5270 or 5903, E-mail address: *scrudder@cdc.gov.*

Dated: April 26, 2002.

Sandra R. Manning,

CGFM, Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–10833 Filed 5–1–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request; Proposed Projects

Title: Head Start Impact Study.

OMB No.: New Collection.

Description: The Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF) of the Department of Health and Human Services (DHHS) is requesting comments on plans to conduct the Head Start Impact Study. This study is being conducted under contract with Westat, Inc. (with the Urban Institute, American Institutes for Research, and Decision Information Resources as their subcontractors) (#282–00–0022) to collect information for determining, on a national basis, how Head Start affects the school readiness of children participating in the program as compared to children not enrolled in Head Start and to determine under which conditions Head Start works best and for which children.

The Head Start Impact Study is a longitudinal study that will involve approximately 5,000–6,000 first time enrolled three- and four-year old preschool children across an estimated 75 nationally representative grantee/delegate agencies (in communities where there are more eligible children and families than can be served by the program). The participating children will be randomly assigned to either a Head Start group (that receives Head Start program services) or a comparison group (that does not receive Head Start services but may enroll in other available services selected by their parents or be cared for at home). Data collection for the study will begin in fall 2002 and extend through spring 2006 with child assessments, conducted in the fall and spring of the Head Start years and in the spring of the kindergarten and first grade years and parent interviews conducted in the fall and spring of each year. Interviews/surveys with program staff/care providers, and quality of care assessments will be conducted each year. This schedule of data collection is necessitated by the mandate in Head Start's 1998 reauthorization (Coats Human Services Amendments of 1998, PL 05–285) that DHHS conduct research to determine, on a national level, the impact of Head Start on the children it serves. A field test of instruments and procedures is being conducted during fall 2001 and spring 2002. The field test involves approximately 450 first time enrolled three- and four-year old preschool children across eight grantee/delegate agencies representing different community contexts.

Respondents: Individuals or Households, Head Start Agencies, School Districts, and other Child Care Providers.

Annual Burden Estimates

Estimated Response Burden for Respondents to the Head Start Impact Study—Fall 2002, Spring 2003, Fall 2003, Spring 2004, Fall 2004, Spring 2005, Fall 2005, and Spring 2006.

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Year 1 (fall 2002):				
Parent Interviews	5,111	1	1.00	5,111

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Child Assessments	5,111	1	0.9166	4,685
Teacher Ratings	613	5	0.0833	255
Center Directors/Principals	307	1	1.00	307
Classroom Teachers	613	1	0.50	307
Year 1 (spring 2003):				
Parent Interviews	4,599	1	1.00	4,599
Father Questionnaire	4,599	1	0.50	2,300
Child Assessments	4,599	1	0.9166	4,216
Teacher Ratings	803	5	0.0833	8335
Teacher Ratings	966	5	0.0833	403
Family Service Workers	368	1	0.50	184
Education Coordinators	368	1	0.50	184
Center Directors/Principals	368	1	1.00	368
Classroom Teachers	736	1	0.50	368
Other Care Providers	230	1	0.50	115
Year 2 (fall 2003):				
Parent Interviews	4,139	1	1.00	4,139
Child Assessments	2,287	1	0.9166	2,096
Year 2 (spring 2004):				
Parent Interviews	3,910	1	1.00	3,910
Child Assessments	3,910	1	0.9166	3,584
Teacher Ratings	803	5	0.833	335
Family Service Workers	165	1	0.50	83
Education Coordinators	165	1	0.50	83
Center Directors/Principals	350	1	1.00	350
Classroom Teachers	700	1	0.50	350
Other Care Providers	103	1	0.50	52
Year 3 (fall 2004):				
Parent Interviews	3,519	1	1.00	3,519
Year 3 (spring 2005):				
Parent Interviews	3,519	1	1.00	3,519
Child Assessments	3,519	1	0.9166	3,226
Teacher Ratings	704	5	0.0833	293
Principals	352	1	1.00	352
Classroom Teachers	704	1	0.50	352
Year 4 (fall 2005):				
Parent Interviews	1,667	1	1.00	1,667
Year (spring 2006):				
Parent Interviews	1,667	1	1.00	1,667
Child Assessments	1.667	1	0.9166	1,528
Teacher Ratings	333	5	0.833	139
Principals	167	1	1.00	167
Classroom Teachers	333	1	0.50	167
Annualized Totals:				
Year 1				23,402
Year 2				14,982
Year 3				11,261
Year 4				5,335
Estimated Total Annual Burden Hours				13,745

Note: The 13,745 Total Annual Burden Hours is based on an average of 2002–03, 2003–04, 2004–05, and 2005–06 estimated burden hours.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: April 29, 2002.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 02–10952 Filed 5–1–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0231]

Agency Information Collection Activities; Announcement of OMB Approval; Veterinary Adverse Drug Reaction, Lack of Effectiveness, Product Defect Report

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Veterinary Adverse Drug Reaction, Lack of Effectiveness, Product Defect Report,'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 5, 2001 (66 FR 55942), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0012. The approval expires on March 31, 2003. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: April 23, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–10791 Filed 5–1–02; 8:45 am]

BILLING CODE: 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0437]

Agency Information Collection Activities; Announcement of OMB Approval; New Animal Drugs for Investigational Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''New Animal Drugs for Investigational Use'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 14, 2002 (67 FR 1772), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0117. The approval expires on March 31, 2005. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: April 23, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–10795 Filed 5–1–02; 8:45 am]

BILLING CODE: 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Dermatologic and Ophthalmic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: 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: Dermatologic and Ophthalmic 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 23, 2002, from 8:30 a.m. to 5 p.m.

Location: Holiday Inn, Kennedy Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Contact Person: Karen M. Templeton-Somers, 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 12534. Please call the Information Line for up-to-date information on this meeting. When available, background material for this meeting will be posted on the FDA Web site, one business day prior to the meeting at: *www.fda.gov/ohrms/dockets/ac/acmenu.htm*.

Agenda: The committee will discuss biologic license application, submission tracking number 125036, alefacept, Biogen, Inc., for the treatment of patients with chronic plaque psoriasis who are candidates for phototherapy or systemic therapy.

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 17, 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 17, 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 Karen M. Templeton-Somers, 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 23, 2002.

Linda A. Suydam,

Senior Associate Commissioner for Communications and Constituent Relations.

[FR Doc. 02–10796 Filed 5–1–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Technical Electronic Products Radiation Safety Standards Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: 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: Technical Electronic Products Radiation Safety Standards Committee.

General Function of the Committee: To provide advice on technical feasibility, reasonableness, and practicality of performance standards for electronic products to control the emission of radiation under 21 U.S.C. 360kk(f).

Date and Time: The meeting will be held on May 22, 2002, from 8:30 a.m. to 5 p.m.

Location: Hilton Washington DC North/Gaithersburg, Salons A and B, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Orhan H. Suleiman, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3332, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12399. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will hear an informal review of ongoing activities associated with electronic products. Following the overview, FDA will discuss its concern about radiation doses associated with x-ray computed tomography (CT), and its current thinking about amending the U.S. performance standard for x-ray CT imaging procedures. Specifically FDA will address possible requirements for: (1) Definition and standardization of CT terminology; (2) display of an index of patient radiation dose that could be automatically recorded within a facility quality assurance program; (3) automatic exposure control through modulation of x-ray tube output according to patient dimensions; and (4) limitation of the x-ray field size to that needed for image formation. In the afternoon, FDA will discuss proposed amendments to the U.S. performance standard for sunlamp products and certain initiatives of international standards organizations concerning sunlamp products. In the final session, FDA will be considering mandatory standards for x-ray security screening systems; FDA will discuss public health considerations regarding these systems that use ionizing radiation.

Background information on the discussion topics will be posted under the Technical Electronic Products Radiation Safety Standards Committee (TEPRSSC) Dockets Management Branch Web site at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*. (Click on the year 2002 and scroll down to TEPRSSC.)

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. On May 22, 2002, oral presentations from the public will be scheduled between approximately 9:45 a.m. and 10:15 a.m., and between 3:15 p.m. and 4 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 AnnMarie Williams, Conference Management Staff, 301–594–1283, ext. 113, 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. 02–10797 Filed 5–1–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Vaccines and Related Biological Products 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: Vaccines and Related Biological Products 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 21, 2002, from 8:30 a.m. to 4:30 p.m.

Location: Hilton Hotel, 8727 Colesville Rd., Silver Spring, MD.

Contact Person: Jody G. Sachs or Denise H. Royster, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12391. Please call the Information Line for up-to-date information on this meeting.

Agenda: In the morning the committee will discuss acute otitis media indication for PREVNAR (Pneumococcal 7-valent Conjugate Vaccine). In the afternoon FDA will present an update to the committee on the GSK Lyme Disease Vaccine (LYMErix).

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 14, 2002. Oral presentations from the public will be scheduled between approximately 1:15 p.m. and 1:45 p.m. and between 3:30 p.m. and 4:15 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before May 14, 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 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 Jody G. Sachs or Denise H. Royster 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 23, 2002.

Linda A. Suydam,

Senior Associate Commissioner for Communications and Constituent Relations.

[FR Doc. 02–10794 Filed 5–1–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer at (301) 443–1129.

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 or other forms of information technology.

Proposed Project: Private Health Insurance Coverage of Immunosuppressive Drugs Survey—New

Public Law 106–310, Section 2101(b) of Title XXI of the Children's Health Act of 2000, states that the Secretary of Health and Human Services shall provide for a study to determine the costs of immunosuppressive drugs provided to children pursuant to organ transplants and to determine the extent to which health plans and health insurance cover such costs.

The Health Resources and Services Administration (HRSA) has determined the extent of government insurance coverage for immunosuppressive drugs given to children pursuant to organ transplantation. However, HRSA still does not know the extent of private health insurance coverage for immunosuppressive drugs. Analysis of the Organ Procurement and Transplantation Network (OPTN) database revealed that approximately 45% of pediatric organ transplant recipients list their primary insurer as being private health insurance—this category being the largest insurer of pediatric organ transplant recipients. Little is known about co-payments, limitation on drug usage, etc., in this category of patients.

In order to fulfill the requirements of Section 2101(b), the Division of Transplantation in the Office of Special Programs, HRSA, contracted with the EMMES Corporation to study the costs of immunosuppressive drugs and to conduct a survey to send to approximately 600 families of post-transplant liver and kidney patients who list private health insurance as their primary provider at the time of transplantation. Data collected and analyzed will be reported to Congress. The report will contain information about the extent to which private health insurance covers the cost of immunosuppressive drugs given pursuant to organ transplants and provide recommendations from the Secretary of Health and Human Services about the findings. Once information has been collected and the report to Congress submitted, the information will be incorporated into private databases maintained by the EMMES Corporation which are closely protected and not available to the public. Analytical requests can be made on the data, but requests are subject to an advisory board and the release in any type of personally-identifiable data or standard analytical file will not be available to the public. The Federal Government will not have access to any of the personally-identifiable data. All these measures will assure patient privacy.

ESTIMATES OF ANNUALIZED HOUR BURDEN

Respondents	Number of respondents	Responses per respondents	Hours per response	Total hour burden
Guardians patients	600	1	.75	450
Transplant Centers	143	1	2.5	357.50
Total	743			807.50

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 11–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: April 25, 2002.

Stephen R. Smith,

Acting Associate Administrator for Management and Program Support.

[FR Doc. 02–10840 Filed 5–1–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

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 or other forms of information technology.

Proposed Project: Cross-site Evaluation of the Effectiveness of the Infant Adoption Awareness Training Program (IAATP)—New

HRSA proposes to evaluate the Infant Adoption Awareness Program being implemented by adoption organizations. The IAATP is authorized under the Children's Health Act of 2000 (CHA), Title XII, Subtitle A to develop, implement and evaluate curricula to achieve the goal of providing adoption information and referrals on an equal basis with other courses of action included in non-directive counseling to pregnant women. National, regional and local organizations whose primary purpose includes adoption were funded under IAATP cooperative agreements to deliver adoption training to health care workers with a special focus on those working in health care facilities funded under section 1001 and section 330 and those receiving grants to provide health services in schools. The Children's Health Act mandates that the Secretary submit to Congress a report evaluating the effectiveness of training delivered under the IAATP and the extent to which it results in the provision of adoption information and referrals to pregnant women on an equal basis with other courses of action included in non-directive counseling to pregnant women.

To determine if the IAATP is effective in achieving the intent of the congressional mandate, the proposed study will assess the effect of IAATP training on knowledge, attitudes and self reported practices for health care workers who counsel pregnant women in health care settings. An estimated 690 health care workers who regularly counsel pregnant women and who completed IAATP training will be recruited into the study and will complete a 20 minute mail survey instrument covering the time and extent of their exposure to the IAATP training as well as knowledge, attitudes and self-reported practices in providing adoption information and referrals to pregnant women. A comparison group of 690 health care workers who perform pregnancy counseling but did not receive the IAATP training will receive a mail survey on their knowledge, attitudes and self-reported behaviors in providing adoption information and referrals to the pregnant women that they counsel.

In addition, staff of each of the four grantees, their trainers and trainees will participate in interviews and focus groups to document the program development and training processes and delivery of the IAATP. For each grantee, there will be one-hour individual interviews of grantee staff, one focus group of trainers from each of four grantees, and two focus groups of trainees from each of four grantee programs.

Respondents	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Health care workers completing IAATP training	690	1	.33	228
Health care workers not completing IAATP training	690	1	.25	173
Grantee staff interviews (8 from each of 4 grantees)	32	2	1	64
Focus groups with trainers	32	1	2	64
Focus groups with trainees	64	1	2	128
Total	1,508			657

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 11–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: April 25, 2002.

Stephen R. Smith,

Acting Associate Administrator for Management and Program Support.

[FR Doc. 02–10841 Filed 5–1–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National

Advisory body scheduled to meet during the month of June 2002.

Name: Maternal and Child Health Research Grants Review Committee

Date and Time: June 6–7, 2002; 8:30 a.m.–5 p.m.

Place: Jurys-Washington Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

The meeting is open to the public on Thursday, June 6, 2002, from 8:30 a.m. to 9:30 a.m., and closed for the remainder of the meeting.

Purpose: To review research grant applications in the program areas of maternal and child health, administered by the Maternal and Child Health Bureau, Health Resources and Services Administration.

Agenda: The open portion of the meeting will cover opening remarks by the Director, Division of Research, Training and Education, who will report on program issues, congressional activities, and other topics of interest to the field of maternal and child health. The meeting will be closed to the public on Thursday, June 6, 2002, from 9:30 a.m. through the remainder of the meeting for the review of grant applications. The grant applications and the discussions would disclose information of a personal nature, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., and the Determination by the Acting Associate Administrator for Management and Program Support, Health Resources and Services Administration, pursuant to Public Law 92–463.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should write or contact Kishena C. Wadhwani, Ph.D., Executive Secretary, Maternal and Child Health Research Grants Review Committee, Room 18A–55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–2207.

Dated: April 25, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–10839 Filed 5–1–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

HIV–1 Envelope Glycoproteins Stabilized by Flexible Linkers as Potent Entry Inhibitors and Immunogens

Dimitrov *et al.* (NCI).

[DHHS Reference No. E–039–02/0 filed 05 Mar 2002]

Licensing Contact: Carol Salata; 301/496–7735 ext. 232; e-mail: *salatac@od.nih.gov.*

The technology relates to tethered constructs where flexible linkers join gp120 and the ectodomain of gp41. The HIV–1 envelope Glycoprotein (Env) undergoes conformational changes while driving entry. The inventors hypothesized that some of the intermediate Env conformations could be stably represented in tethered constructs where gp120 and the ectodomain of gp41 are joined by flexible linkers. Tethered Envs with long (15 to 26 amino acid) linkers were stable and potently inhibited fusion mediated by R5, X4 and R5X4 Envs, most likely by exposure of gp41 structures that bind DP178 and cluster II mAbs. A tethered Env with a short (4 amino acid) linker, gp120 or DP178 were 100, 20 or 10-fold less effective, respectively. The fusion proteins with long linkers exhibited enhanced exposure of DP178 and cluster II mAbs binding gp41 structures that are critical for entry. These findings suggest the existence of conserved structures that are critical for HIV–1 entry, and could be used as inhibitors and novel immunogens for elicitation of broadly neutralizing antibodies.

Construction of West Nile Virus and Dengue Virus Chimeras for Use in a Live Virus Vaccine to Prevent Disease Caused by West Nile Virus

Pletnev et al. (NIAID).

[DHHS Reference No. E–357–01/0 filed 10 Jan 2002]

Licensing Contact: Carol Salata; 301/496–7735 ext. 232; e-mail: *salatac@od.nih.gov.*

A candidate live attenuated vaccine strain was constructed for West Nile virus (WN), a neurotrophic flavivirus that has recently emerged in the U.S. Considerable attenuation for mice was achieved by chimerization with dengue virus type 4 (DEN4). The genes for the structural premembrane and envelope proteins of DEN4 present in an infectious cDNA clone were replaced by the corresponding genes of WN strain NY99. Two of 18 cDNA clones of a WN/DEN4 chimera yielded full-length RNA transcripts that were infectious when transfected into susceptible cells. The WN/DEN4 chimera was highly attenuated in mice compared with its WN parent; the chimera was at least 28,500 times less neurovirulent in suckling mice inoculated intracerebrally and at least 10,000 times less virulent in adult mice inoculated intraperitoneally. Nonetheless, the WN/DEN4 chimera and a deletion mutant derived from it were immunogenic and provided complete protection against lethal WN challenge. These observations provide the basis for pursuing the development of a live attenuated WN vaccine.

MVA Expressing Modified HIV Envelope, Gag and Pol Genes

Bernard Moss and Linda S. Wyatt (NIAID).

[DHHS Reference No. E–115–01/0 filed 08 Mar 2001]

Licensing Contact: Carol Salata; 301/496–7735 ext. 232; e-mail: *salatac@od.nih.gov.*

This technology relates to construction of a recombinant poxvirus using modified vaccinia Ankara (MVA). The recombinant MVA (rMVA) expresses HIV Gag, Pol and HIV–1 Env under the control of vaccinia virus early/late promoters. A related rMVA expressing SHIV genes was used in heterologous prime/boost regimens that raised high levels of immune responses. DNA priming followed by a recombinant modified vaccinia Ankara (rMVA) booster controlled a highly pathogenic immunodeficiency virus challenge in a rhesus macaque model. Both the DNA and rMNA components of the vaccine expressed multiple immunodeficiency virus proteins. Two DNA inoculations at 0 and 8 weeks effectively controlled an intrarectal challenge administered 7 months after the booster. These findings provide hope that a relatively simple multiprotein DNA/MVA vaccine can

help to control the acquired immune deficiency syndrome epidemic. This research is described in Science 292(5514): 69–74, April 6, 2001 (originally published in Science Express as 10.1126/science.1058915 on March 8, 2001).

Specific Inhibition of Gene Expression by Small Double Stranded RNAs

Caplen et al. (NHGRI).

[DHHS Reference No. E–284–01/0 filed 30 Jul 2001]

Licensing Contact: Fatima Sayyid; 301/496–7056 ext. 243; e-mail: *sayyidf@od.nih.gov.*

Double-stranded RNA (dsRNA) has been shown to trigger sequence-specific gene silencing in a wide variety of organisms, including plant, nematode and invertebrate species. Recent intense work in the field has shown that small dsRNAs mediate sequence specific RNA degradation in the process known as RNA interference (RNAi).

This invention provides for synthetic dsRNAs (20–25 nucleotides in length) and methods that can inhibit gene-specific expression in mammalian cells. The sequence of the dsRNAs are essentially identical to a portion of the coding region of the target gene for which interference or inhibition of expression is desired. This inhibition has been shown to be superior to single-stranded antisense oligonucleotides and opens the possibility of the use of dsRNAs as reverse genetic and therapeutic tools in mammalian cells.

Magnetic Labeling of Cells Using Transfection Agents

Joseph Frank and Jeff Bulte (CC).

[DHHS Reference No. E–176–01/0 filed 13 Jun 2001]

Licensing Contact: Norbert Pontzer; 301/496–7736, ext. 284; e-mail: *np59n@nih.gov.*

Many therapeutic strategies, such as stem cell transplantation, are based upon introducing exogenous living cells or tissues into a patient or host. A problem common to all therapeutic strategies involving administration of exogenous cells is identifying and monitoring the cells in the host. It is currently difficult or impossible to monitor the location of such cells or tissues in the host after administration. It may also be difficult to establish the survival of these cells in the host. Currently available procedures to locate transplanted cells are invasive and destructive. This problem must be overcome before such cell therapies can achieve their full potential.

Magnetic Resonance Imaging (MRI) is a technique that allows whole body in vivo imaging in three dimensions at near-cellular (microscopic) resolution. MR image contrast is largely determined by the nuclear magnetic relaxation times of tissues. To allow detection of transplanted cells, this technology provides compositions and methods for labeling cells in vitro with a contrast agent prior to transplantation. These contrast agents are non-toxic, biodegradable and are prepared by mixing commercially available magnetic responsive coated iron oxides and transfection agents, some of which are FDA approved. Magnetically labeled cells will facilitate the use or MRI to monitor these cells following transplantation in a clinical setting.

Anti-sera Against Arylalkylamine N-acetyltransferase (AANAT)—The Melatonin Rhythm Enzyme

David C. Klein et al. (NICHD).

[DHHS Reference No. E–181–00/0]

Licensing Contact: Pradeep Ghosh; 301/496–7736 ext. 211; e-mail: *ghoshp@od.nih.gov.*

Biological materials are important research tools that can be used for diagnostic purposes. In particular, antisera are of broad value in biomedical research and in clinical chemistry. The present invention comprises of unpurified and immunopurified antisera developed in rabbits against bovine, rat, pike-2, zebra fish, chicken, monkey, and human AANAT. AANAT is an important enzyme because it controls the production of melatonin and its rhythm in vertebrates. A daily rhythm of melatonin in the circulation serves as the hormonal signal of the daily light/dark cycle. AANAT protein is expressed at high levels in pineal gland and retina, and only at night. The antisera developed as part of this invention may serve as an important immunologic tool to detect and monitor the expression of AANAT protein. Expression of AANAT is important for the understanding of the biochemical and physiological role of melatonin and therefore, the antisera may have a wide use in research studies. In addition, antisera detecting human AANAT may be useful in pathological and histochemical analysis of human pineal and retinal tissues. Further, the use of antisera may be applicable in clinical testing and monitoring of the effects of drugs on AANAT protein and other biochemical modification procedures.

Research articles that describe the use of the antisera include: Invest Opthalmol. and Visual Science 43:564–572, 2002; Proc. Natl. Acad. Sci U.S.A. 98:8083–8088, 2001; Endocrinology 142:1804–1813, 2001; J. Biol. Chem. 276:24097–24107, 2001; J. Neurochem. 75:2123–2132, 2000; J. Neurochem. 74:2315–2321, 1999; Science 279:1358–1360, 1998; Recent Progress in Hormone Research 52:307–358, 1997.

Dated: April 24, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 02–10927 Filed 5–1–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Development of Novel Technologies for In Vivo Imagin.

Date: June 20–21, 2002.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Select—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Kenneth L Bielat, PhD, Scientific Review Administrator, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 7147, Bethesda, MD 20892, (301) 496–7576, *bielatk@mail.nih.gov.*

(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 24, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–10917 Filed 5–1–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; 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 constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Clinical Research.

Date: June 4–5, 2002.

Time: June 4, 2002, 8 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Eric H. Brown, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, Office of Review, 6705 Rockledge Drive, Msc 7965, One Rockledge Center, Room 6018, Bethesda, MD 20892–7965. (301) 435–0815. *browne@ncrr.nih.gov.*

Name of Committee: National Center for Research Resources Special Emphasis Panel, Research Infrastructure.

Date: June 18–19, 2002.

Time: June 18, 2002, 8 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Sybil A. Wellstood, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, One Rockledge Centre, Room 6018, 6705 Rockledge Drive, MSC 7965, Bethesda, MD 20892–7965. (301) 435–0814. *wellstoods@ncrr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: April 26, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–10921 Filed 5–1–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Heart, Lung, and Blood Advisory Council, May 9, 2002, 8:30 a.m. to May 9, 2002, 2 p.m., National Institutes of Health, Building 31, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892 which was published in the **Federal Register** on March 27, 2002, 67 FR 14721.

The National Heart, Lung, and Blood Advisory Council's open session start time has changed from 8:30 a.m. to 8 a.m. Date and location remain the same. The meeting is partially closed to the public.

Dated: April 26, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–10908 Filed 5–1–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Novel Biomarkers of Chronic Obstructive Pulmonary Disease (COPD).

Date: June 5, 2002.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815–4495.

Contact Person: Anne P. Clark, PhD, NIH, NHLBI, DEA, Review Branch, Rockledge II, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892–7924, (301) 435–0270, *clarka@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 24, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–10915 Filed 5–1–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Mentored Scientist Development Award.

Date: June 17–18, 2002.

Time: 7:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications

Place: Chevy Chase Holiday Inn, Chevy Chase, MD 20815.

Contact Person: Roy L White, PhD, Review Branch, Room 7196, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892, 301–435–0288.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for

Sleep Disorders Research; 98.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 26, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–10923 Filed 5– 1–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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 Heart, Lung, and Blood Institute Special Emphasis Panel, National Heart, Lung and Blood Institute Proteomics Initiative.

Date: June 13–14, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Sheraton Inner Harbor Hotel, 300 South Charles Street, Baltimore, MD 21201.

Contact Person: Valerie L. Prenger, PhD, Health Scientist Administrator, Review Branch, Room 7198, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892–7924. (301) 435–0297. prengerv@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 26, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–10924 Filed 5–1–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Cardiac Resuscitation Meeting.

Date: June 27–28, 2002.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, Chevy Chase, MD 20815.

Contact Person: Roy L. White, PhD, Review Branch, Room 7196, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892. 301–435–0288.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 26, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–10925 Filed 5–1–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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 Neurological Disorders and Stroke Special Emphasis Panel, ZNS1 SRB–A (04) Program Project Application Review.

Date: May 2, 2002.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: 6001 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Andrea Sawczuk, DDS, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–0660.

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. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: April 26, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–10906 Filed 5–1–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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 Neurological Disorders and Stroke Special Emphasis Panel.

Date: April 25, 2002.

Time: 1:00 p.m. to 4:00 p.m..

Agenda: To review and evaluate grant applications.

Place: 6001 Executive Blvd., Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Alan L. Willard, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

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. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: April 26, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–10907 Filed 5–1–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; 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 Allergy and Infectious Diseases Special Emphasis Panel, NIH Loan Repayment Program.

Date: May 9, 2002.

Time: 2:00 PM to 4:00 PM.

Agenda: To review and evaluate contract proposals.

Place: 6700–B Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gary S. Madonna, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–3528, *gm12w@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. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 26, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–10909 Filed 5–1–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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 National Advisory Neurological Disorders and Stroke Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Neurological Disorders and Stroke Council.

Date: May 30–31, 2002.

Time: May 30, 2002, 10:30 a.m. to 5 p.m.

Agenda: Report by the Acting Director, NINDS; Report by the Director, Division of Extramural Research; and other administrative and program developments.

Place: National Institutes of Health, Building 31, C Wing, Conference Room 10, 31 Center Drive, Bethesda, MD 20892.

Closed: May 31, 2002, 8:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, C Wing, Conference Room 10, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Constance W. Atwell, PhD, Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892–9531, (301) 496–9248.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *www.ninds.nih.gov*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: April 25, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–10910 Filed 5–1–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of 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 meetings of the National Advisory Neurological Disorders and Stroke Council.

The meetings 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 meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose

confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Neurological Disorders and Stroke Council Training Subcommittee.

Date: May 29, 2002.

Time: 8 p.m. to 10 p.m.

Agenda: To discuss the training programs of the Institute.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Constance W. Atwell, PhD, Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892–9531, (301) 496–9248.

Name of Committee: National Advisory Neurological Disorders and Stroke Council Clinical Trials Subcommittee.

Date: May 30, 2002.

Open: 8 a.m. to 8:30 a.m.

Agenda: To discuss clinical trials policy.

Place: National Institutes of Health, Building 31, A Wing, Conference Room 8A28, 31 Center Drive, Bethesda, MD 20892.

Closed: 8:30 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, A Wing, Conference Room 8A28, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Constance W. Atwell, PhD, Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892–9531, (301) 496–9248.

Name of Committee: National Advisory Neurological Disorders and Stroke Council Infrastructure, Neuroinformatics, and Computational Neuroscience Subcommittee.

Date: May 30, 2002.

Time: 8 a.m. to 10 a.m.

Agenda: To discuss research mechanisms and infrastructure needs.

Place: National Institutes of Health, Building 31, C Wing, Conference Room 9, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Robert Baughman, MD, Associate Director for Technology Development, National Institute of Neurological Disorders and Stroke, National Institutes of Health, 6001 Executive Blvd., Suite 2137, MSC 9527, Bethesda, MD 20892–9527, (301) 496–1779.

Information is also available on the Institute's/Center's home page: www.ninds.nih.gov, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: April 25, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–10911 Filed 5–1–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 a meeting of the Board of Scientific Counselors, NIDA.

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 Drug Abuse, 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 Counselor, NIDA.

Date: May 7, 2002.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Intramural Research Program, National Institute on Drug Abuse, Johns Hopkins Bayview Campus, Bldg. C, 2nd Floor Auditorium, 5500 Nathan Shock Drive, Baltimore, MD 21224.

Contact Person: Stephen J. Heishman, PHD, Research Psychologist, Clinical Pharmacology Branch, Intramural Research Program, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5500 Nathan Shock Drive, Baltimore, MD 21224, (410) 550–1547.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: April 25, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–10912 Filed 5–1–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin 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 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: Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee.

Date: June 11, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, The Conference Suite #107, Bethesda, MD 20817.

Contact Person: John R. Lymangrover, PHD, Scientific Review Administrator, National Institutes of Health, NIAMS, Natcher Bldg., Room 5As25N, Bethesda, MD 20892, 301–594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: April 25, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–10913 Filed 5–1–02; 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 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 meetings of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meetings 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 meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council.

Date: May 30–31, 2002.

Open: May 30, 2002, 8:30 a.m. to 12 p.m.

Agenda: To present the Director's Report and other scientific presentations.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, Conf. Rm. 6, Bethesda, MD 20892.

Closed: May 31, 2002, 9:45 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, Conf. Rm. 6, Bethesda, MD 20892.

Open: May 31, 2002, 10:15 a.m. to 12 p.m.

Agenda: Continuation of the Director's Report and other scientific presentations.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, Conf. Rm. 6, Bethesda, MD 20892.

Contact Person: Robert D. Hammond, PhD., Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Blvd, room 715, MSC 5452, Bethesda, MD 20892–5452, 301–594–8834, *hammondr@extra.niddk.nih.gov*.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council Digestive Diseases and Nutrition Subcommittee.

Date: May 30–31, 2002.

Open: May 30, 2002, 1:15 p.m. to 3 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 7, Bethesda, MD 20892.

Closed: May 30, 2002, 3:15 p.m. to 5:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 7, Bethesda, MD 20892.

Open: May 31, 2002, 8 a.m. to 9:30 a.m.

Agenda: Continuation of the review of the Division's scientific and planning activities.

Place: National Institute of Health, 9000 Rockville Pike, Building 31, Conference Room 7, Bethesda, MD 20892.

Contact Person: Robert D. Hammond, PhD., Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Blvd, room 715, MSC 5452, Bethesda, MD 20892–5452, 301–594–8834, *hammondr@extra.niddk.nih.gov*.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Endocrinology, and Metabolic Diseases Subcommittee.

Date: May 30–31, 2002.

Open: May 30, 2002, 1:15 p.m. to 3:30 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, Conf. Rm. 6, Bethesda, MD 20892.

Closed: May 30, 2002, 3:45 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, Conf. Rm. 6, Bethesda, MD 20892.

Closed: May 31, 2002, 8 a.m. to 8:45 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, Conf. Rm. 6, Bethesda, MD 20892.

Open: May 31, 2002, 8:45 a.m. to 9:30 a.m.

Agenda: Continuation of the review of the Division's scientific and planning activities.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, Conf. Rm. 6, Bethesda, MD 20892.

Contact Person: Robert D. Hammond, PhD., Director for Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases. National Institutes of Health, 6707 Democracy Blvd, room 715, MSC 5452, Bethesda, MD 20892-5452, 301–594–8834, *hammondr@extra.niddk.nih.gov*.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Kidney, Urologic and Hematologic Diseases Subcommittee.

Date: May 30–31, 2002.

Open: May 30, 2002, 1:15 p.m. to adjournment.

Agenda: To review the Division's scientific and planning activities.

Open: May 30, 2002, 1:15 p.m. to adjournment.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 9A22.

Closed: May 31, 2002, 8 a.m. to 9:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 8.

Contact Person: Robert D. Hammond, PhD., Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Blvd, room 715, MSC 5452, Bethesda, MD 20892-5452, 301–594–8834, *hammondr@extra.niddk.nih.gov*.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by nongovernment employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *www.niddk.nih.gov/fund/divisions/DEA/Council/coundesc.htm.*, where an agenda and any additional information for the meeting will be posted when available.

(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 25, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–10914 Filed 5–1–02; 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 contract proposals and the discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel MRI Study of Normal Brain Development.

Date: May 24, 2002.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: 6100 Executive Blvd., DSR Conf. Rm., Rockville, MD 20852. (Telephone Conference Call)

Contact Person: Hameed Khan, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research, for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: April 24, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–10916 Filed 5–01–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel, Informal Caregiving Research SEP.

Date: June 10–11, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Marriott, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Mary Stephens-Frazier, PhD, Scientific Review Administrator, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd., Room 707, Bethesda, MD 20892. (301) 402–6959.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: April 26, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–10922 Filed 5–1–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel, Medical Informatics (ZLM1 MMR C 01).

Date: June 10, 2002.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Division of Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Merlyn M. Rodrigues, MD, PhD, Medical Officer/SRA, National Library of Medicine, Extramural Program, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS).

Dated: April 24, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–10918 Filed 5–1–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel, Medical Informatics (ZLM1 MMR M 01).

Date: June 11, 2002.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Division of Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Merlyn M. Rodrigues, M.D. PhD, Medical Officer/SRA, National Library of Medicine, Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: April 24, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–10919 Filed 5–1–02; 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 5 U.S.C.,

as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 ET–1 04.

Date: May 3, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Philip Perkins, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7804, Bethesda, MD 20892. (301) 435–1718.

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 CONC 04.

Date: May 13, 2002.

Time: 3 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Sharon K. Pulfer, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892. (301) 435–1767.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 26, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–10920 Filed 5–1–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: 1,8 Naphthalimide Imidazo [4,5,1-de] Acridones With Anti-Tumor Activity

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(I), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the invention embodied in U.S. Patent Application 60/187,991 filed on March 7, 2000, entitled ''1,8 Naphthalimide Imidazo [4,5,1-*de*] Acridones with Anti-Tumor Activity,'' to Avalon Pharmaceuticals, having a place of business in Gaithersburg, MD. The aforementioned patent rights have been assigned to the United States of America.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before July 1, 2002, will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Wendy R. Sanhai, Ph.D., Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; e-mail: *sanhaiw@od.nih.gov*; Telephone: (301) 496–7056, ext. 244; Facsimile: (301) 402–0220.

SUPPLEMENTARY INFORMATION: This invention relates to the general fields of pharmaceuticals and cancer chemotherapy, particularly to the areas of cytotoxic antitumor agents and DNA intercalating agents. The lead imidazoacridone compound which will be the target of development of the exclusive licensee is WMC79, a novel synthetic agent with high selectivity and potency against colon, pancreatic and hematopoietic tumors. WMC79 is a novel synthetic agent with very potent but highly selective activity against colon cancer, pancreatic cancer as well as hematopoietic tumors. Preliminary data show that WMC79 is very active against colon cancer and pancreatic cancer xenografted into nude mice and is very well tolerated at doses that produce a strong anti-tumor effect.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The field of use may be limited to the development of a drug for human administration, having therapeutic and pharmaceutical uses as an anti-cancer agent.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: April 24, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 02–10926 Filed 5–1–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Treatment of Ocular Disease With Pigment Epithelium Derived Factor (PEDF) Protein Using Non-Gene Therapy Means

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 15 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive world-wide license to practice the inventions embodied in any or all of (a) U.S. patents 5,840,686 (11/24/1998) and 6,319,687 (11/20/2001), (b) U.S. patent applications 07/894,215 (06/04/1992, now abandoned), 07/952,796 (9/24/1992, now abandoned), 08/279,979 (7/25/1994, now abandoned), 08/377,710 (01/25/1995, now abandoned), 08/520,373 (8/29/1995) and 09/630,629 (8/1/2000), and (c) foreign applications corresponding to PCT Patent Applications (i) PCT/US93/05358 entitled ''Retinal Pigmented Epithelium Derived Neurotrophic Factor'', published as WO 93/24529 (12/9/1993) and (ii) PCT/US95/07201, entitled ''Pigment Epithelium-Derived Factor: Characterization, Genomic Organization and Sequence of the PEDF Gene'', published as WO 95/33480 (12/14/95) to EyeTech Pharmaceuticals, Incorporated of New York, New York.

The prospective exclusive license may be limited to the development of compositions and methods for the treatment of ocular disease based on the

protein PEDF utilizing delivery methods other than gene therapy. The grant of the exclusive license proposed does not supercede that previously announced in 62 FR 62781–62782, November 25, 1997.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before July 1, 2002, will be considered.

ADDRESSES: Requests for a copy of these patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to Susan S. Rucker, J.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3821; telephone: 301/496–7056 ext 245; fax: 301/402–0220. A signed Confidentiality Agreement (CDA) will be required to receive copies of the patent applications.

SUPPLEMENTARY INFORMATION: The patents and patent applications describe and claim compositions based on the molecule known as Pigment Epithelium Derived Factor (PEDF) and methods for making and using those compositions. PEDF is also known as EPC–1 (early population doubling level cDNA–1; RJ Pignolo, et al. J Biol Chem. 268(12):8949–57 (Apr 25, 1993)) and SLED (Bouck, et al. WO 99/04806 (2/4/99)). These methods and compositions include the protein, as well as recombinant applications thereof based on the amino acid and nucleic acid sequences of PEDF. PEDF is a member of the serpin (serine protease inhibitor) superfamily of proteins but has not been shown to posses the serine protease inhibitory properties. *In vitro* studies have demonstrated that PEDF has properties beneficial to neuronal tissue (neuronal cell survival, gliastatic, and neurotrophic activity) and anti-angiogenic properties. These properties suggest that PEDF may be useful in compositions and methods for the treatment of ocular diseases such as age-related macular degeneration and diabetic retinopathy which may be related to angiogenesis and neuronal tissue properties or in the treatment of cancers.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. This prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license (*i.e.,* a completed ''Application for License to Public Health Service Inventions'') in the indicated exclusive field of use filed in response to this notice will be treated as objections to the grant of the contemplated license. Any objections to the grant of the contemplated license must specifically and separately, if more than one Notice of Intent to Grant related to these patents and patent applications is being responded to, reference the particular Notice of Intent to Grant being responded to and address only the proposed grant as set forth in the particular Notice of Intent to grant (*i.e.,* an objection to the proposed grant as set forth in this Notice of Intent to Grant to EyeTech Pharmaceuticals, Incorporated will not be considered an objection to the proposed grant as set forth in the concurrently published Notice of Intent to Grant to GenVec, Incorporated). Comments and objections will not be made available for public inspection and, to the extent permitted by law, will not be subject to disclosure under the Freedom of Information Act 35 U.S.C. 552.

Dated: April 24, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 02–10928 Filed 5–1–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Delivery of Pigment Epithelium Derived Factor (PEDF) To Treat Cancer by Gene Therapy

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 15 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive world-wide license to practice the inventions embodied in any or all of (a) U.S. patents 5,840,686 (11/24/1998) and 6,319,687 (11/20/2001), (b) U.S. patent applications 07/894,215 (06/04/1992, now abandoned), 07/952,796 (9/24/1992, now abandoned), 08/279,979 (7/25/1994, now abandoned), 08/377,710 (01/25/1995, now abandoned), 08/520,373 (8/29/1995) and 09/630,629 (8/1/2000), and (c) foreign applications corresponding to PCT Patent Applications (i) PCT/US93/05358 entitled ''Retinal Pigmented Epithelium Derived Neurotrophic Factor'', published as WO 93/24529 (12/9/1993) and (ii) PCT/US95/07201, entitled ''Pigment Epithelium-Derived Factor: Characterization, Genomic Organization and Sequence of the PEDF Gene'', published as WO 95/33480 (12/14/95) to GenVec, Incorporated of Gaithersburg, Maryland.

The prospective exclusive license may be limited to the development of compositions and methods utilizing viral vector based gene therapy for the delivery of PEDF in the treatment of cancer. The grant of the exclusive license proposed does not supercede that previously announced in 62 FR 62781–62782, November 25, 1997.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before July 1, 2002, will be considered.

ADDRESSES: Requests for a copy of these patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to Susan S. Rucker, J.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3821; telephone: 301/496–7056 ext 245; fax: 301/402–0220. A signed Confidentiality Agreement (CDA) will be required to receive copies of the patent applications.

SUPPLEMENTARY INFORMATION: The patents and patent applications describe and claim compositions and methods that incorporate the molecule known as Pigment Epithelium Derived Factor (PEDF). PEDF is also known as EPC–1 (early population doubling level cDNA–1; RJ Pignolo, et al. J Biol Chem. 268(12): 8949–57 (Apr. 25, 1993)) and SLED (Bouck, et al. WO 99/04806 (2/4/99)). These methods and compositions incorporating the molecule PEDF include the protein, as well as recombinant applications thereof based on the amino acid and nucleic acid sequences, for the molecule. PEDF is a member of the serpin (serine protease inhibitor) superfamily of proteins but has not been shown to posses the serine protease inhibitory properties. *In vitro* studies have demonstrated that PEDF has properties beneficial to neuronal tissue (neuronal cell survival, gliastatic, and neurotrophic activity) and anti-angiogenic properties. These properties suggest that PEDF may be useful in compositions and methods for the

treatment of cancers or in the treatment of ocular diseases such as age-related macular degeneration and diabetic retinopathy, which may be related to both angiogenesis and the neuronal tissue properties of the eye.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. This prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license (*i.e.,* a completed ''Application for License to Public Health Service Inventions'') in the indicated exclusive field of use filed in response to this notice will be treated as objections to the grant of the contemplated license. Any objections to the grant of the contemplated license must specifically and separately, if more than one Notice of Intent to Grant related to these patents and patent applications is being responded to, reference the particular Notice of Intent to Grant being responded to and address only the proposed grant as set forth in the particular Notice of Intent to Grant (*i.e.,* an objection to the proposed grant as set forth in this Notice of Intent to Grant to GenVec, Incorporated will not be considered an objection to the proposed grant as set forth in the concurrently published Notice of Intent to Grant to EyeTech Pharmaceuticals, Incorporated). Comments and objections will not be made available for public inspection and, to the extent permitted by law, will not be subject to disclosure under the Freedom of Information Act 35 U.S.C. 552.

Dated: April 24, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 02–10929 Filed 5–1–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Office of American Indian Trust

Agency Information Collection Activities Under OMB Review

AGENCY: Office of American Indian Trust, Interior.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and renewal.

DATES: Comment must be received on or before June 3, 2002.

ADDRESSES: Comments should be sent to: Document Library, Room 10102, Attn: Desk Officer for the Department of the Interior, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503. Copies of any comments should be sent to: Director, Office of American Indian Trust, United States Department of the Interior, 1849 C Street, NW., Room 2472, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: James I. Pace, (202) 208–3338.

SUPPLEMENTARY INFORMATION: The Department of the Interior invites comments by the public on: Whether the validity of the methodology and assumptions used; ways to enhance the quality, usefulness, and clarity of the information to be collected; and minimizing the burden of collection on those who are to respond. The Information Collection Request describes the nature of the information collection and its expected cost and burden. OMB has up to 60 days to approve or disapprove this information collection but may respond after 30 days; therefore, public comments submitted to OMB closer to 30 days will have more chance for review. 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 this collection is 1076–0146. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on February 14, 2002 (67 FR 6941). There were no comments received.

Title: Evaluation of the Performance of Trust Functions Performed by Tribes under Self-Governance Compacts, 25 CFR part 1000, subpart O (OMB Control No. 1076–0146). This is a request for an extension of a currently approved information collection.

Abstract: This collection of information will be made to ensure compliance with 25 U.S.C. 458cc(d) which requires that the Secretary of the Interior monitor the performance of trust functions which have been assumed under Self-Governance funding agreements negotiated between the Secretary and an Indian Tribe/Consortia (hereinafter the respondent).

This information collection addresses those statutory and regulatory performance requirements imposed upon the respondent through the assumption of a particular trust function, through a formal Self-Governance agreement pursuant to the Self-Governance Act (Pub. L. 103–413) which, if not performed properly, may create imminent jeopardy to a trust asset. The information will be used by the Department of the Interior to determine if there is imminent jeopardy to any asset held in trust by the United States for an Indian Tribe or individual Indian that are being managed by a Tribe/Consortium on behalf of the United States pursuant to a Self-Governance agreement.

Burden Statement: There is no preliminary work nor is any follow-up work required of the respondents. There are no forms to complete. The annual hour burden is calculated by the amount of time that the reviewer spends at each program site interviewing the respondents and collecting file information. Currently there are 70 respondents. The time required ranges from 4 person/hours to 80 person/hours. Based on the size and complexity of the current programs, the average hours spent for each annual evaluation is estimated at 24 person/hours. $70 \times 24 =$ 1,680 total burden hours per year for the collection of information.

Dated: April 18, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–10802 Filed 5–1–02; 8:45 am]

BILLING CODE 4310–E8–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collections Submitted to the Office of Management and Budget for Approval Under the Paperwork Reduction Act; Grants Programs Authorized by the North American Wetlands Conservation Act (NAWCA)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service (Service) plans to submit to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995. Copies of the specific information collection requirements, related forms and explanatory material may be obtained by contacting the Service Information Collection

Clearance Officer at the address provided below.

DATES: Consideration will be given to all comments received on or before June 3, 2002. The 60 day notice was published in the **Federal Register** on February 6, 2002 (67 FR 5608). No comments were received during the 60 day period.

ADDRESSES: Comments and suggestions on the requirement should be sent to Rebecca Mullin, Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, ms 222—ARLSQ, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact Rebecca A. Mullin at 703/358–2287, or electronically to *rmullin@fws.gov.*

SUPPLEMENTARY INFORMATION: The 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)). On May 26, 1999, the U.S. Fish and Wildlife Service (Service) was given regular approval by OMB for collection of information in order to continue the grants programs currently conducted under the North American Wetlands Conservation Act (Pub. L. 101–233, as amended; December 13, 1989). The assigned OMB information collection control number is 1018–0100, and approval expires on May 31, 2002. The Service is requesting a three year term of approval for this information collection activity. 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.

Comments are invited on : (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information; (3) ways to enhance the quality, utility and clarity of the information to be collected; and, (4) ways to minimize the burden of the collection of information on respondents.

Title: Information Collection In Support of Grant Programs Authorized by the North American Wetlands Conservation Act of 1989 (NAWCA).

Approval number: 1018–0100.

Service form number(s): N/A.

Description and use: The North American Waterfowl Management Plan (NAWMP), first signed in 1986, is a tripartite agreement among Canada, Mexico and the United States to enhance, restore and otherwise protect continental wetlands to benefit waterfowl and other wetland associated wildlife through partnerships between and among the private and public sectors. Because the 1986 NAWMP did not carry with it a mechanism to provide for broadly-based and sustained financial support for wetland conservation activities, Congress passed and the President signed into law the NAWCA to fill that funding need. The purpose of NAWCA, as amended, is to promote long-term conservation of North American wetland ecosystems and the waterfowl and other migratory birds, fish and wildlife that depend upon such habitat through partnerships. Principal conservation actions supported by NAWCA are acquisition, enhancement and restoration of wetlands and wetlands-associated habitat.

As well as providing for a continuing and stable funding base, NAWCA establishes an administrative body, made up of a State representative from each of the four Flyways, three representatives from wetlands conservation organizations, the Secretary of the Board of the National Fish and Wildlife Foundation, and the Director of the Service. This administrative body is chartered, under the Federal Advisory Committee Act, by the U.S. Department of the Interior as the North American Wetlands Conservation Council (Council). As such, the purpose of the Council is to recommend wetlands conservation project proposals to the Migratory Bird Conservation Commission (MBCC) for funding.

Subsection (c) of section 5 (Council Procedures) provides that the "* * * Council shall establish practices and procedures for the carrying out of its functions under subsections (a) and (b) of this section * * *," which are consideration of projects and recommendations to the MBCC, respectively. The means by which the Council decides which project proposals are important to recommend to the MBCC is through grants programs that are coordinated through the Council Coordinator's office (NAWWO) within the Service.

Competing for grant funds involves applications from partnerships that describe in substantial detail project locations and other characteristics, to meet the standards established by the Council and the requirements of NAWCA. The Council Coordinator's office publishes and distributes Standard and Small Grants instructional booklets that assist the applicants in formulating project proposals for Council consideration. The instructional booklets and other instruments, *e.g.*, **Federal Register** notices on request for proposals, are the basis for this information collection request for OMB clearance. Information collected under this program is used to respond to such needs as: Audits, program planning and management, program evaluation, Government Performance and Results Act reporting, Standard Form 424 (Application For Federal Assistance), grant agreements, budget reports and justifications, public and private requests for information, data provided to other programs for databases on similar programs, Congressional inquiries and reports required by NAWCA, *etc.*

In summary, information collection under these programs is required to obtain a benefit, *i.e.*, a cash reimbursable grant that is given competitively to some applicants based on eligibility and relative scale of resource values involved in the projects. The information collection is subject to the Paperwork Reduction Act requirements for such activity, which includes soliciting comments from the general public regarding the nature and burden imposed by the collection.

Frequency of collection: Occasional. The Small Grants program has one project proposal submissions window per year and the Standard Grants program has two per year.

Description of respondents: Households and/or individuals; business and/or other for-profit; not-for-profit institutions; farms; Federal Government; and State, local and/or Tribal governments.

Estimated completion time: The reporting burden, or time involved in writing project proposals, is estimated to be 80 hours for a small grants submission and 400 hours for a standard grants submission.

Number of respondents: It is estimated that 150 proposals will be submitted each year, 70 for the small grants program and 80 for the standard grants program.

Annual burden hours: 37,600.

Dated: April 11, 2002.

Rebecca Mullin,

Information Collection Officer, Fish and Wildlife Service.

[FR Doc. 02–10801 Filed 5–1–02; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–417–421 (Final) and 731–TA–953, 954, 956–959, 961, and 962 (Final)]

Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, Turkey, and Ukraine

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of countervailing duty and antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of countervailing duty investigations Nos. 701–TA–417–421 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of subsidized imports from Brazil, Canada, Germany, Trinidad and Tobago, and Turkey of carbon and certain alloy steel wire rod, provided for in subheadings 7213.91.30, 7213.91.45, 7213.91.60, 7213.99.00, 7227.20.00, and 7227.90.60 of the Harmonized Tariff Schedule of the United States (HTS). Notice is also hereby given of the scheduling of the final phase of antidumping investigations Nos. 731–TA–953, 954, 956–959, 961, and 962 (Final) under section 735(b) of the Act (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine of carbon and certain alloy steel wire rod.[1] For further information concerning the conduct of this phase of the investigations, hearing procedures, 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 and C (19 CFR part 207).

EFFECTIVE DATE: April 10, 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 these investigations may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION:

Background.—The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in Canada, Germany, and Trinidad and Tobago of carbon and certain alloy steel wire rod, and that such products from Brazil, Canada, Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on August 31, 2001, by Co-Steel Raritan, Inc., Perth Amboy, NJ; GS Industries, Inc., Charlotte, NC; Keystone Consolidated Industries, Inc., Dallas, TX; and North Star Steel Texas, Inc., Edina, MN. Although the Department of Commerce has preliminarily determined that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are not being provided to manufacturers, producers, or exporters in Brazil and Turkey of carbon and certain alloy steel wire rod and that imports of carbon and certain alloy steel wire rod from Indonesia are not being and are not likely to be sold in the United States at less than fair value, for purposes of efficiency the Commission hereby waives rule 207.21(b)[2] so that the final phase of the investigations may proceed concurrently in the event that Commerce makes final affirmative determinations with respect to such imports.

Participation in the investigations 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 final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. § 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on June 12, 2002, and a public version will be issued

[1] For purposes of these investigations, the Department of Commerce has defined the subject merchandise as certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.0 mm, in solid cross-sectional diameter. Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the HTS definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (i.e., products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium. Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod that comport with the specifications set forth in the scope language published in the Commerce Department's preliminary determinations in these cases (see, e.g., 67 FR 17385, April 10, 2002).

[2] Section 207.21(b) of the Commission's rules provides that, where the Department of Commerce has issued a negative preliminary determination, the Commission will publish a Final Phase Notice of Scheduling upon receipt of an affirmative final determination from Commerce.

thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on June 25, 2002, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before June 17, 2002. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on June 20, 2002, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is June 19, 2002. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is July 2, 2002; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before July 2, 2002. On July 19, 2002, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before July 23, 2002, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, 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. In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: April 26, 2002.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–10852 Filed 5–1–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–02–013]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: International Trade Commission.

TIME AND DATE: May 10, 2002 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436. Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–428 and 731–TA–992–994 and 996–1005 (Preliminary) (Oil Country Tubular Goods from Austria, Brazil, China, France, Germany, India, Indonesia, Romania, South Africa, Spain, Turkey, Ukraine, and Venezuela)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on or before May 13, 2002; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before May 20, 2002.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: April 29, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–11029 Filed 4–30–02; 2:26 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of a Consent Decree Pursuant to the Clean Water Act

Notice is hereby given that a proposed Consent Decree in *United States of America* v. *Alexander City, Alabama, Russell Corporation, Avondale Mills, Inc., and the State of Alabama,* Civ. No. 02–W–428–E, was lodged on April 15, 2002, with the United States District Court for the Middle District of Alabama.

The proposed Consent Decree would resolve certain claims under sections 301 and 402 of the Clean Water Act, 333 U.S.C. 1251, *et seq.,* against Alexander City, Alabama (''the City''), Russell Corporation (''Russell'') and Avondale Mills, Inc. (''Avondale'') (collectively ''Settling Defendants''), through the payment of a civil penalty and the performance of a Supplemental Environmental Project (''SEP''). The United States alleges that the City is liable as a person who has discharged a pollutant from a point source to navigable waters of the United States in excess of permit limitations. The United States alleges that Russell and Avondale are liable as persons who caused interference with publicly-owned treatment works and pass through of untreated contaminants to navigable waters of the United States. The United States further alleges that the City failed to develop and enforce specific effluent limits of Industrial Users that were necessary to ensure renewed and continued compliance with the City's National Pollutant Discharge Elimination System (''NPDES'') permit.

The proposed Consent Decree would resolve the liability of the Settling Defendants for the violations alleged in the complaint filed in this matter. To resolve these claims, the Settling Defendants will each pay a civil penalty of $10,000, and collectively will perform a land acquisition SEP valued at $197,000. Claims against the State of Alabama, which is named as a defendant solely pursuant to section 309(e) of the Clean Water Act, 33 U.S.C. 1319(e), are not resolved by the proposed Consent Decree.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be

addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044 and should refer to *United States* v. *Alexander City, Alabama, et al.,* DJ No. 90–5–1–1–06993.

The proposed Consent Decree may be examined at the office of the United States Attorney for the Middle District of Alabama, One Court Square, Suite 201, Montgomery, AL 36104, and at the Region 4 Office of the Environmental Protection Agency, Atlanta Federal Center 61 Forsyth Street, SW, Atlanta GA 30303. A copy of the proposed Consent Decree may also be obtained by faxing a request to Tonia Fleetwood, Department of Justice Consent Decree Library, fax no. (202) 616–6584; phone confirmation no. (202) 514–1547. There is a charge for the copy (25 cents per page reproduction cost). Upon requesting a copy, please mail a check payable to the ''US Treasury'', in the amount of $10.75, to: Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. The check should refer to *United States* v. *Alexander City, et al,* DJ No. 90–5–1–1–06993.

Ellen Mahan,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–10816 Filed 5–1–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Partial Consent Decrees in Comprehensive Environmental Response, Compensation, and Liability Act Cost Recovery Action

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that two Partial Consent Decrees in *United States* v. *American Scrap Company et al.*, Civil Action No. 1:99–CV–2047, were lodged with the United States District Court for the Middle District of Pennsylvania on April 22, 2002.

One of the two Partial Consent Decrees resolves the United States' claims against Larami Metal Company, Inc. under sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. § 9607(a), relating to the Jack's Creek/Sitkin Smelting Superfund Site in Mifflin County, Pennsylvania. The Partial Consent Decree requires Larami Metal to pay $175,000.00 to the United States.

The second Partial Consent Decree resolves the United States' claims against Hudson Scrap Metal, Inc., United Alloys & Steel Corporation, United Scrap, Inc., and Urps Metal Company under Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9607(a), relating to the Jack's Creek/Sitkin Smelting Superfund Site. The Partial Consent Decree requires a payment by each of these defendants—Hudson Scrap ($79,578.18), United Alloys ($80,000.00), United Scrap ($25,000) and Urps Metals ($5,000.00)—consistent with each respective party's ability to pay.

The Department of Justice will accept written comments on the proposed Partial Consent Decrees for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044–7611 and refer to *United States* v. *American Scrap Company*, DOJ Ref. No. 90–11–2–911/1.

Copies of the proposed Partial Consent Decrees may be examined at the office of the United States Attorney, Middle District of Pennsylvania, 228 Walnut Street, Harrisburg, PA 17108, and at EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029. Copies of the proposed Partial Consent Decrees may also be obtained by mail from the U.S. Department of Justice, Consent Decree Library, P.O. Box 7611, Washington, DC 20044–7611, or by faxing a request to Tonia Fleetwood, facsimile no. (202) 514–0097, phone confirmation no. (202) 514–1547. When requesting copies, please enclose a check to cover the twenty-five cents per page reproduction costs payable to the ''U.S. Treasury'' in the amount of $5.00 for the Larami Metal decree and/or $8.50 for the Hudson Scrap decree, and reference *United States* v. *American Scrap Company*, DOJ Ref. No. 90–11–2–911/1.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 02–10821 Filed 5–1–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Barretts Minerals Inc.,* Civil Action No. 02–62–M–DWM, was lodged with the United States Court for the District of Montana on April 9, 2002.

The consent decree resolves claims pursuant to section 309(d) of the Clean Water Act, 33 U.S.C. 1319(d), for past violations of permit limits for nitrate plus nitrite and total suspended solids, and for failures to monitor stream flow rates. The decree obligates defendant Barretts to pay a civil penalty of $40,000. The decree also requires that Barretts expend at least $74,000 to implement a supplemental environmental project consisting of rehabilitation of a roadway along Stone Creek, in Madison County, Montana, to control stormwater run-off and sediment deposition.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530. Each communication should refer on its face to *United States* v. *Barretts Minerals Inc.,* DOJ # 90–5–1–1–06884.

The proposed consent decree may be examined at the office of the United States Attorney for the District of Montana, 105 East Pine Street, Missoula, MT 59601; and the Region VIII Office of the Environmental Protection Agency, 999 18th Street, Suite 500, Denver, CO 80202. A copy of the proposed consent decree may be obtained by faxing a request to Tonia Fleetwood, Department of Justice Consent Decree Library, fax number (202) 616–6584; phone confirmation (202) 514–1547. In requesting a copy, please forward the request and a check in the amount of $8.75 (25 cents per page reproduction cost) payable to the U.S. Treasury, referencing the DOJ Consent Decree Library, *United States* v. *Barretts Minerals Inc.,* DOJ #90–5–1–1–06884, to the first-class mail address listed above.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–10815 Filed 5–1–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Under 28 CFR 50.7, notice is hereby given that on April 22, 2002, a proposed consent decree in *United States* v. *F.P. Woll & Co.,* Civil Action No. 02–CV–2331, was lodged with the United States District Court for the Eastern District of Pennsylvania.

In this action the United States is seeking response costs pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9601 *et seq.,* in connection with the North Penn Area Six Superfund Site (''Site''), which consists of a number of separate parcels of property within and adjacent to the Borough of Lansdale, Montgomery County, Pennsylvania. The proposed consent decree will resolve the United States' claims against F.P. Woll & Company (''Settling Defendant'') in connection with the Settling Defendant's property at the Site. Under the terms of the proposed consent decree, Settling Defendant will reimburse the United States $40,708.00 in past response costs incurred by the United States at Settling Defendant's property and will receive a covenant not to sue by the United States for past costs under Section 107 of CERCLA.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural resources Division, and transmitted by one of the following methods: (1) Via U.S. Mail to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611; (2) by facsimile to (202) 353–0296; and/or (3) by overnight delivery, other than through the U.S. Postal Service, c/o Chief, Environmental Enforcement Section, 1425 New York Avenue, NW., 13th Floor, Washington DC 20005. Each communication should reference *United States* v. *F.P. Woll & Co.,* DJ #90–11–2–006024/13.

The proposed consent decree may be examined at the Office of the United States Attorney, 615 Chestnut Street, Suite 1250, Philadelphia, PA 19106, and at U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103. A copy of the proposed consent decree may also be obtained by faxing a request to Tonia Fleetwood, Department of Justice Consent Decree Library, fax number 202–616–6584 (telephone confirmation number 202–514–1547). Upon requesting a copy, please mail a check payable to ''U.S. Treasury'' in the amount of $4.00 (25 cents per page reproduction cost) to Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. The check should reference *United States* v. *F.P. Woll & Co.,* DJ #90–11–06024/13.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–10819 Filed 5–1–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Filing of Environmental Settlement in Re Fruit of the Loom, Inc.

Notice is hereby given that a proposed settlement entered into by the United States on behalf of the U.S. EPA, Department of Interior, National Oceanic and Atmospheric Administration of the Department of Commerce, and the Nuclear Regulatory Commission, the States of Illinois, Michigan, New Jersey, and Tennessee, Debtors Fruit of the Loom, Inc. and NWI Land Management Corp., and Velsicol Chemical Corporation and True Specialty Corporation was filed on April 17, 2002 in *In re Fruit of the Loom, Inc.,* No. 99–4497(PJW) with the United States Bankruptcy Court for the District of Delaware. The proposed settlement would resolve certain claims of the Governmental Parties against the settling parties under the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9601 *et seq.,* Section .7003 of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6973, and the Atomic Energy Act, 42 U.S.C. 2001 *et seq.,* relating to the St. Louis Facility in St. Louis, Michigan, the Breckenridge Facility in St. Louis/Breckenridge, Michigan; the Residue Hill Facility in Chattanooga, Tennessee; the Hardeman County Landfill Facility in Toone, Tennessee; the Hollywood Dump Facility in Memphis, Tennessee; the Marshall 23 Acre Facility in Marshall, Illinois; and the Ventron/Velsicol Chemical/Berry's Creek Facility in Wood-Ridge and Carlstadt, New Jersey, the ''Seven Facilities''). Under the settlement, *inter alia,* the following will be dedicated to fund response action or costs and natural resource damage assessment or restoration for the Seven Facilities: (1) $4,292,808 to be paid in full as an Allowed Administrative Expense; (2) certain future proceeds from general liability insurance claims; (3) certain future recoveries from preferred shares of stock in True specialty Corporation; and (4) certain proceeds from Fruit of the Loom's and Velsicol's ''cost cap'' and pollution legal liability insurance policies. The settlement also resolves certain claims against the debtors Fruit of the Loom, Inc. and NWI Land Management Corp. (but not Velscol) for other Facilities known as the A&I Facilities, which are listed in Attachment A to the settlement.

The Department of Justice will receive comments relating to the United States' approval of the terms of proposed settlement for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *In re Fruit of the Loom, Inc.,* D.J. Ref. No. 90–11–2–07096. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d). Copies of the proposed settlements may be examined at the Office of the United States Attorney for the District of Delaware, 1201 Market Street, Suite 1100, Wilmington, DE, the United States Environmental Protection Agency, Region 2, 290 Broadway, 17th Floor, New York, New York, the United States Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia, and the United States Environmental Protection Agency, Region 5, 77 West Jackson Blvd., 14th Floor, Chicago, Illinois. Copies of the proposed settlements may also be obtained by request addressed to the Department of Justice Consent Decree Library, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044. In requesting a copy of the proposed settlements, please enclose a check in the amount of $24.75 for (25 cents per page for reproduction costs), payable to the United States Treasurer.

Bruce S. Gelber,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–10818 Filed 5–1–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decrees Under the Comprehensive Environmental Response, Compensation and Liability Act

Pursuant to section 122(d) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(d), and 28 CFR 50.7, notice is hereby given that on April 25, 2002, two proposed consent decrees in *United States* v. *General Motors Corp., et al.,* Civil Action No. 02 C 2345, were lodged with the United States District Court for the Northern District of Illinois. This action is not consolidated with *United States* v. *Nalco Chemical Co., et al.,* Civil Action No. 91 C 4482 (N.D. Illinois).

In this action the United States asserted claims pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, seeking injunctive relief to require a group of 12 defendants to implement two operable unit remedial actions selected by the United States Environmental Protection Agency (''EPA'') for the Byron Superfund Site in Ogle County, Illinois (''Site''), and seeking reimbursement of response costs incurred and to be incurred by the United States in connection with the Site. The two proposed consent decrees would resolve all claims asserted against defendants in this action, subject to specified reservations of rights. One of the proposed consent decrees referred to as the ''Permanent Water Supply System Consent Decree,'' provides for construction of a permanent water supply system to serve the Rock River Terrace subdivision near the Site. The other consent decree, referred to as ''Soil Consent Decree'', provides for defendants to implement specified remedial measures, including installation of a cover over contaminated soils, and groundwater monitoring activities, in accordance with EPA's selected remedy and a scope of work incorporated into the Soil Consent Decree. Under the Soil Consent Decree, defendants will also pay $282,000 to the Hazardous Substance Superfund as reimbursement for past response costs incurred by the United States in connection with the Site, and defendants will pay specified future response costs incurred by the United States, including costs incurred in connection with the oversight and implementation of work required under either the Soil Consent Decree or the Permanent Water Supply Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating either to the Permanent Water Supply System Consent Decree or the Soil Consent Decree, or both. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *General Motors Corp., et al.,* Civil Action No. 91 C 4482, D.J. Ref 90–11–2–687/1. Commenters on the Soil Consent Decree may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The Permanent Water Supply System Consent Decree and Soil Consent Decree may be examined at the Office of the United States Attorney, 219 South Dearborn Street, Chicago, Illinois 60604, and at U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. A copy of each of the Consent Decrees may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please indicate whether you wish to receive the Permanent Water Supply System Consent Decree, the Soil Consent Decree, or both, and specify whether you wish to receive copies of attachments to the requested Consent Decree(s). Please enclose a check, payable to the U.S. Treasury, in the amount specified below (25 cents per page reproduction cost): $70.75 for the Soil Consent Decree, with attachments; $14.00 for the Soil Consent Decree, without attachments; $53.50 for the Permanent Water Supply System Consent Decree, with attachments; $13.00 for the Permanent Water Supply System Consent Decree, without attachments; $124.25 for both Consent Decrees, with attachments; $27.00 for both Consent Decrees without attachments.

William D. Brighton,

Assistant, Chief, Environmental, Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–10820 Filed 5–1–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with 28 CFR 50.7, notice is hereby given that on April 3, 2002 a proposed consent decree in *United States* v. *MEC Oregon Racing, Inc. et al.,* Civil Action No. 02–CV–433–HA, was lodged with the United States District Court for the District of Oregon.

In this action, which concerned the Portland Meadows race track complex located in Portland, Oregon, the United States alleged that MEC Oregon Racing, Inc., Thomas Moyer, and Portland Meadows Management, LLC, discharged and may continue to discharge wastewater and other pollutants from the stable and practice track areas, without authorization by a National Pollutant Discharge Elimination System (''NPDES'') permit, in violation of the Clean Water Act. The consent decree requires Defendant Moyer to pay a $100,000 penalty and requires all Defendants, among other things, to (i) remove all horses from the complex and prevent their return until routing of process wastewater to a sanitary sewer is complete, (ii) immediately institute Best Management Practices to reduce discharge of process wastewater, (iii) pay stipulated penalties for any direct discharges of process wastewater occurring on or after February 15, 2002, (iv) apply for an NPDES permit, and (v) cease all unpermitted discharges by April 30, 2005.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments on the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *MEC Oregon Racing, Inc. et al.,* Civil Action No. 02–CV–433–HA, DOJ No. 90–5–1–1–06954/1.

The proposed consent decree may be examined at the office of the United States Attorney, 1000 S.W. Third Avenue, Suite 600, Portland, Oregon 97204, and may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. To request a copy of the proposed consent decree by mail, please refer to *United States* v. *MEC Oregon Racing, Inc. et al.,* Civil Action No. 02–CV–433–HA, DOJ No. 90–5–1–1–06954/1, and enclose a check for the amount of $9.00 (25 cents

per page reproduction cost) payable to the Consent Decree Library.

Robert E. Maher, Jr.,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–10817 Filed 5–1–02; 8:45 am]

BILLING CODE 4410–15–M

IMMIGRATION AND NATURALIZATION SERVICE

Agency Information Collection Activities: Extension of existing Collection; Comment Request

ACTION: 30-day notice of information collection under review; Application by refugee for Waiver of Ground of Excludability; Form I–602.

The Office of Management and Budget (OMB) approval is being sought for the information collected listed below. This proposed information collection was previously published in the **Federal Register** on March 1, 2002 at 67 FR 4970, allowing for a 60-day public comment period. No comments were received by the Immigration and Naturalization Service.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until June 3, 2002. This process is conducted in accordance with 5 CFR part 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Patrick Henry Building, 601 D Street, NW., Suite 1600,. Washington, DC 20530. Comment may also be submitted to DOJ via facsimile to 202–514–1534.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of currently approved information collection.

(2) *Title of the Form/Collection:* Application by Refugee for Waiver of Ground of Excludability.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–602. Office of International Affairs, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is used by the INS to determine eligibility for waiver.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 25,000 responses at 15 minutes (.25) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 625 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Mr. Richard A. Sloan, 202–514–3291, Director, Regulations and Forms Service Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: April 25, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–10798 Filed 5–1–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-day notice of information collection under review: application for Certificate of Citizenship; Form N–600.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on June 13, 2001 at 66 FR 32148, allowing for a 60-day public comment period. Written comments were received from two organizations. The written comments have been addressed in the accompanying Supporting Statement. Based on the comments received, the INS revised the Form N–600 and created a new Form N–600K, Application for Citizenship and Issuance of a Certificate under Section 322. The Form N–600K will be published for public comment separately.

The purpose of this notice is to allow an additional 30 days for public comments on the revised form. Attached for your review and comment is the revised form. Comments are encouraged and will be accepted until June 3, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725–17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points.

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of information collection:* revision of currently approved information collection.

(2) *Title of the form collection:* application for Certificate of Citizenship.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–600, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: individuals or households. This form is provided by the Service as a uniform format for obtaining essential data necessary to determine the applicant's eligibility for the requested immigration benefit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 88,500 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 88,500 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, 425 I Street, NW., Room 4034, Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, N.W., Ste. 1600, Washington, DC 20530.

Dated: April 24, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–10799 Filed 5–1–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-Day Notice of Information Collection under Review: Application for Citizenship and Issuance of Certificate under Section 322; Form N–600K.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on June 13, 2001 at 66 FR 32148, allowing for a 60-day public comment period. Written comments were received from two organizations. The written comments have been addressed in the accompanying Supporting Statement. Based on the comments received, the INS revised the Form N–600 and created a new Form N–600K, Application for Citizenship and Issuance of a Certificate under Section 322.

The purpose of this notice is to allow an additional 30 days for public comments on the revised form. Attached for your review and comment is the revised form. Comments are encouraged and will be accepted until June 3, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725—17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New information collection.

(2) *Title of the Form/Collection:* Application for Citizenship and Issuance of Certificate under Section 322.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–600K, Immigration Services Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form provides an organized framework for establishing the authenticity of an applicant's eligibility and is essential for providing prompt, consistent and correct processing of such applications for citizenship under Section 322 of the Act.

(5) *An estimate of the total of respondents and the amount of time estimated for an average respondent to respond:* 1,500 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,500 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, 425 I Street, NW., Room 4034, Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s), contained in this notice, especially regarding the estimated public burden and associated response

time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Ste. 1600, Washington, DC 20530.

Dated: April 24, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–10800 Filed 5–1–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,439 & NAFTA–4365]

Eastern Fine Paper Brewer, ME; Notice of Revised Determination on Reconsideration

On April 27, 2001, the Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration for TAA and NAFTA–TAA applicable to workers and former workers of the subject firm. The notice was published in the **Federal Register** on May 9, 2001 (66 FR 23731).

The initial TAA and NAFTA–TAA petition investigations for workers at Eastern Fine Paper, Brewer, Maine (TA–W–38,439 & NAFTA–4365) were denied based on the finding that the subject firm sales and production increased during the relevant period.

The company provided additional information depicting increases in production. They also provided a sales list of customers.

On reconsideration, the Department conducted a survey of the subject firm's customers regarding their purchases of high capacity papers for commercial printing, sheets and rolls during 1999, 2000 and January through March 2001. The survey revealed a major customer increased their reliance on imported (including Canada and/or Mexico) paper like or directly competitive with what the subject plant produced, while decreasing their purchases from the subject plant during the relevant period.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with high capacity papers for commercial printing, sheets and rolls, contributed importantly to the decline in sales or production and to the total or partial separation of workers of Eastern Fine Paper, Brewer, Maine. In accordance with the provisions of the Act, I make the following revised determination:

''All workers of Eastern Fine Paper, Brewer, Maine (TA–W38,439 who became totally or partially separated from employment on or after December 5, 1999, through two years from the date of this issuance, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974'' and

''All workers of Eastern Fine Paper, Brewer, Maine (NAFTA–TAA–4365 who became totally or partially separated from employment on or after December 5, 1999, through two years from the date of this issuance, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974''

Signed in Washington, DC, this 10th day of April 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–10899 Filed 5–1–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Traditional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of April, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–40,914; Harsco Track Technologies, Luddington, MI
TA–W–40,742; Huhtamaki Foodservice, Inc., FSBU, Waterville, ME
TA–W–40,612; Odetics, Inc., GYYR CCTV Div., Anaheim, CA
TA–W–40,529; L–S Electro Galvanizing Co., Cleveland, OH
TA–W–40,475; Quality Tool and Die, Inc., Meadville, PA
TA–W–40,163; Acu-Crimp, Inc., El Paso, TX
TA–W–41,196; Textile Parts and Machine Co., Gastonia, NC
TA–W–40, 343; Specialty Minerals (Michigan), Inc., Plainwell, MI
TA–W–40,376; Wheeling Corrugating Co., Kirkwood, NY
TA–W–40,843; Superior Milling, Inc., Watersmeet, MI

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–39,881; Marley Cooling Tower Co., Louisville, KY
TA–W–40,269; Wheeling Corrugating Co., Klamath Falls, OR
TA–W–40,109; Innovex, Inc., Litchfield, MN
TA–W–40,442; CNH Global N.V., Burlington, IA
TA–W–40,768; Bor Warner, Inc., Transmission Systems, Coldwater, MI
TA–W–40,856 & A; Powermatic Corp., Manufacturing, McMinnville, TN

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–41,164; Britax Health Techna, Inc., Aircraft Interior System, Bellingham, WA
TA–W–40,161; JVC Digital Image, Carlsbad, CA
TA–W–581; Young Men's Shop, Inc., Altoona, PA
TA–W–40,798; Ocwen Technology Xchange, Ocwen Federal Bank FSB, West Palm Beach, FL
TA–W–40,389; BP Amoco Oil Co., Chicago, IL
TA–W–40,743; Hewlett Packard, Colorado Springs, CO
TA–W–40,548; BP Exploration Alaska, Inc., Prudhoe Bay, AK

TA–W–40,426; Gilbert Western Corp. on Location at the East Boulder Mine Site, Omaha, NE

TA–W–40,961; Foster Wrecking Yard, Stamford, TX

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–39,432; Columbus Industries, Ashville, OH

TA–W–40,170; Amerex Corp., New York, NY

TA–W–40,915; Trend Technologies, Round Rock, TX

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–40,012; Polymer Sealing Solutions, Forsheda Engineered Seals, Vandalia, IL: August 27, 2000.

TA–W–40,335; Phelps Dodge Sierrita, Inc., Green Valley, AZ: October 26, 2000.

TA–W–40,539; Kemmer Prazision, Chicago, IL: December 13, 2000.

TA–W–40,534; Littleford Day, Inc., Florence, KY: December 24, 2000.

TA–W–40,569; Tama Sportswear, Long Island City, NY: November 6, 2000.

TA–W–40,708; Cannon County Knitting Mills, Inc., Smithville, TN: January 7, 2001.

TA–W–40,761; Lou Levy & Sons Fashions, Inc., New York, NY: May 18, 2001.

TA–W–39,792; Kinston Apparel Manufacturing Co., A Subsidiary of Brooks Brothers, Inc., Kinston, NC: July 30, 2000.

TA–W–40,893; Danbury Fabrics LTD, Ridgewood, NY: October 25, 2000.

TA–W–40,965; L.E. Mason Co., Thomas and Betts Corp., Boston, MA: February 5, 2001.

TA–W–40,956; Bead Industries, Inc., Bridgeport, CT: February 2, 2001.

TA–W–40,793; ATR Wire and Cable Co., Inc., Danville, KY: January 4, 2001.

TA–W–40,733; Blauer Manufacturing Co., Inc., CAM Div., Chatom, AL: December 18, 2000.

TA–W–40,807 & A & B; Down East Woodcrafters, Skowhegan, ME, Madison, ME and Bath, ME: January 9, 2001.

TA–W–41,154; Justin Brands, Inc. El Paso, TX: January 31, 2001.

TA–W–41,099; Olamon Industries, Old Town, ME: March 8, 2001.

TA–W–40,889; Nordic Delight Foods, Lubec, ME: November 8, 2000.

TA–W–41,045; Modine Manufacturing Co., Heavy Duty and Industrial Div., LaPorte, IN: February 27, 2001.

TA–W–40,821; Getchell Gold Corp., Golconda, NV: October 23m 2001.

TA–W–40,725; TI Automotive Systems, LLC, Coldwater, MI: December 7, 2000.

TA–W–40,608; The Boeing Co., Boeing Commercial Aircraft, Tulsa Div., Oak Ridge, TN: November 21, 2000.

TA–W–40,566 & A; Angelica Image Apparel, Winona, MS and Tishomingo, MS: October 16, 2000.

TA–W–40,522; Johnston Controls Retail, Reynoldsburg, OH: October 17, 2000.

TA–W–40,286; Tyco International Ltd, Tyco Electronics Corp., Rock Hill, SC: October 3, 2000.

TA–W–40,089; Bank Manufacturing Co., Havelock, NC: September 4, 2001.

TA–W–30,674; Pennsylvania Steel Technologies, Steelton, PA: July 3, 2000.

TA–W–39,657; Weirton Steel Corp., Weirton, WV: July 3, 2000.

TA–W–39,638; Wesbar Corp., West Bend, WI: June 26, 2000.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of April, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) that sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increased imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–05366; Acu-Crimp, Inc., El Paso, TX

NAFTA–TAA–05435; CNH Global N.V., Burlington, IA

NAFTA–TAA–05446; Wheeling Corrugating Co., Klamath Falls, OR

NAFTA–TAA–05593; The Boeing Co., Boeing Commercial Aircraft, Tulsa Div., Oak Ridge, TN

NAFTA–TAA–05733; Charmilles Technologies Manufacturing Corp., Owosso, MI

NAFTA–TAA–05767; Huhtamaki Food Service, Inc., FSBU, Waterville, ME

NAFTA–TAA–05776; Blouer Manufacturing Co., Inc., CAM Div., Chatom, AL

NAFTA–TAA–05713; Borg Warner, Inc., Transmission Systems, Coldwater, MI

NAFTA–TAA–05742; Cannon County Knitting Mills, Inc., Smithville, TN

NAFTA–TAA–05885A, B & C; Price Pfister, Machining Dept., Pacoima, CA, Screw Machining Dept, Pacoima, CA and Fabrication Dept., Pacoima, CA

The workers firm does not produce an article as required for certification under Section 250(a), Subchapter D, Chapter 2, Title II, of the trade Act of 1974, as amended

NAFTA–TAA–05918; Britax Health Techna, Inc., Aircraft Interior Systems, Bellingham, WA

NAFTA–TAA–05350; JVC Digital Image Technology Center, Carlsbad, CA

NAFTA–TAA–05563; Bliss Clearing Niagara, Inc., (Formerly Doing Business as CNB International, Inc.), Hastings, MI

The investigation revealed that criteria (1) have not been met. A significant number or proportion of the workers in such workers' firm or an appropriate subdivision including workers in any agricultural firm or appropriate sub-division thereof) did not become totally or partially separated from employment.

NAFTA–TAA–05802A & B; Justin Brands, Inc., Carthage, MO and Cassville, MO

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–05911; Modine Manufacturing Co., Heavy Duty and Industrial Div., LaPorte, IN: February 27, 2001.
NAFTA–TAA–5802; Justin Brands, Inc., El Paso, TX: February 4, 2001.
NAFTA–TAA–05982 & A; Blough-Wagner Manufacturing Co., Inc., Middleburg, PA and Elysburg, PA: January 15, 2001.
NAFTA–TAA–05885; Price Pfister, Finishing Dept., Pacoima, CA: January 28, 2001.
NAFTA–TAA–05839; Square D. Company, Design Center, Oshkosh, WI: April 14, 2002.
NAFTA–TAA–04982; Future Knits, Pineville, NC: June 12, 2000.
NAFTA–TAA–05097; NYCO Minerals, Inc., Willsboro, NY: June 1, 2000.
NAFTA–TAA–05760; Donaldson Co., Inc., Gas Turbine Filter Dept, Nicholasville, KY: January 25, 2001.
NAFTA–TAA–05772; ASARCO, Inc., Amarillo, TX: January 3, 2001.
NAFTA–TAA–05300; Polymer Sealing Solutions, Forsheda Engineered Seals, Vandalia, IL: August 24, 2000.
NAFTA–TAA–05394; Bond Technologies, A Div. Of Emerson Electric Co., Huntington Beach, CA: September 27, 2000.
NAFTA–TAA–05488; Phelps Dodge Sierrita, Inc., Green Valley, AZ: October 29, 2000.
NAFTA–TAA–05803; Optek Technology, Inc., Carrollton, TX: November 23, 2000.
NAFTA–TAA–05820; Albany International Corp., Greschmay Plant, Greenville, SC: January 28, 2001.
NAFTA–TAA–05861; L.E. Mason Co., Thomas & Betts Corp., Boston MA: February 5, 2001.
NAFTA–TAA–05877; Nibco, Inc., South Glens Falls, NY: December 18, 2000.
NAFTA–TAA–05938; York International, Unitary Products Group, Elyria, OH: March 6, 2001.
NAFTA–TAA–05969; General Electric Industrial Systems, Somersworth, NH: March 20, 2001.

I hereby certify that the aforementioned determinations were issued during the month of April, 2002. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: April 26, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–10890 Filed 5–1–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of April, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–39,922; Tessy Plastic Corp., Elbridge, NY
TA–W–40,216; Paul Flagg Leather Co., Sheboygan, WI
TA–W–40,469; Kellogg Crankcrafts, Jackson, MI
TA–W–41,127; Phaztech, Inc., St. Marys, PA
TA–W–39,982; Auto Body Connection, Erie, PA
TA–W–40,447; SCI, Inc., Lynchburg, VA
TA–W–40,030; Brown and Sharpe, A Div. Of Hexagon AB, North Kingstown, RI

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–41,150; Robur Corp., Evansville, IN
TA–W–41,182; Hughes Fabricating Co., Inc., Corinth, MS
TA–W–40,236; Strippit/LVD, Akron, NY
TA–W–41,210; Burlington Chemical Co., Burlington, NC
TA–W–40,366; Mike Dent Enterprises, Burns, OR
TA–W–39,956; Commander Aircraft Co., Bethany, OK
TA–W–40,007; DESA International, Shelbyville, TN
TA–W–40,438; Appleton Paper, Inc., Harrisburg Plant, Camp Hill, PA
TA–W–40,461; Daishowa America Co. LTD, Marine Drive Yard, Port Angeles, WA
TA–W–40,527; Clearwater Forest Industries, Inc., Kooshia, ID
TA–W–41,104; Siegel Robert of Arkansas, Siegel Robert, Inc., Wilson, AR
TA–W–40,796; Theo. Tiedemann and Sons, Inc., Mahwah, NJ

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–40,588; Bliss Clearing Niagara, Inc., Formerly Doing Business as CNB International, Inc., Hastings, MI
TA–W–40,415; Pressman-Gutman Co., Inc., New York, NY
TA–W–41,162; Delphi Automotive Systems Corp., Delphi Delco Electronics Div., Body and Security Team, Oak Creek, WI

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–40,309; Firestone Tube Co., A Div. Of Bridgestone/Firestone North America Tire, LLC, A Subsidiary of Bridgestone Corp., Russellville, AR
TA–W–40,762; Presto Products Manufacturing Co., Presto Products Co., Alamogardo, NM

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–40,240; S.B. Inc., Formfit Apparel Div., Lafayette, TN: October 5, 2000.
TA–W–40,260; Chicago Cutlery, A Div. Of World Kitchen, Inc., Wauconda, IL: October 5, 2000.
TA–W–40,363 & A; The William Carter Co., Barnesville, GA and Milner, GA: November 9, 2000.
TA–W–40,386; Celestica Corp., Milwaukie, OR: November 19, 2000.
TA–W–40,445; Composidie, Inc., Apollo, PA: November 5, 2000.
TA–W–40,716; Hathaway/Waterville Shirt Co., Waterville, ME: January 2, 2001.
TA–W–40,851; Owens Illinois, Plastic Containers Div., Newburyport, MA: January 9, 2001.
TA–W–41,129; The Orvis Co., Inc., Tipton, MO: February 25, 2001.
TA–W–41,057; Ingersoll CM Systems, Inc., Midland, MI: February 8, 2001.
TA–W–41,097; Tillmann Tool and Die, Inc., Breckenridge, MN: December 7, 2000.
TA–W–40,968; Toshiba Ceramics America, Inc., Hillsboro, OR: January 3, 2001.
TA–W–40,883; Iomega Corp., Roy, UT: October 23, 2000.
TA–W–40,747; Bose Corp., Hillsdale, MI: December 13, 2000.
TA–W–40,719; Associated Spring, Barnes Group, Inc., Dallas, TX: January 22, 2001.
TA–W–40,316; American Furniture Co., Martinsville, VA: October 4, 2000.
TA–W–40,272; National Metal Industries, West Springfield, MA: October 9, 2000.
TA–W–40,014; MECO Corp., Greeneville, TN: August 26, 2000.
TA–W–39,975; Pleatz LLC, New York, NY: August 10, 2000.

Also, pursuant to Title V of the North American Free Trade Agreement Implement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of April, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) that sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTAA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–05916; Siegel Robert of Arkansas, Siegel Robert, Inc., Wilson, AR
NAFTA–TAA–05185; Conveyco Manufacturing, Clackamas, OR
NAFTA–TAA–05444; American Furniture Co., Martinsville, VA
NAFTA–TAA–05492; Wheeling Corrugating Co., Chehalis, WA
NAFTA–TAA–05562; Kellog Crankshaft, Jackson, MI
NAFTA–TAA–05637; Daishowa America Co., Ltd, Marine Drive Chip Yard, Port Angeles, WA
NAFTA–TAA–05706; Clearwater Forest Industries, Inc., Kooskia ID
NAFTA–TAA–05252; Auto Body Connection, Erie, PA
NAFTA–TAA–05401; S.B.F., Inc., Formfit Apparel Div., Lafayette, TN
NAFTA–TAA–05601 & A; Onkyo America, Inc., Columbus, IN and Troy MI
NAFTA–TAA–05673; Phoenix Gold International, Inc., Portland, OR
NAFTA–TAA–05773; Superior Milling, Inc., Watersmeet, MI
NAFTA–TAA–05072; Endar Corp., Temecula, CA

The workers firm does not produce an article as required for certification under section 250(a), subchapter D, chapter 2, Title II, of the trade Act of 1974, as amended

NAFTA–TAA–5755; Delphi Automotive Systems Corp., Delphi Delco Electronics Div., Body and Security Team, Oak Creek, WI

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–05644; Bose Corp., Hillsdale, MI: December 13, 2000.
NAFTA–TAA–05801; Associated Spring, Barnes Group, Inc., Dallas, TX: January 22, 2001.
NAFTA–TAA–05809; Haworth, Inc., Myrtle—Mueller Div., Including Workers of Coastal Temporary Service, Chadbourn, NC: January 30, 2001.
NAFTA–TAA–5904; Bacou Dalloz USA, Inc., Dalloz Safety, Snow Hill NC: February 20, 2001
NAFTA–TAA–04903; Mowad Apparel, Inc., El Paso, TX: May 5, 2001.
NAFTA–TAA–05620; E–M Solutions, Longmont, CO: December 5, 2000.
NAFTA–TAA–05586; Celestica Corp., Milwaukie, OR: November 19, 2000.

I hereby certify that the aforementioned determinations were issued during the month of April, 2002. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: April 22, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–10891 Filed 5–1–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,271]

The Customshop.Com, Drexel Shirt, Adminstaff, TCS Acquisition Corp., Franklin, New Jersey; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 13, 2001, applicable to workers of The CumstomShop.com, Franklin, New Jersey. The notice was published in the **Federal Register** on December 26, 2001 (66 FR 66426).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The

workers were engaged in the production of men's custom shirts.

New information provided by the State shows that during different periods of time, The CustomShop.com operated under additional company names: Drexel Shirt, Adminstaff and TCS Acquisition Corp. Therefore, claimants' wages were reported under the Unemployment Insurance (UI) tax accounts for The CustomShop.com, Drexel Shirt, Adminstaff and TCS Acquisition Corp., Franklin, New Jersey.

The intent of the Department's certification is to include all workers of The CustomShop.com who were adversely affected by increased imports.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA–W–39,271 is hereby issued as follows:

''All workers of The CustomShop.com, Drexel Shirt, Adminstaff and TCS Acquisition Corp., Franklin, New Jersey who became totally or partially separated from employment on or after May 2, 2000, through December 13, 2003, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 16th day of April, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–10894 Filed 5–1–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,292]

Exolon-Esk Company, Tonawanda, New York; Including Employees of Exolon-Esk Company Located in Illinois; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 22, 2002, applicable to workers of Exolon-Esk Company, Tonawanda, New York. The notice was published in the **Federal Register** on February 5, 2002 (67 FR 5294).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations occurred involving employees of the Tonawanda, New York facility of Exolon-Esk Company located in Illinois. These employees were engaged in employment related to the production of man-made abrasives, silicon carbide and aluminum oxide at the Tonawanda, New York location of the subject firm.

Based on these findings, the Department is amending this certification to include employees of the Tonawanda, New York facility of Exolon-Esk Company located in Illinois.

The intent of the Department's certification is to include all workers of Exolon-Esk Company who were adversely affected by increased imports.

The amended notice applicable to TA–W–40,292 is hereby issued as follows:

''All workers of Exolon-Esk Company, Tonawanda, New York, including employees of Exolon-Esk Company, Tonawanda, New York, located in Illinois, who became totally or partially separated from employment on or after April 13, 2001, through January 22, 2004, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.''

Signed at Washington, DC this 16th day of April, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–10889 Filed 5–1–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,857, TA–W–40,847A, TA–W–40,857B and TA–W–40,857C]

Fairbanks Morse Engine Coltec Industries, Inc. Division of Goodrich Corp. Beloit, Wisconsin, Norfolk, VA, Seattle, WA, Houston, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 26, 2002, applicable to workers of Fairbanks Morse Engine, Beloit, Wisconsin, Norfolk, Virginia, Seattle, Washington and Houston, Texas. The notice was published in the **Federal Register** on April 5, 2002 (67 FR 16441).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of large diesel and duel fuel engines for ship propulsion and power generation.

New Information received from the State and the company shows that in 1999, Fairbanks Morse Engine merged with Coltec Industries, Inc., a division of Goodrich Corp. Information also shows that workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Fairbanks Morse Engine, Coltec Industries, Inc., a Division of Goodrich Corp.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA–W–40,857, TA–W–40,857A, TA–W–40,857B, TA–W–40,857C and TA–W–40,857D are hereby issued as follows:

All workers of Fairbanks Morse Engine, Coltec Industries, Inc., a division of Goodrich Corp., Beloit, Wisconsin (TA–W–40,857), Norfolk, Virginia (TA–W–40,857A), Seattle, Washington (TA–W–40,857B), Houston, Texas (TA–W–40,857C) who became totally or partially separated from employment on or after December 13, 2000, through March 26, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 18th day of April, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–10895 Filed 5–1–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,331]

Georgia-Pacific West Camas, Washington; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of February 8, 2002, the workers requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, petition TA–W–40,331. The denial notice was signed on December 31, 2002 and published in the **Federal Register** on January 11, 2002 (67 FR 1510).

The Department has reviewed the request for reconsideration and has determined that further survey of customers of the subject firm would be appropriate.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 10th day of April 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–10900 Filed 5–1–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,124]

Krones, Inc. Franklin, WI Notice of Revised Determination on Reconsideration

By letter of February 1, 2002, the petitioners, requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on December 17, 2001, based on the finding that imports of labeling machines did not contribute importantly to worker separations at the subject plant. Company imports of labeling equipment were negligible. The Department conducted a survey of the subject firm's customers. The survey revealed that none of the respondents imported products like or directly competitive with what the subject plant produced. The denial notice was published in the **Federal Register** on January 11, 2002 (67 FR 1509).

The petitioners allege that the company lost orders to an affiliated company that imported labeling machines and that this was not evident during the investigation due to the long lead-time required to fill the orders.

New information provided by the company bear out the fact that the company increased their reliance on imported labeling machines from an affiliated foreign facility, thus contributing to the layoffs at the subject plant during the relevant period.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at Krones, Inc., Franklin, Wisconsin, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Krones, Inc., Franklin, Wisconsin, who became totally or partially separated from employment on or after September 17, 2000 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 10th day of April 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–10901 Filed 5–1–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,745]

New Holland North America, Inc., CNH Global N.V., Including Temporary Workers of Kelly Services and Manpower, Belleville, Pennsylvania; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 6, 2002, applicable to workers of New Holland North American, Inc., CNH Global N.V., Belleville, Pennsylvania. The notice was published in the **Federal Register** on March 29, 2002 (67 FR 15226).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Information provided by the State and the company shows that temporary workers of Kelly Services and Manpower were employed at New Holland North America, Inc., CNH Global N.V. to produce industrial machinery and component parts at the Belleville, Pennsylvania location of the subject firm.

Based on these findings, the Department is amending this certification to include temporary workers of Kelly Services and Manpower, Belleville, Pennsylvania employed at New Holland North America, Inc., CNH Global N.V., Belleville, Pennsylvania.

The intent of the Department's certification is to include all workers of New Holland North America, Inc., CNH Global N.V. who were adversely affected by increased imports.

The amended notice applicable to TA–W–40,745 is hereby issued as follows:

''All workers of New Holland North America, Inc., CNH Global N.V., Belleville, Pennsylvania including temporary workers of Kelly Services and Manpower, Belleville, Pennsylvania engaged in employment related to the production of industrial machinery and component parts at New Holland North America, Inc., CNH Global N.V., Belleville, Pennsylvania who became totally or partially separated from employment on or after December 13, 2000, through March 6, 2004, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.''

Signed at Washington, DC this 16th day of April, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–10893 Filed 5–1–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40, 243]

Paulson Wire Rope Corp., Sunbury, PA; Including Employees of Paulson Wire Rope Corp. Located in California, Georgia, Indiana and Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 14, 2002, applicable to workers of Paulson Wire Rope Corp., Sunbury, Pennsylvania. The notice was published in the **Federal Register** on January 31, 2002 (67 FR 4750).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations occurred involving employees of the Sunbury, Pennsylvania facility of Paulson Wire Rope Corp. located in California, Georgia, Indiana, and Texas. These employees were engaged in employment related to the production of wire rope at the Sunbury, Pennsylvania location of the subject firm.

Based on these findings, the Department is amending this certification to include employees of the Sunbury, Pennsylvania location of Paulson Wire Rope Corp. located in California, Georgia, Indiana and Texas.

The intent of the Department's certification is to include all workers of Paulson Wire Rope Corp. adversely affected by increased imports of wire rope.

The amended notice applicable to TA–W–40,243 is hereby issued as follows:

All workers of Paulson Wire Rope Corp., Sunbury, Pennsylvania, including employees of Paulson Wire Rope Corp., Sunbury, Pennsylvania, located in California, Georgia, Indiana, and Texas, who become totally or partially separated from employment on or after October 4, 2000, through January 14, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC., this 12th day of April, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–10896 Filed 5–1–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–A–40,521 and TA–A–40,521K]

Republic Technologies International, Corporate Office, Akron, OH and Republic Technologies International, Canton Special Metals Plant, Canton, OH; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 19, 2002, applicable to workers of Republic Technologies, International, Headquartered in Akron, Ohio, including various facilities located in Ohio, Illinois, New York, Pennsylvania and Indiana. The notice was published in the **Federal Register** on February 28, 2002 (67 FR 93225).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The company reports that worker separations occurred at the Corporate Office, Akron, Ohio location of the subject firm. The Corporate Office provides administrative support functions including finance, sales, marketing customer service and Human Resource services to the subject firms' many production facilities. Findings also show that worker separations occurred at the Canton Special Metals Plant, Canton, Ohio location of the subject firm. The workers are engaged in the production of hot rolled steel bars, cold finished steel bars and specialty steel. The intent of the Department's certification is to include all workers of Republic Technologies International adversely affected by increased imports.

Accordingly, the Department is amending the certification to cover workers of Republic Technologies International, Corporate Office, Akron, Ohio and the Canton Special Metals Plant, Canton, Ohio.

The amended notice applicable to TA–W–40,521 is hereby issued as follows:

All workers of Republic Technologies International, Corporate Office, Akron, Ohio (TA–W–40,521) and the Canton Special Metals Plant, Canton, Ohio (TA–W–40,521K) who became totally or partially separated from employment on or after November 19, 2000, through February 19, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 11th day of April, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–10897 Filed 5–1–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,959]

Teccor Electronics, a Division of Invensys, Irving, Texas; Notice of Negative Determination Regarding Application for Reconsideration

By application of January 23, 2002, petitioners requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Teccor Electronics, A Division of Invensys, Irving, Texas was issued on December 11, 2001, and was published in the **Federal Register** on December 26, 2001 (66 FR 66426).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The investigation findings revealed that criterion (3) of the group eligibility requirements of section 222 of the Trade Act of 1974 was not met. The decision was based on imports not contributing importantly to the decline in employment at the subject plant. The investigation further revealed that the production of wafers at the subject firm was transferred to a foreign plant.

The request for reconsideration alleges that the final testing and categorizing (referred to as back-end production) of the thyristor semiconductor was moved to that foreign source. The petitioners further allege that the equipment to test and categorize the thyristor semiconductors was also shifted to a foreign source.

Since the workers are engaged solely in the final testing and categorizing of imported thyristor semiconductors, they are not considered engaged in the production of an article. Testing and categorizing of thyristor semiconductors are post-production activities and are thus outside of the scope of workers engaged in the production of thyristor semiconductors produced at an affiliated foreign source. Therefore, the shift in testing and categorizing functions to a foreign source does not satisfy criterion (3) requirements.

Additionally, upon reconsideration the subject workers do not produce an article within the meaning of section 222(3) of the Act.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 10th day of April 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–10898 Filed 5–1–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act of 1998 (WIA); Notice of Incentive Funding Availability for Program Year (PY) 2000 Performance

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, in collaboration with the Department of Education, announces that 12 States are eligible to apply for Workforce Investment Act (WIA) (Pub. L. 105–220, 29 U.S.C. 2801 *et seq.*) incentive awards under the WIA Regulations.

DATES: The 12 eligible States must submit their applications for incentive funding to the Department of Labor by June 17, 2002.

ADDRESSES: Submit applications to the Employment and Training Administration, Performance Accountability Task Force, 200 Constitution Avenue NW, Room N–4470, Washington, DC 20210, Attention: Christine Kulick, 202–693–3937 (phone), 202–693–3113 (fax), e-mail: *ckulick@doleta.gov.* Please be advised that mail delivery in the Washington, DC area has been inconsistent because of concerns about anthrax contamination. States are encouraged to submit applications via e-mail.

FOR FURTHER INFORMATION CONTACT: The Performance Accountability Task Force: Christine Kulick (phone: 202–693–3937 or e-mail: *ckulick@doleta.gov*) or Jim Aaron (phone: 202–693–2814 or e-mail: *jaaron@doleta.gov*). (These are not toll-free numbers.) Information may also be found at the *Web site—http://usworkforce.org.*

SUPPLEMENTARY INFORMATION: After the first year of full implementation of the Workforce Investment Act across the country, 12 States (see list below) have qualified to receive a share of the $27.6 million available for incentive grant awards under WIA section 503. These funds are available to the States through June 30, 2004, to support innovative workforce development and education activities that are authorized under title I or title II (the Adult Education and Family Literacy Act (AEFLA)) of WIA, or under the Perkins Act (Pub. L. 105–332, 20 U.S.C. 2301 *et seq.*)

In order to qualify for a grant award, a State must have exceeded performance levels, agreed to by the Secretaries, Governor, and State Education Officer, for outcomes in WIA title I, adult education (AEFLA), and vocational education (Perkins Act) programs. The goals included placement after training, retention in employment, and improvement in literacy levels, among other measures. After review of the performance data submitted by States to the Department of Labor and to the Department of Education, each Department determined which States would qualify for incentives for its program(s). (*See* below for a list of the States that qualified under all three programs.) These lists of eligible States were compared, and States that qualified under all three programs are eligible to receive an incentive grant award. The amount that each State is eligible to receive was determined by the Department of Labor and the Department of Education and is based on WIA section 503(c) (20 U.S.C. 9273(c)) and is proportional to the total funding received by these States for the three programs.

The States eligible to apply for incentive grant awards, and the amounts they are eligible to receive, are listed below:

State	Amount of award
1. Connecticut	$ 1,652,500
2. Florida	$ 3,000,000
3. Idaho	$ 975,500
4. Illinois	$ 3,000,000
5. Indiana	$ 2,896,500
6. Kentucky	$ 3,000,000
7. Maine	$ 819,700
8. Massachusetts	$ 2,887,400
9. Michigan	$ 3,000,000
10. North Dakota	$ 750,000
11. Texas	$ 3,000,000
12. Wisconsin	$2,599,000

These eligible States must submit their applications for incentive funding to the Department of Labor by June 17, 2002. As set forth in the provisions of WIA section 503(b)(2) (20 U.S.C. 9273(b)(2)), 20 CFR 666.220(b) and Training and Employment Guidance Letter (TEGL) No. 20–01, Application Process for Workforce Investment Act (WIA) Section 503 Incentive Grants, Program Year 2000 Performance, which is available at *http://usworkforce.org*, the application must include assurances that:

A. The legislature of the State was consulted with respect to the development of the application.

B. The application was approved by the Governor, the eligible agency for adult education (as defined in section 203(4) of WIA (20 U.S.C. 9202(4))) and the State agency responsible for vocational and technical education programs (as defined in section 3(9) of Perkins III (20 U.S.C. 2302(9)).

C. The State and the eligible agency, as appropriate, exceeded the State adjusted levels of performance for WIA title I, the State adjusted levels of performance for the AEFLA, and the performance levels established for Perkins Act programs.

In addition, States are requested to provide a description of the planned use of incentive grants as part of the application process, to ensure that the State's planned activities are innovative and are otherwise authorized under the WIA title I, the AEFLA, and/or the Perkins Act as amended, as required by WIA Section 503(a). TEGL No. 20–01 provides the specific application process that States must follow to apply for these funds.

The applications may take the form of a letter from the Governor, or designee, to the Assistant Secretary of Labor, Emily Stover DeRocco, Attention: Christine Kulick, 200 Constitution Avenue NW, Room N–4470, Washington, DC 20210. In order to expedite the application process, States are encouraged to submit their applications electronically to Christine Kulick at *ckulick@doleta.gov.* The States will receive their incentive awards by June 30, 2002.

Signed at Washington, DC, this 26th day of April, 2002.

Emily Stover DeRocco,

Assistant Secretary for Employment and Training.

BILLING CODE 4510–30–P

State	PY 2000 Performance Qualifies State for Incentives			
	WIA (title I)	AEFLA (Adult Education)	Perkins Act (Vocational Education)	WIA title I; AEFLA; Perkins Act
1. Alabama		X		
2. Alaska		X	X	
3. Arizona		X	X	
4. Arkansas		X		
5. California		X	X	
6. Colorado	X	X		
7. Connecticut	X	X	X	X
8. District of Columbia		X	X	
9. Delaware		X		
10. Florida	X	X	X	X
11. Georgia		X	X	
12. Hawaii		X	X	
13. Idaho	X	X	X	X
14. Illinois	X	X	X	X
15. Indiana	X	X	X	X
16. Iowa			X	
17. Kansas		X		
18. Kentucky	X	X	X	X
19. Louisiana		X		
20. Maine	X	X	X	X
21. Maryland		X	X	
22. Massachusetts	X	X	X	X
23. Michigan	X	X	X	X
24. Minnesota			X	
25. Mississippi			X	
26. Missouri		X		
27. Montana		X	X	
28. Nebraska		X		
29. Nevada	X	X		
30. New Hampshire	X	X		
31. New Jersey		X	X	
32. New Mexico		X		
33. New York		X	X	
34. North Carolina		X	X	
35. North Dakota	X	X	X	X
36. Ohio		X	X	
37. Oklahoma		X		
38. Oregon	X		X	
39. Pennsylvania		X	X	
40. Puerto Rico			X	
41. Rhode Island	X	X		
42. South Carolina		X	X	
43. South Dakota		X	X	
44. Tennessee		X	X	
45. Texas	X	X	X	X
46. Utah		X	X	
47. Vermont			X	
48. Virginia		X	X	
49. Washington		X	X	
50. West Virginia		X		
51. Wisconsin	X	X	X	X
52. Wyoming		X	X	

[FR Doc. 02–10888 Filed 5–1–02; 8:45 am]

BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–5218 and TA–W–39,831, TA–W–39,831A]

Chipman Union, Inc., Union Point, Georgia, Chipman Union, Inc., Bryan Scott Plant, Greensboro, GA; Notice of Revised Determination on Reconsideration

By letter dated January 16, 2002, the company, requested administrative reconsideration of the Department's denial of North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA–TAA) and Trade Adjustment Assistance (TAA), applicable to workers of Chipman Union, Inc., Union Point, Georgia. The denial notice applicable to NAFTA–05218 was signed on December 17, 2001 and the denial notices for TA–W–39,831 and TA–W–39,831A were signed on December 14, 2001. The notices were published in the **Federal Register** on January 11, 2002, NAFTA–5218 (67 FR 1513); for TA–W–39,831 and TA–W–39,831A (67 FR 1508).

The workers of Chipman Union, Inc., Union Point, Georgia (NAFTA–5218) engaged in activities related to the production of socks were denied NAFTA–TAA because criteria (3) and (4) of the group eligibility requirements of paragraph (a)(1) of section 250 of the Trade Act of 1974, as amended, were not met. A survey of customers indicated that increased imports from Canada and Mexico did not contribute importantly to worker separations. The subject firm did not import socks from Canada or Mexico during the relevant period. There was no shift in the production of socks from the subject firm to Canada or Mexico during the relevant period.

The workers of Chipman Union, Inc., Union Point, Georgia (TA–W–39–831) and Chipman Union, Inc., Bryan Scott Plant, Greensboro, Georgia (TA–W–39–831A) were denied TAA because criterion (3) of the group eligibility requirements of section 222 of the Trade Act of 1974, as amended, was not met. Imports did not contribute importantly to the worker separations during the relevant period.

The request for reconsideration indicates that the company lost a license agreement, which accounted for a major portion of their sales. The request further indicated that the company that was awarded the new license, imported the socks.

The Department contacted the company which was awarded the new license agreement and confirmed that the company that was awarded the license began importing the socks from Canada to the subject firm's domestic customers during the relevant period.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that increased imports of socks, including imports from Canada, contributed importantly to the decline in production and to the total or partial separation of workers at Chipman Union, Inc., Union Point, Georgia (NAFTA–5218) and Chipman Union, Inc., Union Point, Georgia (TA–W–39,831) and Chipman Union, Inc., Bryan Scott Plant, Greensboro, Georgia (TA–W–39,831A). In accordance with the provisions of the Act, I make the following revised determination:

"All workers at Chipman Union, Inc., Union Point, Georgia (NAFTA–5218), who became totally or partially separated from employment on or after August 16, 2000, through two years from the date of certification, are eligible to apply for NAFTA–TAA under section 250 of the Trade Act of 1974;" and

"All workers at Chipman Union, Inc., Union Point, Georgia (TA–W–39,831) and Chipman Union, Inc., Bryan Scott Plant, Greensboro, Georgia (TA–W–39,831A), who became totally or partially separated from employment on or after August 6, 2000, through two years from the date of certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 4th day of April, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–10892 Filed 5–1–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NACE–2002–1]

National Advisory Committee on Ergonomics

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Notice of intent to establish a National Advisory Committee on Ergonomics; request for nominations

SUMMARY: The Secretary of Labor intends to establish a Committee to advise the Assistant Secretary of Labor for Occupational Safety and Health (Assistant Secretary) on ergonomic guidelines, research, and outreach, and assistance. The Committee will consist of not more than 15 members who will be selected based upon their expertise or experience with ergonomic issues. OSHA invites interested parties to submit nominations for membership on the Committee.

DATES: Nominations for membership (whether hard copy, electronic mail, or facsimile) must be received by June 17, 2002.

ADDRESSES: Nominations may be submitted in hard copy, electronic mail, or facsimile.

Submitting nominations in hard copy: Nominations for membership on the Committee may be hand-delivered, or sent by Express Mail or other overnight delivery service, to: U.S. Department of Labor, OSHA Docket Office, Docket NACE–2002–1, Room N–2625, 200 Constitution Ave., NW., Washington, DC 20210, Telephone: (202) 693–2350.

Submitting nominations electronically: Nominations for membership on the Committee may be sent electronically from the OSHA website at *http://ecomments.osha.gov.* Nominations may also be faxed to the OSHA Docket Office at (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Ms. Bonnie Friedman, OSHA, Office of Public Affairs, Rm. N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210; Telephone: (202) 693–1999.

SUPPLEMENTARY INFORMATION:

I. Background

On April 4, 2002, the Secretary of Labor announced a comprehensive approach to ergonomics. This approach consists of four prongs: Guidelines; Enforcement; Outreach and Assistance; and Research. In order for this comprehensive approach to be successful, the Secretary believes it is necessary and in the public interest to establish a National Advisory Committee on Ergonomics. The Committee will advise the Assistant Secretary of Labor for Occupational Safety and Health (Assistant Secretary) on ergonomic guidelines, research, and outreach and assistance. Specifically, the Assistant Secretary intends to seek advice from the Committee in the following areas: (1) Information related to various industry or task-specific guidelines; (2) identification of gaps in the existing research based related to applying ergonomic principles to the

workplace; (3) current and projected research needs and efforts; (4) methods of providing outreach and assistance that will communicate the value of ergonomics to employers and employees, and (5) ways to increase communication among stakeholders on the issue of ergonomics. The Committee will be expected to report periodically to the Assistant Secretary on its findings and recommendations. Where Committee recommendations involve research efforts, the Assistant Secretary will forward such recommendations to NIOSH.

II. Committee Formation

The Committee will consist of not more than 15 members. The Assistant Secretary recognizes that ergonomics involves a wide range of complex issues. For that reason, the Agency encourages the nomination of a broad range of individuals as possible Committee members, including those with specialized scientific or medical expertise related to ergonomics, or others who have knowledge or experience concerning the issues to be examined by the Committee. The Committee will be fairly balanced in terms of the points of view represented and the functions to be performed. OSHA is requesting that the Committee be chartered for a two year period. OSHA anticipates that during its two-year term, the Committee will meet between 2 and 4 times per year.

The Committee will function solely as an advisory body, and in compliance with the provisions of the Federal Advisory Committee (5 U.S.C. App. 2), 41 CFR Part 102–3, and DLMS 3 Chapter 1600.

III. Public Participation

Nominees for committee membership should be qualified by experience, knowledge, and expertise. Interested persons may nominate themselves or others for membership on the Committee. Each nomination must include: (1) The name of the nominee; (2) the address, phone number, title, position, experience, qualifications and resume of the nominee; and (3) a written commitment from the nominee that he/she can and will attend regular meetings of the Committee and participate in good faith. In addition, please include an e-mail address or fax number, so that the Agency may acknowledge that it has received your nomination. (For information on dates and addresses for submitting nominations, see the **DATES** and **ADDRESSES** section of this notice, above.) Because of security-related problems in receiving regular mail service in a timely manner, OSHA requests that nominations be hand-delivered to the Docket Office, or sent by Express Mail or other overnight delivery service, electronic mail, or facsimile. Please do not send nominations by more than one of these media.

Consistent with the Department's recently-issued procedural rule on OSHA Advisory Committees (67 FR 658, January 7, 2002), appointment of a member to this Advisory Committee for a fixed time period shall not affect the authority of the Assistant Secretary to remove, in his discretion, any member at any time. If a member resigns or is removed before his or her term expires, the Assistant Secretary may appoint for the remainder of the unexpired term a new member who shall represent the same interest as his or her predecessor.

Authority: This notice was prepared under the direction of John L. Henshaw, Assistant Secretary for Occupational Safety and Health. It is issued under the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2), GSA's FACA Regulations (41 CFR Part 102–3, and DLMS 3 Chapter 1600.

Issued at Washington, DC, this 29th day of April, 2002.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 02–10961 Filed 4–30–02; 10:00 am]

BILLING CODE 4510–26–M

NUCLEAR REGULATORY COMMISSION

[Docket No. STN 50–456, STN 50–457, STN 50–454, STN 50–455, 50–237, 50–249, 50–373, 50–374, 50–254, and 50–265]

Exelon Generation Company, LLC; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Exelon Generation Company, LLC (the licensee) to withdraw its March 23, 2001, application for proposed amendments to Facility Operating License Nos. NPF–72 and NPF–77 for Braidwood Station, Units 1 and 2, located in Will County, IL; License Nos. NPF–37 and NPF–66 for Byron Station, Units 1 and 2, located in Ogle County, IL; License Nos. DPR–19 and DPR–25 for Dresden Nuclear Power Station, Units 2 and 3, located in Grundy County, IL; License Nos. NPF–11 and NPF–18 for LaSalle County Station, Units 1 and 2, located in LaSalle County, IL; and License Nos. DPR–29 and DPR–30, for Quad Cities Nuclear Power Station, Units 1 and 2, located in Rock Island County, IL.

The proposed amendments would have revised the escorting and control requirements for non-designated vehicles, lighting requirements for exterior areas within the protected area, and annual weapons qualifications.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on October 3, 2001, (66 FR 50467). However, by letter dated February 13, 2002, the licensee withdrew the proposed change.

For further details with respect to this action, see the applications for amendment dated March 23, 2001, and the licensee's letter dated February 13, 2002, which withdrew the applications for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by email to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 12th day of April 2002.

For the Nuclear Regulatory Commission.

George F. Dick, Jr.,

Sr. Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–10843 Filed 5–1–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC—25555]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

April 26, 2002.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of April, 2002. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW., Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the

SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 21, 2002, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. For Further Information Contact: Diane L. Titus, at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW., Washington, DC 20549–0506.

CN Loan Fund Inc. [File No. 811–9895]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering. Applicant will continue to operate as a real estate investment trust in reliance on sections 3(c)(1), 3(c)(5)(C) and/or 3(c)(7) of the Act.

Filing Dates: The application was filed on March 28, 2002, and amended on April 16, 2002.

Applicant's Address: City National Center, 400 North Roxbury Dr., Beverly Hills, CA 90210.

MetaMarkets.com Funds [File No. 811–9351]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 28, 2001, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $29,000 incurred in connection with the liquidation were paid by applicant.

Filing Date: The application was filed on April 15, 2002.

Applicant's Address: PO Box 182208, Columbus, OH 43218.

Credit Suisse Growth Fund, Inc. [File No. 811–9681]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. By August 31, 2001, all shareholders of applicant had voluntarily redeemed their shares at net asset value. Expenses of approximately $2,500 incurred in connection with the liquidation were paid by Credit Suisse Asset Management, LLC, applicant's investment adviser.

Filing Date: The application was filed on April 15, 2002.

Applicant's Address: 466 Lexington Ave., New York, NY 10017.

Credit Suisse Institutional Services Fund, Inc. [File No. 811–10323]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. By October 2, 2001, applicant's sole shareholder had voluntarily redeemed its shares at net asset value. Expenses of approximately $2,500 incurred in connection with the liquidation were paid by Credit Suisse Asset Management, LLC, applicant's investment adviser.

Filing Date: The application was filed on April 15, 2002.

Applicant's Address: 466 Lexington Ave., New York, NY 10017.

Credit Suisse Warburg Pincus Long-Short Market Neutral Fund, Inc. [File No. 811–8925]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. By January 11, 2002, applicant had made a final liquidating distribution to its shareholders based on net asset value. Expenses of approximately $2,500 incurred in connection with the liquidation were paid by Credit Suisse Asset Management, LLC, applicant's investment adviser.

Filing Date: The application was filed on April 15, 2002.

Applicant's Address: 466 Lexington Ave., New York, NY 10017.

PNC Advisors Fund [File No. 811–10233]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on April 5, 2002, and amended on April 19, 2002.

Applicant's Address: 1600 Market Street, Philadelphia, PA 19103.

Rochdale Investment Insurance Trust [File No. 811–9857]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on April 5, 2002, and amended on April 17, 2002.

Applicant's Address: 570 Lexington Ave., New York, NY 10022–6837.

American Municipal Term Trust Inc. [File No. 811–6274]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On April 10, 2001, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $17,000 incurred in connection with the liquidation were paid by applicant.

Filing Date: The application was filed on April 1, 2002.

Applicant's Address: 601 Second Ave. S, Minneapolis, MN 55402.

Reich & Tang Government Securities Trust [File No. 811–4598]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 28, 1996, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $3,000 incurred in connection with the liquidation were paid by Reich & Tang Asset Management, LLC, applicant's investment adviser.

Filing Date: The application was filed on March 25, 2002.

Applicant's Address: 600 Fifth Ave., New York, NY 10020.

Credit Suisse WorldPerks Tax Free Money Market Fund, Inc. [File No. 811–8901] Credit Suisse WorldPerks Money Market Fund, Inc. [File No. 811–8899]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. By October 31, 2001, all shareholders of each applicant had redeemed their shares based on net asset value. Applicants incurred no expenses in connection with the liquidations.

Filing Dates: The applications were filed on March 13, 2002, and amended on April 8, 2002.

Applicants' Address: 466 Lexington Ave., New York, NY 10017.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–10810 Filed 5–1–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25556; 812–12795]

First American Investment Funds, Inc., et al.; Notice of Application

April 26, 2002.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 17(a) of the Act.

SUMMARY OF THE APPLICATION: Applicants request an order to permit certain series of two registered open-end management investment companies to acquire all of the assets, net of liabilities, of certain other series of the same registered open-end management investment companies. Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

Applicants: First American Investment Funds, Inc. (''FAIF''), First American Strategy Funds, Inc. (''FASF'') and U.S. Bancorp Asset Management, Inc. (''USBAM'').

Filing Dates: The application was filed on March 15, 2002. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 17, 2002, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, c/o John A. Haveman, Esq., Faegre & Benson LLP, 2200 Wells Fargo Center, 90 South Seventh Street, Minneapolis, Minnesota 55402.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Sr., Senior Counsel, at (202) 942–0714, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. FAIF, a Maryland corporation, and FASF, a Minnesota corporation, are registered under the Act as open-end management investment companies. FAIF currently offers forty-four series and FASF currently offers five series. Four of the series of FAIF and one series of FASF are referred to as the ''Acquiring Funds'' and four other series of FAIF and one other series of FASF are referred to as the ''Acquired Funds,'' and together the Acquiring Funds and the Acquired Funds are referred to as the ''Funds'' and individually as a ''Fund.''

2. USBAM, a wholly-owned subsidiary of U.S. Bank Nation Association (''U.S. Bank'') and indirect subsidiary of U.S. Bancorp, serves as investment adviser to the Funds and is registered under the Investment Advisers Act of 1940. U.S. Bank and its affiliates are part of a common control group and are collectively referred to as the ''U.S. Bancorp Affiliates.'' Currently, U.S. Bancorp Affiliates, in a fiduciary or custodial capacity for various accounts, hold of record in their own name or through a nominee more than 5% (and more than 25%) of the outstanding shares of each Fund, and hold or share voting power and/or investment discretions with respect to a portion of these shares. Included in the shares held of record by the U.S. Bancorp Affiliates are shares held for the benefit of defined benefit and defined contribution plans for which U.S. Bancorp or one or more of its subsidiaries have funding obligations.

3. On February 21, 2002, the board of directors of FAIF and FASF (the ''Board''), including all of the directors who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Disinterested Directors''), approved the proposed reorganizations and agreements and plans of reorganization of the respective Funds (the ''Reorganization Agreements''). Under the Reorganization Agreements, each class of the applicable Acquiring Fund will acquire all of the assets and assume identified liabilities of the corresponding class of the corresponding Acquired Fund in exchange for shares of that class of the Acquiring Fund (the ''Reorganizations'') [1] on May 20, 2002 (''Closing Date''). The shares of each Acquiring Fund exchanged will have an aggregate net asset value equal to the aggregate net asset value of the corresponding Acquired Fund's shares calculated as of the close of the regular trading on the New York Stock Exchange on the business day immediately preceding the Closing Date (''Valuation Time''). The method of valuation of the net asset value of the assets of the Funds will be determined according to the applicable Fund's then-current prospectus and statement of additional information. As soon as reasonably practicable after the Closing Date, the Acquired Funds will distribute the shares of each class of the corresponding Acquiring Funds pro rata to their shareholders of record. Following the distribution of the Acquiring Funds' shares, the Acquired Funds will terminate.

4. Each of the Acquired Funds and Acquiring Funds offers shares in five classes: Class A, Class B, Class C, Class S and Class Y. Shareholders of each class of the Acquired Fund will receive shares of the corresponding class of the corresponding Acquiring Fund. Class A shares are subject to a front-end sales charge, rule 12b–1 distribution fees, service fees and a contingent deferred sales charge (''CDSC''). Class B shares are not subject to an initial sales charge, but are subject to rule 12b–1 distribution fees, service fees and a CDSC. Class C shares are subject to a front-end sales charge, rule 12b–1 distribution fees, service fees and a CDSC. Class S and Class Y shares are offered through banks and certain other financial institutions that have entered into sales agreements with the Funds' distributor and sold without any front-end sales charge or a CDSC, rule 12b–1 distribution fees and service fees but are subject to a shareholder servicing fee.

5. No front-end sales charge will be imposed on Acquired Fund shareholders in connection with their acquisition of Acquiring Fund shares in the Reorganizations. No CDSC will be imposed on any of the Acquired Funds shares that are canceled as a result of the Reorganizations. For purposes of calculating any CDSC on Class A, Class

[1] Under the Reorganizations, the Acquired Funds will merge into the corresponding Acquiring Funds as follows: Capital Growth Fund will merge into Large Cap Growth Fund, Relative Value Fund into Large Cap Value Fund, Growth & Income Fund into Equity Income Fund, Science & Technology Fund into Technology Fund and Strategy Global Growth Allocation Fund into Strategy Aggressive Allocation Fund.

B and Class C shares of the Acquiring Funds, shareholders of the Acquired Funds will be deemed to have held the shares of the Acquiring Funds since the date the shareholders initially purchased the shares of the Acquired Fund.

6. Applicants state that the investment objectives, policies and restrictions of each Acquired Fund are similar, and in some cases identical, to those of the corresponding Acquiring Fund. Applicants state that the rights and obligations of each class of shares of the Acquired Funds are similar to those of the corresponding class of shares of the Acquiring Funds. USBAM will bear the costs associated with the Reorganizations.

7. The Board, including a majority of the Disinterested Directors, determined that the Reorganization is in the best interests of each Fund and that the interests of the shareholders of each Fund would not be diluted as a result of the Reorganization. In assessing the Reorganizations, the Board considered various factors, including: (a) The terms and conditions of the Reorganizations; (b) the compatibility of the Funds' investment objectives, policies and limitations; (c) the potential opportunity for better investment performance of the Funds; (d) the potential for reduced operating expenses; (e) the potential elimination of confusion among shareholders with respect to products that may be considered duplicative; (f) the tax-free nature of the proposed Reorganizations; and (g) the fact that Reorganization expenses will be borne by USBAM.

8. Each Reorganization is subject to a number of conditions precedent, including: (a) Approval by the shareholders of each Acquired Fund; (b) receipt of certain opinions of counsel that the Reorganizations will be tax-free for the Funds' shareholders; (c) receipt from the Commission of an exemption from section 17(a) of the Act for the Reorganization; and (d) that the registration statement under the Securities Act of 1933 for the Acquiring Funds will have become effective. Each Acquired Fund will declared dividend(s) or distribution(s) which, together with all previous dividends and distributions, shall have the effect of distributing to its shareholders all investment company taxable income for all taxable periods ending on the Closing Date (computed without regard to any deduction for dividends paid) and all of its net capital gains realized in all taxable periods ending on the Closing Date (after reductions for any capital loss carryovers). Each Reorganization Agreement provides that the Reorganization may be terminated by mutual consent by both parties or by either party upon breach or failure to satisfy a condition precedent by the other party at or before the Closing Date. Applicants agree not to make any material changes to the Reorganization Agreements without prior Commission approval.

9. Registration statements on Form N–14 (each containing a combined proxy prospectus/proxy statement) were filed with the Commission on March 4 and 6, 2002 with respect to the Reorganizations. Prospectus/proxy statements have been sent to shareholders beginning April 8, 2002. A special meeting of shareholders of the Acquired Funds to consider the Reorganizations is scheduled for May 14, 2002.

Applicants' Legal Analysis

1. Section 17(a) of the Act, in relevant part, prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include: (a) any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company.

2. Rule 17a-8 under the Act exempts certain mergers, consolidations, and sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions are satisfied. Applicants believe that rule 17a-8 may not be available to exempt the Reorganizations because the Funds may be deemed to be affiliated by reasons other than having a common investment adviser, common directors, and/or common officers. Applicants state that Bancorp Affiliates hold of record 5% or more (and more than 25%) of the outstanding voting securities of each of the Funds, hold or share voting power and/or investment discretion with respect to a portion of these shares, and may be deemed to have an indirect pecuniary interest in the performance of all but one of the Funds by virtue of ownership in excess of 5% of the shares of those Funds by defined benefit and defined contribution plans sponsored by the U.S. Bancorp Affiliates. As a result, each Fund may be deemed to be an affiliated person of an affiliated person of each other Fund.

3. Section 17(b) of the Act provides, in relevant part, that the Commission may exempt a transaction from the provisions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

4. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) to the extent necessary to effect the Reorganizations. Applicants submit that the Reorganizations satisfy the conditions of section 17(b) of the Act. Applicants state that the Board, including a majority of the Disinterested Directors, has determined that the participation of each of the Funds in the Reorganizations is in the best interests of the Fund and that such participation will not dilute the interests of the existing shareholders of each Fund. Applicants also state that the Reorganizations will be effected on the basis of relative net asset value.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–10866 Filed 5–1–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [67 FR 20194, April 24, 2002].

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW, Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Wednesday, April 24, 2002, at 9:30 a.m.

CHANGE IN THE MEETING: Additional Item.

The following item was added to the closed meeting held on Wednesday, April 24, 2002: an adjudicatory matter.

Commissioner Hunt, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

For further information please contact the Office of the Secretary at (202) 942–7070.

Dated: April 29, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–10974 Filed 4–29–02; 4:53 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–8095 and 34–45842/April 29, 2002]

Order Making Fiscal 2003 Annual Adjustments to the Fee Rates Applicable Under Section 6(b) of the Securities Act of 1933 and Sections 13(e), 14(g), 31(b) and 31(c) the Securities Exchange Act of 1934

I. Background

The Commission collects fees under various provisions of the securities laws. Section 6(b) of the Securities Act of 1933 (''Securities Act'') requires the Commission to collect fees from issuers on the registration of securities.[1] of the Securities Exchange Act of 1934 (''Exchange Act'' requires the Commission to collect fees on certain repurchases of securities.[2] Section 14(g) of the Exchange Act requires the Commission to collect fees on proxy solicitations and statements in corporate control transactions.[3] Fiscally, sections 31(b) and (c) of the Exchange Act require the Commission to collect fees from national securities exchanges and national securities associations, respectively, on transactions.[4]

On January 16, 2002, the President signed the Investor and Capital Markets Fee Relief Act (''Fee Relief Act''). [5] The Fee Relief Act reduced that fee rates applicable under section 6(b) of the Securities 13(e), 14(g), 31(b) and 31(c) of the Exchange Act. The Fee Relief Act also amended these sections to require the Commission to make annual adjustments to the fee rates applicable under these sections for each of the fiscal years 2003 through 2011, and one final adjustments to fix the fee rates under these sections for fiscal year 2012 and beyond.[6]

II. Fiscal 2002 Annual Adjustment to the Fee Rates Applicable Under Section 6(b) of the Securities Act and Sections 13(e) and 14(g) of the Exchange Act

Paragraph 6(b)(2) of the Securities Act requires an issuer to pay to the Commission a fee at an initial rate of $92 per million of the maximum aggregate offering price at which securities are proposed to be offered. This same fee rate applies to certain repurchases of securities under section 13(e) of the Exchange Act and proxy solicitations and statements in corporate control transactions under section 14(g) of the Exchange Act.

Paragraph 6(b)(5) of the Securities Act requires the Commission to make an annual adjustment to the fee rate applicable under paragraph 6(b)(2) of the Securities Act in each of the fiscal years 2003 through 2011.[7] In those same fiscal years, paragraphs 13(e)(5) and 14(g)(5) of the Exchange Act require the Commission to adjust the fee rates under Sections 13(e) and 14(g) to a rate that is equal to the rate that is applicable under Section 6(b). In other words, the annual adjustment to the fee rate under section 6(b) of the Securities Act also sets the annual adjustment to the fee rates under sections 13(e) and 14(g) of the Exchange Act.

Paragraph 6(b)(5) specifies the method for determining the annual adjustment to the fee rate Section 6(b) for fiscal 2003. Specifically, the Commission must adjust the fee rate under Section 6(b) to a ''rate that, when applied to the baseline estimate of the aggregate maximum offering prices for [fiscal year 2003], is reasonable likely to produce aggregate fee collections under [Section 6(b)] that are equal to the target offsetting collection amount for [fiscal 2003].'' That is, the adjusted rate is determined by dividing the ''target offsetting collection amount'' for fiscal 2003 by the ''baseline estimate of the aggregate maximum offering prices'' for fiscal 2003.

Paragraph 6(b)(11)(A) specifies that the ''target offsetting collection amount'' for fiscal 2003 is $435,000,000.[8] Paragraph 6(b)(11)(B) defines the ''baseline estimate of the aggregate maximum offering price'' for fiscal 2003 as the ''baseline estimate of the aggregate maximum offering price at which securities are proposed to be offered pursuant to registration statements filed with the Commission during [fiscal 2003] as determined by the Commission, after consultation with the Congressional Budget Office and the Office of Management and Budget.

* * *

Using a methodology developed in consultation with the Congressional Budget Office (''CBO'') and Office of Management and Budget (''OMB''), the Commission determines the ''baseline estimate of the aggregate maximum offering price'' for fiscal 2003 to be $5,379,329,602,021.[9] Based on this estimate, the Commission calculates the annual adjustment for fiscal 2003 to be $80.90 per million. This adjusted fee rate applies to section 6(b) of the Securities Act, as well as to sections 13(e) and 14(g) of the Exchange Act.

III. Fiscal 2003 Annual Adjustment to the Fee Rates Applicable Under Sections 31(b) and (c) of the Exchange Act

Section 31(b) of the Exchange Act requires each national securities exchange to pay the Commission a fee at a rate, as adjusted by our order pursuant to paragraph 31(j)(2), of $30.10 per million of the aggregate dollar amount of sales of certain securities transacted on the exchange.[10] Similarly, Section 31(c) requires each national securities association to pay the Commission a fee at the same adjusted rate on the aggregate dollar amount of

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[1] 15 U.S.C. 77f(b).

[2] 15 U.S.C. 78m(e).

[3] ,15 U.S.C. 78n(g).

[4] 15 U.S.C. 77ee(j)(1) and (j)(3). Section 31(d) of the Exchange Act also requires the Commission to collect assessments from national securities exchanges and national securities associations for round turn transactions on security futures.

[5] Pub. L. No. 107–123, 115 Stat. 2390 (2002).

[6] *See* 15 U.S.C. 77f(b)(5), 77f(b)(6), 78m(e)(5), 78m(e)(6), 78n(g)(6), 78n(g)(5) 78ee(j)(1), and 78ee(j)(3). Paragraph 31(j)(2) of the Exchange Act, 15 U.S.C. 78ee(j)(2), also requires the Commission, in certain circumstances, to make a mid-year adjustment to the fee rates under Sections 31(b) and (c) of the Exchange Act in fiscal 2002 through fiscal 2011.

[7] The annual adjustments are designed to adjust the fee rate in a given fiscal year so that, when applied to the aggregate maximum offering price at which securities are proposed to be offered for the fiscal year, it is reasonably likely to produce total fee collections under Section 6(b) equal to the ''target offsetting collection amount''specified in Section 6(b)(11)(A) for that fiscal year.

[8] Congress determined the target offsetting collection amounts by applying reduced fee rates to the CBO's January 2001 projection of the aggregate maximum offering prices for fiscal years 2002 through 2011. In any fiscal year through fiscal 2011, the annual adjustment mechanism will result in additional fee reductions if the CBO's January 2001 projection of the aggregate maximum offering prices for the fiscal year proves to be too low, and fee rate increases if the CBO's January 2001 projection of the aggregate maximum offering prices for the fiscal year proves to be too high.

[9] *Appendix A* explains how we determined the ''baseline estimate of the aggregate maximum offering price'' for fiscal 2003 using our methodology, and then shows the purely arithmetical process of calculating the fiscal 2003 annual adjustment based on that estimate. The appendix includes the data used by the Commission in making its ''baseline estimate of the aggregate maximum offering price'' for fiscal 2003.

[10] Exchange Act Release No. 45489 (March 1, 2002), 67 FR 10239 (March 6, 2002).

sales of certain securities transacted by or through any member of the association otherwise than on an exchange. Section 31(j)(1) requires the Commission to make annual adjustments to the fee rates applicable under Sections 31(b) and (c) for each of the fiscal years 2003 through 2011.[11]

Paragraph 31(j)(1) specifies the method for determining the annual adjustment for fiscal 2003. Specifically, the Commission must adjust the rates under Sections 31(b) and (c) to a ''uniform adjust rate that, when applied to the baseline estimate of the aggregate amount of sales for [fiscal 2003], is reasonably likely to produce aggregate fee collections under [Section 31] (including assessments collected under [Section 31(d)]) that are equal to the target offsetting collection amount for [fiscal 2003].''

Paragraph 31(1)(1) specifies that the ''target offsetting collection amount'' for fiscal 2003 is $849,000,000. [12] Paragraph 31(1)(2) defines the ''baseline estimate of the aggregate dollar amount of sales'' as ''the baseline estimate of the aggregate dollar amount of sales of securities * * * to be transacted on each national securities exchange and by or through any member of each national securities association (otherwise than on a national securities exchange) during [fiscal 2003] as determined by the Commission, after consultation with the Congressional Budget Office and the Office of Management and Budget. * * *''

To make the baseline estimate of the aggregate dollar amount of sales for fiscal year 2003, the Commission is using the same methodology it developed in consultation with the CBO and OMB for making projections of dollar volume for purposes of the fiscal 2002 mid-year adjustment.[13] Using this methodology, the Commission calculates the baseline estimate of the aggregate dollar amount of sales for fiscal 2003 to be $33,158,519,250,001. Based on this estimate, and an estimated collection of $450,000 in assessments on securities futures products in fiscal 2003,[14] the uniform adjusted rate is $25.20 per million.[15]

VI. Effective Dates of the Annual Adjustments

Subparagraph 6(b)(8)(A) of the Securities Act provides that the fiscal 2003 annual adjustment to the fee rate applicable under section 6(b) of the Securities Act shall take effect on the later of October 1, 2002, or five days after the date on which a regular appropriation to the Commission for fiscal 2003 is enacted.[16] Subparagraphs 13(e)(8)(A) and 14(g)(8)(A) of the Exchange Act provide for the same effective date for the annual adjustment to the fee rates applicable under section 13(e) and 14(g) of the Exchange Act.[17]

Subparagraph 31(j)(4)(A) of the Exchange Act provides that the fiscal 2003 annual adjustments to the fee rates applicable under section 31(b) and (c) of the Exchange Act shall take effect on the later of October 1, 2002, or thirty days after the date on which a regular appropriation to the Commission for fiscal 2003 is enacted.

V. Conclusion

Accordingly, pursuant to section 6(b) of the Securities Act and sections 13(e), 14(g) and 31(j) of the Exchange Act,[18]

It is hereby ordered that the fee rates applicable under section 6(b) of the Securities Act and sections 13(e) and 14(g) of the Exchange Act shall be $80.90 per million effective on the later of October 1, 2002, or five days after the date on which a regular appropriation to the Commission for fiscal 2003 is enacted; and

It is further ordered that the fee rates applicable under sections 31(b) and (c) of the Exchange Act shall be $25.20 per million effective on the later of October 1, 2002, or thirty days after the date on which a regular appropriation to the Commission for fiscal 2003 is enacted.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Appendix A

A. Baseline Estimate of the Aggregate Maximum Offering Prices for Fiscal Year 2003 Subject to Securities Act Section 6(b)

First, calculate the aggregate maximum offering prices (AMOP) for each month in the sample (March 1992–March 2002). Next, calculate the percentage change in the AMOP from month-to-month.

Model the monthly percentage change in AMOP as a first order moving average process. The moving average approach allows one to model the effect that an exceptionally high (or low) observation of AMOP tends to be followed by a more ''typical'' value of AMOP.

Use the estimated moving average model to forecast the monthly percent change in AMOP. These percent changes can then be applied to obtain forecasts of the monthly aggregate maximum offering prices. The following is a more formal (mathematical) description of the procedure:

1. Begin with the monthly data for AMOP. The sample spans ten years from March 1992 to March 2002. There are 6 months in the sample for which the data are not used because of the impact of extraordinary events (*e.g.*, the 1995 government shutdown).

2. Divide each month's AMOP (column C) by the number of trading days in that month (column B) to obtain the average daily AMOP (AAMOP, column D).

3. For each month t, the natural logarithm of AAMOP is reported in column E.

4. Calculate the change in log(AAMOP) from the previous month as $\Delta_t = \log(AAMOP_t) - \log(AAMOP_{t-1})$. This approximates the percentage change.

5. Estimate the first order moving average model $\Delta_t = \alpha + \beta e_{t-1} + e_t$, where e_t denotes the forecast error for month t. The forecast error is simply the difference between the one-month ahead forecast and the actual realization of Δ_t. The forecast error is expressed as $e_t = \Delta_t - \alpha - \beta e_{t-1}$. The model can be estimated using standard commercially available software such as SAS or Eviews. Using least squares, the estimated parameter values are $\alpha = 0.01292$ and $\beta = -0.78083$.

6. For the month of April 2002, forecast $\Delta_{t=4/02} = \alpha + \beta e_{t=3/02}$. For all subsequent months, forecast $\Delta_t = \alpha$.

7. Calculate forecasts of log(AAMOP). For example, the forecast of log(AAMOP) for June 2002 is given by $FLAAMOP_{t=6/02} = \log(AAMOP_{t=3/02}) + \Delta_{t=4/02} + \Delta_{t=5/02} + \Delta_{t=6/02}$.

8. Under the assumption that e_t is normally distributed, the n-step ahead forecast of AAMOP is given by $\exp(FLAAMOP_t + \sigma_n^2/2)$, where σ_n denotes the standard error of the n-step ahead forecast.

9. For June 2002, this gives a forecast AAMOP of $18.5 Billion (Column I), and a forecast AMOP of $369.9 Bilion (Column J).

[11] The annual adjustments, as well as the mid-year adjustments required in certain circumstances under paragraph 31(j)(2) in fiscal 2002 through fiscal 2011, are designed to adjust the fee rates in a given fiscal year so that, when applied to the aggregate dollar volume of sales for the fiscal year, they are reasonably likely to produce total fee collections under Section 31 equal to the ''target offsetting collection amount'' specified in Section 31(l)(1) for that fiscal year.

[12] Congress determined the target offsetting collection amounts by applying reduced fee rates to the CBO's January 2001 projections of dollar volume for fiscal years 2002 through 2011. In any fiscal year through fiscal 2011, the annual and, in certain circumstances, mid-year adjustment mechanisms will result in additional fee rate reductions if the CBO's January 2001 projection of dollar volume for the fiscal year proves to be too low, and fee rate increases if the CBO's January 2001 projection of dollar volume for the fiscal year proves to be too high.

[13] *Appendix B* explains how we determined the ''baseline estimate of the aggregate dollar amount of sales'' for fiscal 2003 using our methodology, and then shows the purely arithmetical process of calculating the fiscal 2003 annual adjustment based on that estimate. The appendix also includes the data used by the Commission in making its ''baseline estimate of the aggregate dollar amount of sales'' for fiscal 2003.

[14] This estimate is based on the CBO's August 2001 estimate of Section 31(d) collections in fiscal 2003, adjusted to reflect the Fee Relief Act's reduction in the Section 31(d) assessment.

[15] As explained in *Appendix B*, the calculation of the adjusted fee rate assumes that the current fee rate of $30,10 per million will apply through October 31st due to the operation of the effective date provision contained in subparagraph 31(j)(4)(A) of the Exchange Act.

[16] 15 U.S.C. 77f(b)(8)(A).

[17] 15 U.S.C. 78m(e)(8)(A) and 78n(g)(8)(A).

[18] U.S.C. 77f(b), 78m(e), 78n(g), and 78ee(j).

10. Iterate this process through September 2003 to obtain a baseline estimate of the aggregate maximum offering prices for fiscal year 2003 of $5,379,329,602,021.

B. Using the Forecasts From A To Calculate the New Fee Rate.

1. Using the data from Table A1, estimate the aggregate maximum offering prices between 10/1/02 and 9/30/03 to be $5,379,329,602,021.

2. The rate necessary to collect the target $435,000,000 in fee revenues is then calculated as: $435,000,000 ÷ $5,379,329,602,021 = 0.00008090.

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Figure A1.
Aggregate Maximum Offering Prices Subject to Securities Act Section 6(b)
(Dashed Line Indicates Forecast Values)

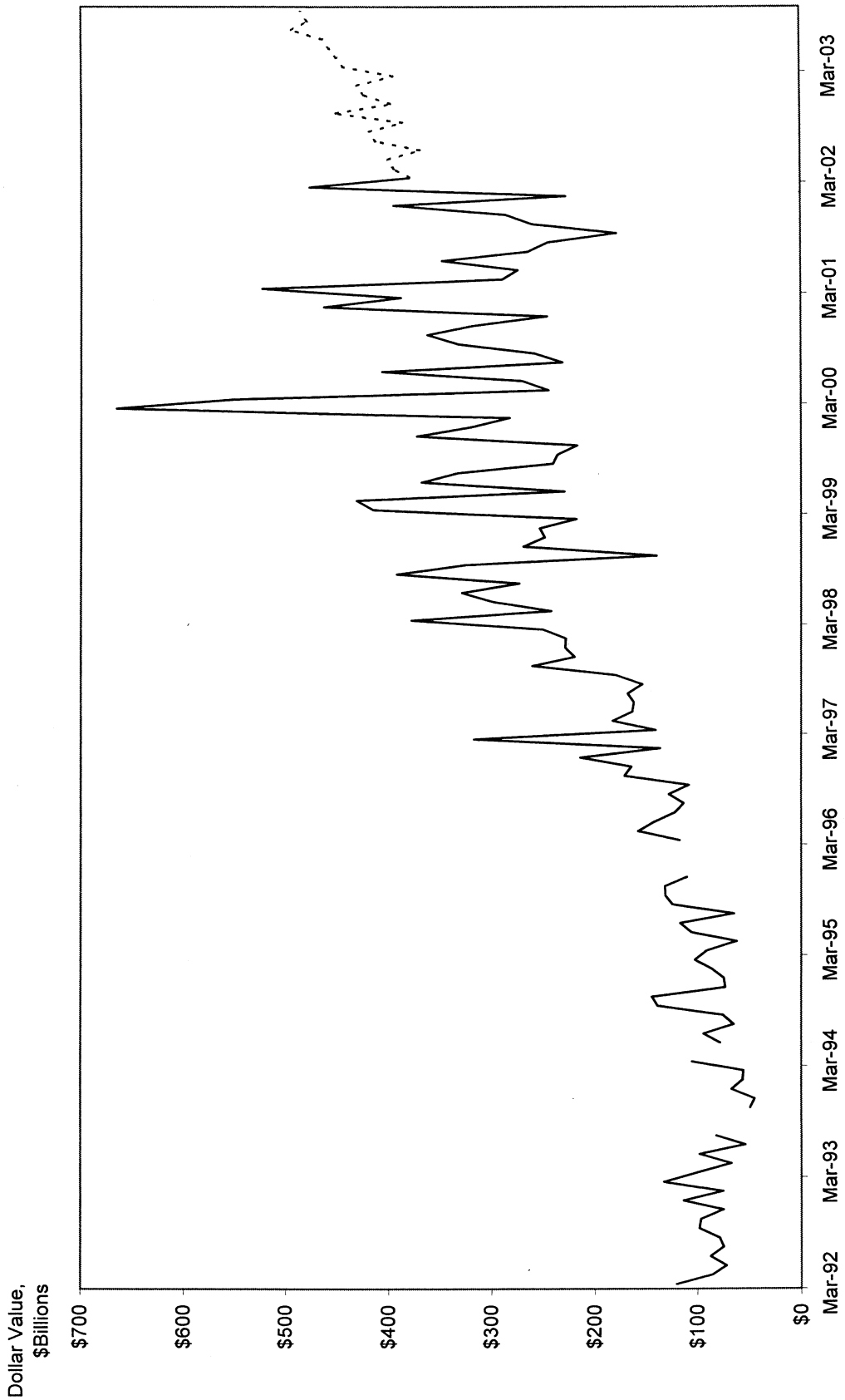

Table A1. Estimation of baseline of aggregate maximum offering prices .

Fee rate calculation.

a. Baseline estimate of the aggregate maximum offering prices, 10/1/02 to 9/30/03 ($Millions)	5,379,330
b. Implied fee rate ($435 Million / a)	$80.90

Data

(A) Month	(B) # of Trading Days in Month	(C) Aggregate Maximum Offering Prices, in $Millions	(D) Average Daily Aggregate Max. Offering Prices (AAMOP) in $Millions	(E) log(AAMOP)	(F) Change in AAMOP	(G) Forecast log(AAMOP)	(H) Standard Error	(I) Forecast AAMOP	(J) Forecast Aggregate Maximum Offering Prices, in $Millions
Mar-92	22	120,702	5,486	22.426					
Apr-92	21	85,953	4,093	22.133	-0.293				
May-92	20	72,313	3,616	22.009	-0.124				
Jun-92	22	88,083	4,004	22.111	0.102				
Jul-92	22	75,000	3,409	21.950	-0.161				
Aug-92	21	79,182	3,771	22.050	0.101				
Sep-92	21	98,659	4,698	22.270	0.220				
Oct-92	22	97,136	4,415	22.208	-0.062				
Nov-92	20	75,453	3,773	22.051	-0.157				
Dec-92	22	114,268	5,194	22.371	0.320				
Jan-93	20	75,676	3,784	22.054	-0.317				
Feb-93	19	133,440	7,023	22.672	0.618				
Mar-93	23	100,585	4,373	22.199	-0.474				
Apr-93	21	67,712	3,224	21.894	-0.305				
May-93	20	98,590	4,929	22.319	0.424				
Jun-93	22	54,357	2,471	21.628	-0.691				
Jul-93	21	82,514	3,929	22.092	0.464				
Aug-93	22								
Sep-93	21								
Oct-93	21	49,664	2,365	21.584					
Nov-93	21	45,360	2,160	21.493	-0.091				
Dec-93	22	67,717	3,078	21.848	0.354				
Jan-94	21	56,998	2,714	21.722	-0.126				
Feb-94	19	56,104	2,953	21.806	0.084				
Mar-94	23	105,914	4,605	22.250	0.444				
Apr-94	19								
May-94	21	78,564	3,741	22.043					
Jun-94	22	94,814	4,310	22.184	0.141				
Jul-94	20	65,628	3,281	21.912	-0.273				
Aug-94	23	75,874	3,299	21.917	0.005				
Sep-94	21	139,422	6,639	22.616	0.699				

(A) Month	(B) # of Trading Days in Month	(C) Aggregate Maximum Offering Prices, in $Millions	(D) Average Daily Aggregate Max. Offering Prices (AAMOP) in $Millions	(E) log(AAMOP)	(F) Change in AAMOP	(G) Forecast log(AAMOP)	(H) Standard Error	(I) Forecast AAMOP	(J) Forecast Aggregate Maximum Offering Prices, in $Millions
Oct-94	21	144,953	6,903	22.655	0.039				
Nov-94	21	73,625	3,506	21.978	-0.677				
Dec-94	21	74,903	3,567	21.995	0.017				
Jan-95	21	86,714	4,129	22.141	0.146				
Feb-95	19	102,999	5,421	22.414	0.272				
Mar-95	23	91,561	3,981	22.105	-0.309				
Apr-95	19	62,518	3,290	21.914	-0.190				
May-95	22	106,333	4,833	22.299	0.385				
Jun-95	22	117,557	5,344	22.399	0.100				
Jul-95	20	65,127	3,256	21.904	-0.495				
Aug-95	23	124,662	5,420	22.413	0.510				
Sep-95	20	131,774	6,589	22.609	0.195				
Oct-95	22	132,141	6,006	22.516	-0.093				
Nov-95	21	110,646	5,269	22.385	-0.131				
Dec-95	20								
Jan-96	22								
Feb-96	20								
Mar-96	21	117,780	5,609	22.448					
Apr-96	21	158,005	7,524	22.741	0.294				
May-96	22	142,452	6,475	22.591	-0.150				
Jun-96	20	122,598	6,130	22.536	-0.055				
Jul-96	22	113,637	5,165	22.365	-0.171				
Aug-96	22	128,154	5,825	22.485	0.120				
Sep-96	20	108,763	5,438	22.417	-0.069				
Oct-96	23	171,507	7,457	22.732	0.316				
Nov-96	20	164,574	8,229	22.831	0.098				
Dec-96	21	214,241	10,202	23.046	0.215				
Jan-97	22	136,615	6,210	22.549	-0.496				
Feb-97	19	317,624	16,717	23.540	0.990				
Mar-97	20	140,809	7,040	22.675	-0.865				
Apr-97	22	182,657	8,303	22.840	0.165				
May-97	21	163,702	7,795	22.777	-0.063				
Jun-97	21	162,111	7,720	22.767	-0.010				
Jul-97	22	168,007	7,637	22.756	-0.011				
Aug-97	21	153,705	7,319	22.714	-0.042				
Sep-97	21	179,559	8,550	22.869	0.155				
Oct-97	23	260,719	11,336	23.151	0.282				
Nov-97	19	219,618	11,559	23.171	0.020				

(A) Month	(B) # of Trading Days in Month	(C) Aggregate Maximum Offering Prices, in $Millions	(D) Average Daily Aggregate Max. Offering Prices (AAMOP) in $Millions	(E) log(AAMOP)	(F) Change in AAMOP	(G) Forecast log(AAMOP)	(H) Standard Error	(I) Forecast AAMOP	(J) Forecast Aggregate Maximum Offering Prices, in $Millions
Dec-97	22	228,605	10,391	23.064	-0.106				
Jan-98	20	228,030	11,402	23.157	0.093				
Feb-98	19	250,266	13,172	23.301	0.144				
Mar-98	22	378,185	17,190	23.568	0.266				
Apr-98	21	242,310	11,539	23.169	-0.399				
May-98	20	298,454	14,923	23.426	0.257				
Jun-98	22	328,994	14,954	23.428	0.002				
Jul-98	22	272,957	12,407	23.242	-0.187				
Aug-98	21	392,104	18,672	23.650	0.409				
Sep-98	21	325,144	15,483	23.463	-0.187				
Oct-98	22	139,786	6,354	22.572	-0.891				
Nov-98	20	269,065	13,453	23.322	0.750				
Dec-98	22	248,596	11,300	23.148	-0.174				
Jan-99	19	253,448	13,339	23.314	0.166				
Feb-99	19	217,433	11,444	23.161	-0.153				
Mar-99	23	415,145	18,050	23.616	0.456				
Apr-99	21	431,280	20,537	23.746	0.129				
May-99	20	229,082	11,454	23.162	-0.584				
Jun-99	22	367,943	16,725	23.540	0.379				
Jul-99	21	332,623	15,839	23.486	-0.054				
Aug-99	22	240,157	10,916	23.114	-0.372				
Sep-99	21	236,011	11,239	23.143	0.029				
Oct-99	21	216,883	10,328	23.058	-0.085				
Nov-99	21	372,582	17,742	23.599	0.541				
Dec-99	22	319,846	14,538	23.400	-0.199				
Jan-00	20	282,165	14,108	23.370	-0.030				
Feb-00	20	665,367	33,268	24.228	0.858				
Mar-00	23	550,107	23,918	23.898	-0.330				
Apr-00	19	244,510	12,869	23.278	-0.620				
May-00	22	269,774	12,262	23.230	-0.048				
Jun-00	22	406,409	18,473	23.640	0.410				
Jul-00	20	230,894	11,545	23.169	-0.470				
Aug-00	23	257,797	11,209	23.140	-0.030				
Sep-00	20	332,120	16,606	23.533	0.393				
Oct-00	22	362,493	16,477	23.525	-0.008				
Nov-00	21	317,653	15,126	23.440	-0.086				
Dec-00	20	246,006	12,300	23.233	-0.207				
Jan-01	21	462,726	22,035	23.816	0.583				

(A) Month	(B) # of Trading Days in Month	(C) Aggregate Maximum Offering Prices, in $Millions	(D) Average Daily Aggregate Max. Offering Prices (AAMOP) in $Millions	(E) log(AAMOP)	(F) Change in AAMOP	(G) Forecast log(AAMOP)	(H) Standard Error	(I) Forecast AAMOP	(J) Forecast Aggregate Maximum Offering Prices, in $Millions
Feb-01	19	388,304	20,437	23.741	-0.075				
Mar-01	22	523,443	23,793	23.893	0.152				
Apr-01	20	289,212	14,461	23.395	-0.498				
May-01	22	274,298	12,468	23.246	-0.148				
Jun-01	21	348,268	16,584	23.532	0.285				
Jul-01	21	264,590	12,600	23.257	-0.275				
Aug-01	23	245,591	10,678	23.091	-0.165				
Sep-01	15	178,524	11,902	23.200	0.108				
Oct-01	23	260,719	11,336	23.151	-0.049				
Nov-01	21	286,199	13,629	23.335	0.184				
Dec-01	20	395,230	19,762	23.707	0.372				
Jan-02	21	227,893	10,852	23.108	-0.599				
Feb-02	19	476,837	25,097	23.946	0.838				
Mar-02	20	380,160	19,008	23.668	-0.278				
Apr-02	22					23.568	0.292	17,947	394,841
May-02	22					23.581	0.299	18,218	400,794
Jun-02	20					23.594	0.305	18,493	369,852
Jul-02	22					23.607	0.312	18,771	412,971
Aug-02	22					23.620	0.319	19,054	419,198
Sep-02	20					23.633	0.325	19,342	386,835
Oct-02	23					23.646	0.331	19,633	451,567
Nov-02	20					23.659	0.337	19,929	398,587
Dec-02	21					23.672	0.343	20,230	424,827
Jan-03	21					23.684	0.349	20,535	431,232
Feb-03	19					23.697	0.355	20,844	396,045
Mar-03	21					23.710	0.361	21,159	444,333
Apr-03	21					23.723	0.366	21,478	451,033
May-03	21					23.736	0.372	21,802	457,833
Jun-03	21					23.749	0.377	22,130	464,736
Jul-03	22					23.762	0.383	22,464	494,207
Aug-03	21					23.775	0.388	22,803	478,855
Sep-03	21					23.788	0.393	23,146	486,075

APPENDIX B

A. Baseline Estimate of the Aggregate Dollar Amount of Sales Subject to Exchange Act Sections 31(b) and 31(c)

First, calculate the average daily dollar amount of sales (ADS) for each month in the sample (March 1992–March 2002). The date obtained from the exchanges and Nasdaq are presented in Table B1. The monthly aggregate dollar amount of sales (exchange plus Nasdaq) is contained in column E.

Next, calculate the percentage change in the ADS from month-to-month. The average monthly percentage growth of ADS over the entire sample is 0.017 and the standard deviation is 0.111. Assuming the monthly percentage change in ADS follows a random walk, calculating the expected monthly percentage growth rate for the full sample is straightforward. The expected monthly percentage growth rate of ADS is 2.4 percent.

Now, use the expected monthly percentage growth rate to forecast the aggregate dollar amount of sales. For example, one can use the ADS for March 2002 ($97,678,101,212) to forecast ADS for April 2002 ($100,007,442,449 = $97,678,101,212 × 1.024). Multiply by the number of trading days in April 2002 (22) to obtain a forecast of the aggregate dollar amount of sales for the month ($2,200,163,733,884). Repeat the method to generate forecasts for subsequent months.

The forecasts for aggregate dollar amount of sales are in column I of Table B1. The following is a more formal (mathematical) description of the procedure:

1. Divide each month's aggregate dollar amount of sales (column E) by the number of trading days in that month (column B) to obtain the average daily dollar volume (ADS, column F).

2. For each month t, calculate the change in ADS from the previous month as $\Delta_t = \log(ADS_{t-1})$, where log (x) denotes the natural logarithm of x.

3. Calculate the mean and standard deviation of the series $\{\Delta_1, \Delta_2, \ldots, \Delta_{120}\}$. These are given by $\mu = 0.017$ and $\sigma = 0.111$, respectively.

4. Assume that the natural logarithm of ADS follows a random walk, so that Δ_s and Δ_t are statistically independent for any two months s and t.

Under the assumption that Δ_t is normally distributed, the expected value of ADS_t/ADS_{t-1} is given by $\exp(\mu + \sigma^2/2)$, or on average $ADS_t = 1.024 \times ADS_{t-1}$.

6. For April 2002, this gives a forecast ADS of 1.024 × $97,678,101,212 = $100,007,442,449. Multiply this figure by the 22 trading days in April 2002 to obtain an aggregate dollar amount of sales forecast of $2,200,163,733,884.

7. For May 2002, multiply the April 2002 ADS forecast by 1.024 to obtain a forecast ADS of $102,392,331,762. Multiply this figure by the 22 trading days in May 2002 to obtain an aggregate dollar amount of sales forecast of $2,252,631,298,774.

8. Repeat this procedure for subsequent months.

B. Using the Forecasts From A To Calculate the New Fee Rate

1. Use Table B1 to estimate fees collected for the period 10/1/02 through 10/31/02. The projected aggregate dollar amount of sales for this period is $2,649,542,136,536. Projected fee collections at the current fee rate of 0.00003010 are $79,751,218.

2. Assume collections of $450,000 in assessments on securities futures products in fiscal 2003. This estimate is based on the CBO's August 2001 estimate of Section 31(d) collections in fiscal 2003, adjusted to reflect the Fee Relief Act's reduction in the Section 31(d) assessments.

3. Subtract the amounts $79,751,218 and $450,000 from the target offsetting collection amount of $849,000,000, leaving $768,798,782 to be collected on dollar volume for the period 11/1/02 through 9/30/03.

4. Use Table B1 to estimate dollar volume for the period 11/1/02 through 9/30/03. The estimate is $30,508,977,113,465. Finally, compute the fee rate required to produce the additional $768,798,782 in revenue. This rate is $768,798,782 divided by $30,508,977,113,465 or 0.0000251991.

5. Consistent with the system requirements of the exchanges and the NASD, round the result to the seventh decimal point, yielding a rate of $25.20 per million.

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Figure B1.
Aggregate Dollar Amount of Sales Subject to Exchange Act Sections 31(b) and 31(c)
(Dashed Line Indicates Forecast Values)

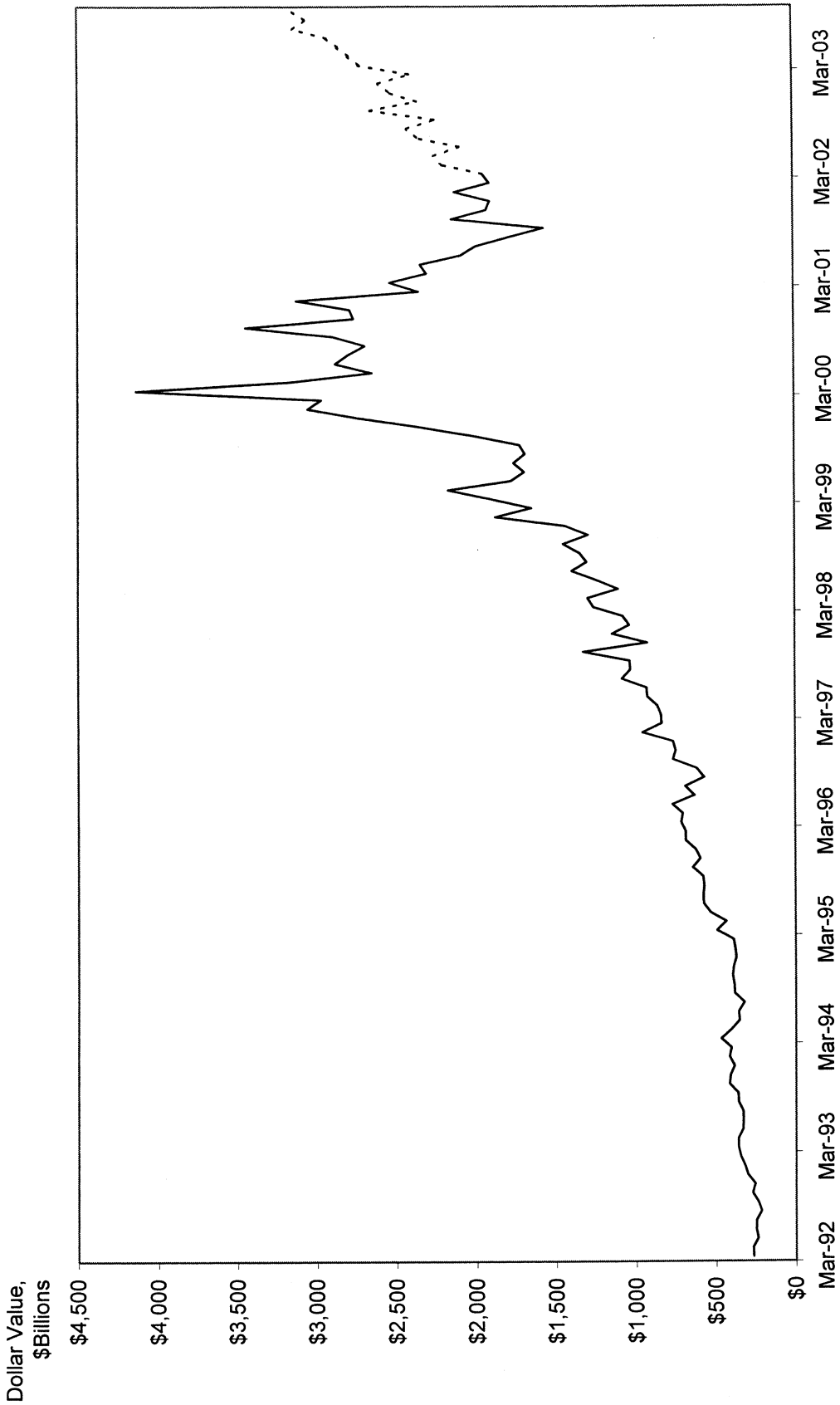

Table B1. Estimation of baseline of the aggregate dollar amount of sales.

Fee rate calculation.

a. Baseline estimate of the aggregate dollar amount of sales, 10/1/02 to 10/31/02 ($Millions)	2,649,542
b. Baseline estimate of the aggregate dollar amount of sales, 11/1/02 to 9/30/03 ($Millions)	30,508,977
c. Assumed collections in assessments on securities futures products in FY 2003 ($Millions)	0.450
d. Implied fee rate (($849,000,000 - 0.00003010*a - c) / b)	$25.20

Data

(A) Month	(B) # of Trading Days in Month	(C) Exchange-Listed Dollar Amount of Sales	(D) Nasdaq Dollar Amount of Sales	(E) Aggregate Dollar Amount of Sales	(F) Average Daily Dollar Amount of Sales (ADS)	(G) Change in ADS	(H) Forecast ADS	(I) Forecast Aggregate Dollar Amount of Sales
Mar-92	22	194,253,583,139	73,399,584,000	267,653,167,139	12,166,053,052	-		
Apr-92	21	192,682,981,517	78,144,178,000	270,827,159,517	12,896,531,406	0.058		
May-92	20	182,587,885,066	57,295,555,000	239,883,440,066	11,994,172,003	-0.073		
Jun-92	22	185,877,632,937	64,635,401,000	250,513,033,937	11,386,956,088	-0.052		
Jul-92	22	185,749,381,610	63,154,356,000	248,903,737,610	11,313,806,255	-0.006		
Aug-92	21	163,201,786,258	53,571,296,000	216,773,082,258	10,322,527,727	-0.092		
Sep-92	21	170,931,544,317	65,871,407,000	236,802,951,317	11,276,331,015	0.088		
Oct-92	22	197,058,901,056	75,795,245,000	272,854,146,056	12,402,461,184	0.095		
Nov-92	20	176,284,430,042	80,748,933,000	257,033,363,042	12,851,668,152	0.036		
Dec-92	22	213,194,085,523	89,348,602,000	302,542,687,523	13,751,940,342	0.068		
Jan-93	20	212,344,305,792	107,992,636,000	320,336,941,792	16,016,847,090	0.152		
Feb-93	19	238,758,759,740	107,865,220,000	346,623,979,740	18,243,367,355	0.130		
Mar-93	23	254,153,083,005	104,714,261,000	358,867,344,005	15,602,928,000	-0.156		
Apr-93	21	259,894,323,029	101,842,746,000	361,737,069,029	17,225,574,716	0.099		
May-93	20	228,370,238,902	103,225,212,000	331,595,450,902	16,579,772,545	-0.038		
Jun-93	22	223,269,586,987	105,819,661,000	329,089,247,987	14,958,602,181	-0.103		
Jul-93	21	228,189,513,167	101,802,827,000	329,992,340,167	15,713,920,960	0.049		
Aug-93	22	240,087,999,028	117,600,923,000	357,688,922,028	16,258,587,365	0.034		
Sep-93	21	243,134,952,411	117,640,918,000	360,775,870,411	17,179,803,353	0.055		
Oct-93	21	275,653,273,040	139,364,838,000	415,018,111,040	19,762,767,192	0.140		
Nov-93	21	280,909,537,581	127,345,828,000	408,255,365,581	19,440,731,694	-0.016		
Dec-93	22	268,471,426,906	114,885,343,000	383,356,769,906	17,425,307,723	-0.109		
Jan-94	21	277,615,393,351	137,551,072,000	415,166,465,351	19,769,831,683	0.126		
Feb-94	19	281,053,587,314	122,882,920,000	403,936,507,314	21,259,816,174	0.073		
Mar-94	23	316,713,498,173	151,177,373,000	467,890,871,173	20,343,081,355	-0.044		
Apr-94	19	289,365,151,226	114,834,515,000	404,199,666,226	21,273,666,643	0.045		
May-94	21	241,278,516,490	112,318,747,000	353,597,263,490	16,837,964,928	-0.234		
Jun-94	22	245,067,967,632	112,555,736,000	357,623,703,632	16,255,622,892	-0.035		
Jul-94	20	221,511,138,952	100,563,525,000	322,074,663,952	16,103,733,198	-0.009		

(A) Month	(B) # of Trading Days in Month	(C) Exchange-Listed Dollar Amount of Sales	(D) Nasdaq Dollar Amount of Sales	(E) Aggregate Dollar Amount of Sales	(F) Average Daily Dollar Amount of Sales (ADS)	(G) Change in ADS	(H) Forecast ADS	(I) Forecast Aggregate Dollar Amount of Sales
Aug-94	23	255,511,795,450	127,675,353,000	383,187,148,450	16,660,310,802	0.034		
Sep-94	21	273,589,300,476	111,984,539,000	385,573,839,476	18,360,659,023	0.097		
Oct-94	21	266,363,537,805	129,089,800,000	395,453,337,805	18,831,111,324	0.025		
Nov-94	21	267,314,618,799	121,827,668,000	389,142,286,799	18,530,585,086	-0.016		
Dec-94	21	265,184,891,948	106,839,641,000	372,024,532,948	17,715,453,950	-0.045		
Jan-95	21	253,958,524,771	125,092,685,000	379,051,209,771	18,050,057,608	0.019		
Feb-95	19	263,486,075,035	125,574,811,000	389,060,886,035	20,476,888,739	0.126		
Mar-95	23	330,806,034,718	161,066,575,000	491,872,609,718	21,385,765,640	0.043		
Apr-95	19	285,586,213,818	149,741,420,000	435,327,633,818	22,911,980,727	0.069		
May-95	22	340,254,177,379	191,600,883,000	531,855,060,379	24,175,230,017	0.054		
Jun-95	22	376,703,055,609	197,629,158,000	574,332,213,609	26,106,009,710	0.077		
Jul-95	20	346,809,496,831	229,239,839,000	576,049,335,831	28,802,466,792	0.098		
Aug-95	23	327,435,391,060	243,203,335,000	570,638,726,060	24,810,379,394	-0.149		
Sep-95	20	352,176,019,676	225,957,920,000	578,133,939,676	28,906,696,984	0.153		
Oct-95	22	386,892,948,035	255,297,230,000	642,190,178,035	29,190,462,638	0.010		
Nov-95	21	340,868,134,565	255,556,416,000	596,424,550,565	28,401,169,075	-0.027		
Dec-95	20	386,356,222,037	238,254,219,000	624,610,441,037	31,230,522,052	0.095		
Jan-96	22	412,342,988,854	275,256,103,000	687,599,091,854	31,254,504,175	0.001		
Feb-96	20	432,110,721,273	255,121,750,000	687,232,471,273	34,361,623,564	0.095		
Mar-96	21	462,522,216,093	252,313,904,000	714,836,120,093	34,039,815,243	-0.009		
Apr-96	21	419,529,647,022	284,880,671,000	704,410,318,022	33,543,348,477	-0.015		
May-96	22	444,864,509,489	323,514,998,000	768,379,507,489	34,926,341,250	0.040		
Jun-96	20	364,047,300,223	267,051,480,000	631,098,780,223	31,554,939,011	-0.102		
Jul-96	22	405,998,331,384	282,430,397,000	688,428,728,384	31,292,214,927	-0.008		
Aug-96	22	347,207,351,036	222,902,421,000	570,109,772,036	25,914,080,547	-0.189		
Sep-96	20	361,752,600,688	255,491,281,000	617,243,881,688	30,862,194,084	0.175		
Oct-96	23	450,138,412,454	314,131,029,000	764,269,441,454	33,229,106,150	0.074		
Nov-96	20	468,499,807,419	279,994,893,000	748,494,700,419	37,424,735,021	0.119		
Dec-96	21	475,791,378,753	288,688,118,000	764,479,496,753	36,403,785,560	-0.028		
Jan-97	22	578,613,348,586	378,819,289,000	957,432,637,586	43,519,665,345	0.179		
Feb-97	19	500,101,991,446	337,072,192,000	837,174,183,446	44,061,799,129	0.012		
Mar-97	20	526,670,517,788	312,522,211,000	839,192,728,788	41,959,636,439	-0.049		
Apr-97	22	541,016,966,315	321,782,247,000	862,799,213,315	39,218,146,060	-0.068		
May-97	21	560,712,670,647	365,021,182,000	925,733,852,647	44,082,564,412	0.117		
Jun-97	21	590,497,004,859	339,912,081,000	930,409,085,859	44,305,194,565	0.005		
Jul-97	22	665,142,486,898	420,540,220,000	1,085,682,706,898	49,349,213,950	0.108		
Aug-97	21	646,260,997,751	385,083,141,000	1,031,344,138,751	49,111,625,655	-0.005		
Sep-97	21	636,729,800,602	399,730,444,000	1,036,460,244,602	49,355,249,743	0.005		

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Oct-97	23	795,309,593,718	534,343,839,000	1,329,653,432,718	57,811,018,814	0.158		
Nov-97	19	614,656,941,587	311,360,937,000	926,017,878,587	48,737,783,084	-0.171		
Dec-97	22	771,801,485,199	375,503,531,000	1,147,305,016,199	52,150,228,009	0.068		
Jan-98	20	664,267,640,263	375,290,271,000	1,039,557,911,263	51,977,895,563	-0.003		
Feb-98	19	672,565,048,157	408,876,474,000	1,081,441,522,157	56,917,974,850	0.091		
Mar-98	22	798,277,192,905	464,862,662,000	1,263,139,854,905	57,415,447,950	0.009		
Apr-98	21	821,022,063,854	478,804,341,000	1,299,826,404,854	61,896,495,469	0.075		
May-98	20	717,711,593,246	392,290,631,000	1,110,002,224,246	55,500,111,212	-0.109		
Jun-98	22	781,193,541,641	464,886,854,000	1,246,080,395,641	56,640,017,984	0.020		
Jul-98	22	839,132,005,554	561,429,081,000	1,400,561,086,554	63,661,867,571	0.117		
Aug-98	21	811,893,940,585	494,696,509,000	1,306,590,449,585	62,218,592,837	-0.023		
Sep-98	21	899,363,115,702	452,978,456,000	1,352,341,571,702	64,397,217,700	0.034		
Oct-98	22	934,874,788,951	519,628,635,672	1,454,503,424,623	66,113,792,028	0.026		
Nov-98	20	761,843,293,678	534,735,697,587	1,296,578,991,265	64,828,949,563	-0.020		
Dec-98	22	831,906,512,838	610,078,427,246	1,441,984,940,084	65,544,770,004	0.011		
Jan-99	19	999,043,017,550	881,762,273,376	1,880,805,290,926	98,989,752,154	0.412		
Feb-99	19	881,206,542,866	771,821,519,115	1,653,028,061,981	87,001,476,946	-0.129		
Mar-99	23	1,064,559,310,307	845,323,661,356	1,909,882,971,663	83,038,390,072	-0.047		
Apr-99	21	1,200,826,668,871	974,846,639,668	2,175,673,308,539	103,603,490,883	0.221		
May-99	20	1,052,642,277,388	728,648,483,251	1,781,290,760,639	89,064,538,032	-0.151		
Jun-99	22	968,355,845,707	728,666,375,241	1,697,022,220,948	77,137,373,679	-0.144		
Jul-99	21	968,729,547,313	795,657,683,556	1,764,387,230,869	84,018,439,565	0.085		
Aug-99	22	909,861,580,448	782,763,893,461	1,692,625,473,909	76,937,521,541	-0.088		
Sep-99	21	886,209,235,286	842,754,416,364	1,728,963,651,650	82,331,602,460	0.068		
Oct-99	21	1,075,832,673,611	938,836,857,225	2,014,669,530,836	95,936,644,326	0.153		
Nov-99	21	1,125,441,492,744	1,218,999,895,936	2,344,441,388,681	111,640,066,128	0.152		
Dec-99	22	1,260,244,827,356	1,472,542,539,476	2,732,787,366,832	124,217,607,583	0.107		
Jan-00	20	1,293,751,986,296	1,759,510,466,949	3,053,262,453,245	152,663,122,662	0.206		
Feb-00	20	1,237,324,279,941	1,730,179,962,177	2,967,504,242,118	148,375,212,106	-0.028		
Mar-00	23	1,675,729,644,521	2,460,195,052,947	4,135,924,697,468	179,822,812,933	0.192		
Apr-00	19	1,429,668,149,369	1,739,658,625,584	3,169,326,774,953	166,806,672,366	-0.075		
May-00	22	1,273,774,500,287	1,374,100,073,878	2,647,874,574,166	120,357,935,189	-0.326		
Jun-00	22	1,283,603,525,223	1,594,692,767,334	2,878,296,292,557	130,831,649,662	0.083		
Jul-00	20	1,203,862,111,445	1,594,341,902,395	2,798,204,013,840	139,910,200,692	0.067		
Aug-00	23	1,211,624,989,972	1,481,001,529,902	2,692,626,519,874	117,070,718,255	-0.178		
Sep-00	20	1,261,317,634,976	1,631,936,332,356	2,893,253,967,332	144,662,698,367	0.212		
Oct-00	22	1,517,440,783,915	1,925,128,263,471	3,442,569,047,386	156,480,411,245	0.079		
Nov-00	21	1,290,090,415,114	1,473,929,732,217	2,764,020,147,331	131,620,007,016	-0.173		

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Dec-00	20	1,367,739,635,585	1,419,735,645,693	2,787,475,281,277	139,373,764,064	0.057		
Jan-01	21	1,547,342,195,603	1,573,412,629,080	3,120,754,824,684	148,607,372,604	0.064		
Feb-01	19	1,223,669,742,059	1,130,494,302,446	2,354,164,044,505	123,903,370,763	-0.182		
Mar-01	22	1,454,524,518,242	1,080,912,409,264	2,535,436,927,506	115,247,133,068	-0.072		
Apr-01	20	1,312,755,897,784	991,843,272,797	2,304,599,170,581	115,229,958,529	0.000		
May-01	22	1,320,141,835,270	1,023,175,979,663	2,343,317,814,933	106,514,446,133	-0.079		
Jun-01	21	1,241,534,765,814	847,846,047,529	2,089,380,813,344	99,494,324,445	-0.068		
Jul-01	21	1,240,991,028,539	757,402,982,130	1,998,394,010,669	95,161,619,556	-0.045		
Aug-01	23	1,120,517,678,311	669,526,933,547	1,790,044,611,858	77,828,026,603	-0.201		
Sep-01	15	1,051,262,586,362	519,060,855,910	1,570,323,442,271	104,688,229,485	0.296		
Oct-01	23	1,361,192,584,564	787,768,976,829	2,148,961,561,392	93,433,111,365	-0.114		
Nov-01	21	1,174,815,213,621	757,448,489,572	1,932,263,703,193	92,012,557,295	-0.015		
Dec-01	20	1,170,796,337,781	738,526,447,576	1,909,322,785,357	95,466,139,268	0.037		
Jan-02	21	1,285,936,279,811	842,154,952,554	2,128,091,232,365	101,337,677,732	0.060		
Feb-02	19	1,259,357,745,469	651,569,612,254	1,910,927,357,723	100,575,124,091	-0.008		
Mar-02	20	1,349,168,451,576	604,393,572,668	1,953,562,024,244	97,678,101,212	-0.029		
Apr-02	22						100,007,442,449	2,200,163,733,884
May-02	22						102,392,331,762	2,252,631,298,774
Jun-02	20						104,834,093,813	2,096,681,876,266
Jul-02	22						107,334,084,853	2,361,349,866,758
Aug-02	22						109,893,693,474	2,417,661,256,431
Sep-02	20						112,514,341,385	2,250,286,827,705
Oct-02	23						115,197,484,197	2,649,542,136,536
Nov-02	20						117,944,612,233	2,358,892,244,666
Dec-02	21						120,757,251,357	2,535,902,278,490
Jan-03	21						123,636,963,818	2,596,376,240,179
Feb-03	19						126,585,349,123	2,405,121,633,341
Mar-03	21						129,604,044,922	2,721,684,943,354
Apr-03	21						132,694,727,916	2,786,589,286,233
May-03	21						135,859,114,793	2,853,041,410,658
Jun-03	21						139,098,963,179	2,921,078,226,756
Jul-03	22						142,416,072,612	3,133,153,597,470
Aug-03	21						145,812,285,547	3,062,057,996,483
Sep-03	21						149,289,488,373	3,135,079,255,835

[FR Doc. 02–10932 Filed 4–29–02; 2:49 pm]

BILLING CODE 8010–01–C

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Investco, Inc.; Order of Suspension of Trading

April 29, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Investco, Inc. (''Investco'') because of questions regarding the accuracy of assertions by Investco, and by others, in press releases to investors concerning, among other things: (1) The company's assets, (2) the company's business combinations, (3) the company's current financial condition, and (4) a tender offer for Investco's outstanding shares.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EDT, April 29, 2002 through 11:59 p.m. EDT, on May 10, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–10960 Filed 4–29–02; 4:48 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45828; File No. SR–Amex–2002–30]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to an Increase to 2,000 Contracts for the Two Near Term Expiration Months and to 1,000 Contracts for All Other Expiration Months in the Maximum Permissible Number of Nasdaq-100 Tracking Stock (QQQ) Option Contracts Executable through AUTO–EX

April 25, 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 12, 2002, the American Stock Exchange LLC (''Amex'' 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. On April 17, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Commentary .02 to Exchange Rule 933 to increase to 2,000 contracts for the two near term expiration months, and to 1,000 contracts for all other expiration months, the maximum permissible number of Nasdaq-100 Tracking Stock (''QQQ'') option contracts in an order that can be executed through the Exchange's automatic execution system (''AUTO–EX'').

Below is the text of the proposed rule change. Proposed new language is *italicized;* proposed deleted language is [bracketed].

* * * * *

Automatic Execution of Options Orders

Rule 933

(a)–(b) No change.

Commentary

.01 No change

.02 Auto-Ex eligible orders must be market or marketable limit orders for two hundred fifty or fewer contracts for series subject to Auto-Ex except in the case of options on the Nasdaq-100 Tracking Stock (QQQ) which is limited to [five hundred] *2,000* or fewer contracts *in the first two (2) near term expiration months and 1,000 or fewer contract for all other expiration months.* Contract limits will be established on a case by case basis for an individual option class or for all option classes upon the approval of two Floor Governors or Senior Floor Officials. Notice concerning applicable size and types of Auto-Ex eligible orders will be provided to members periodically via Exchange circulars and/or posted on the Exchange's web site.

.03 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, 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

On March 22, 2002, the Commission granted approval to an Exchange proposal to increase to 250 contracts the maximum permissible number of equity and index option contracts in an order that can be executed through AUTO–EX.[4] At the same time, the Commission also approved similar proposals filed by the Philadelphia Stock Exchange, Inc. (''Phlx'') and the Pacific Exchange, Inc. (''PCX''), although in the case of the Phlx proposal, the increase to 250 contracts was limited to options on the QQQ.[5]

In the interim, the Chicago Board Options Exchange, Inc. (''CBOE''), on April 4, 2002, in various press reports indicated that, effective immediately, orders in the QQQ options of up to 500 contracts were eligible for instantaneous execution on the CBOE's Retail Automated Execution System (''RAES''). Previously, the maximum order size for QQQ options on the CBOE was 100 contracts. The Exchange represents that the ability of the CBOE to increase its RAES-eligible size to 500 contracts is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated April 11, 2002 (''Amendment No. 1''). In Amendment No. 1, the Amex amended its initial filing to include a representation that the Amex was trading up to 500 contracts in QQQ option contracts as of April 5, 2002 (*see infra* note 8) prior to the immediate effectiveness of this filing on April 12, 2002; to include the rule text being amended; and to request that the filing be re-characterized as a ''noncontroversial'' rule change under Rule 19b–4(f)(6) of the Act, 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 45628 (March 22, 2002), 67 FR 15262 (March 29, 2002).

[5] *See* Securities Exchange Act Release Nos. 45629 (March 22, 2002), 67 FR 15271 (March 29, 2002) (order approving File No. SR–Phlx-2001–89); and 45641 (March 25, 2002), 67 FR 15445 (April 1, 2002) (order approving File No. SR–PCX–2001–48).

based on Commission approval of a CBOE proposed rule change to establish the RAES-eligible size at the size of the disseminated options quote size.[6] The Exchange represents that, as a result, the CBOE is now able to provide immediate automatic executions of up to 500 contracts on RAES. The Amex notes, however, that this size may not remain static due to the new decrement feature of the CBOE system.

On April 5, 2002, the Exchange filed with the Commission for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4 thereunder, to increase to 500 contracts the maximum permissible number of QQQ option contracts in an order executable through AUTO–EX.[8]

The Exchange represents that the International Securities Exchange LLC (''ISE''), on April 8, 2002, announced that SLK-Hull Derivatives LLC, the primary market maker (''PMM'') in QQQ options on the ISE, would guarantee a size of 2,000 contracts in the two near term expiration months and 1,000 contracts for all other expiration months for customer orders in QQQ options. The Exchange represents that the ISE, as a fully electronic exchange, automatically executes a customer order for the disseminated quote size once the order hits the available option quote. Accordingly, the Exchange represents that an ISE PMM that guarantees 2,000 contracts in the two near term months and 1,000 contracts for all other expiration months provides an automatic execution for these amounts.

Therefore, the Exchange, consistent with Commentary .03 to Exchange Rule 933, submits this proposed rule change to permit an immediate increase in its AUTO–EX eligible size for QQQ options to match the size of orders in QQQ options at the ISE that can be executed automatically by the ISE PMM.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act[9] in general and furthers the objectives of Section 6(b)(5) of the Act[10] 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, 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, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change, as amended, (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 and Rule 19b–4(f)(6) thereunder.

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), [11] the Commission may designate a shorter time if such action is consistent with the protection of investors and public interest. The Exchange seeks to have the proposed rule change become operative as of April 12, 2002, in order to allow it to implement the increase to the maximum permissible number of QQQ option contracts executable through the AUTO–EX system. The Amex further believes that an operative date of April 12, 2002 is necessary so that trading in QQQ options does not hinge on a regulatory advantage, but instead remains competitive. 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 prior to the filing date or such shorter time as designated by the Commission.

The Commission, consistent with the protection of investors and the public interest, has waived the five-day pre-notice and thirty-day operative date requirements for this proposed rule change, and has determined to designate the proposed rule change, as amended, as operative as of April 12, 2002, to allow the Amex to compete with the ISE, which currently allows executions of up to 2,000 contracts in the two near term months and up to 1,000 contracts for all other expiration months in QQQ options contracts.[12] 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.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change 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 Amex. All submissions should refer to File No. SR–Amex–2002–30 and should be submitted by May 23, 2002.

[6] *See* Securities Exchange Act Release Nos. 45490 (March 1, 2002), 67 FR 10778 (March 8, 2002) (notice of filing of File No. SR–CBOE–2001–70); and 45676 (March 29, 2002), 67 FR 16478 (April 5, 2002) (order approving File No. SR–CBOE–2001–70).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] *See* Securities Exchange Act Release Nos. 45756 (April 15, 2002) (notice of filing and immediate effectiveness of File No. SR–Amex–2002–29). The filing was amended on April 8, 2002.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] 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).

[13] For purposes of calculating the 60 day abrogation period, the Commission considers the period to commence on April 17, 2002, the date that the Exchange filed Amendment No. 1.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–10868 Filed 5–1–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45837; File No. SR–CBOE–2002–20]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Legal Proceedings Against the Exchange

April 26, 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 23, 2002, the Chicago Board Options Exchange, Inc. (''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 CBOE. 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 amend CBOE Rule 6.7A to prohibit members from initiating certain types of legal proceedings against the Exchange or its contractors. The text of the proposed rule change is provided below. Text that has been added to the current Exchange rule is in italics.

Rule 6.7A Legal Proceedings Against *the* Exchange *and its* Directors, Officers, Employees, *Contractors* or Agents

No member or person associated with a member shall institute a lawsuit or other legal proceeding against *the Exchange* or any director, officer, employee, *contractor,* agent or other official of the Exchange or any subsidiary of the Exchange, for actions taken or 2 omitted to be taken in connection with the official business of the Exchange or any subsidiary, except to the extent such actions or omissions constitute violations of the federal securities laws for which a private right of action exists. This provision shall not apply to appeals of disciplinary actions or other actions by the Exchange as provided for in the Rules.

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 CBOE 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 CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, CBOE Rule 6.7A prohibits a member or associated person from instituting a lawsuit or any other type of legal proceeding against any officer, director, employee, agent or other official of the Exchange or any of its subsidiaries based on action taken or omitted to be taken while such person is acting on Exchange business or the business of any of its subsidiaries. CBOE Rule 6.7A does not prevent a legal proceeding based on violation of the federal securities laws where a private right of action for such violation otherwise exists, nor does it prevent appeals of Exchange actions as provided for in the Rules of the Exchange.[3]

The purpose of the proposed rule change is to amend CBOE Rule 6.7A to also prohibit a member or associated person from instituting a lawsuit or any other type of legal proceeding against the Exchange or its contractors. According to the CBOE, the proposed change to CBOE Rule 6.7A would not impair a member's ability to initiate legal action against the Exchange or its contractors based upon violations of the federal securities laws for which a private right of action exists, appeals of disciplinary actions, or other actions by the CBOE as provided for in the Exchange's rules. The Exchange believes that the proposed rule change would make CBOE Rule 6.7A consistent with the International Securities Exchange's Rule 705(c).

2. Statutory Basis

The CBOE believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(5) of the Act,[5] in particular, because by precluding certain types of legal actions by members against the Exchange and its contractors, it will further reduce the costs of the Exchange in responding to claims and lawsuits, thereby permitting the resources of the Exchange to be better utilized for promoting just and equitable principles of trade and protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose a burden on competition that is not necessary or appropriate in furtherance of 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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [6] and Rule 19b–4(f)(6) thereunder,[7] 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 that the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

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 the furtherance of the purposes of the Act.[8]

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission approved CBOE Rule 6.7A on July 11, 1996. *See* Securities Exchange Act Release No. 37421, 61 FR 37513 (July 18, 1996).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(f)(6).

[8] 15 U.S.C. 78s(b)(3)(C).

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–2002–20 and should be submitted by May 23, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–10870 Filed 5–1–02; 8:45 am]

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[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45823; File No. SR–ISE–2001–32]

Self-Regulatory Organizations; International Securities Exchange LLC; Order Granting Approval to Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to a Pilot Program To Increase the Minimum Quote Size for Certain Option Classes

April 25, 2002.

On November 16, 2001, the International Securities Exchange LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt a three-month pilot program establishing greater size requirements for certain quotations in specified options. The ISE amended its proposal on February 13, 2002[3] and on March 13, 2002.[4] The proposed rule change, as amended, was published for comment in the **Federal Register** on March 22, 2002.[5] The Commission received no comments on the proposal, as amended.

The Commission finds that the proposed rule change and Amendment Nos. 1 and 2 are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[6] and in particular, the requirements of Section 6 of the Act[7] and the rules and regulations thereunder. Specifically, the Commission finds that the proposal to adopt a three-month pilot program in which ISE market makers would be required to establish and maintain quotations of a larger minimum size in a limited number of option classes is consistent with section 6(b)(5) of the Act[8] because it is designed to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that the increased minimum size for quotes for PMMs would be 100 contracts for customers and 50 contracts for broker-dealers.[9] For Competitive Market Makers, the size requirements would be half of the PMM requirement: 50 contracts for customers and 25 contracts for broker-dealers. However, the enhanced broker-dealer size would not apply to executions against other market makers, where the minimum size would continue to be one contract. Furthermore, these enhanced size requirements would apply only to the options series in the three months closest to expiration, and the pilot would not apply to ''deep-in-the-money'' options[10] or an option in the last three days of that option's trading.

The Commission believes that the larger size requirements may help the Exchange attract more order flow. In addition, the Commission believes that limiting the pilot program to the specified options should permit the Exchange to monitor the effects of the proposal on the quality of the ISE's market before implementing the proposal across the Exchange. In this regard, the Commission notes that the included options represent 19 of the 22 options with the highest trading volume in the industry, and thus, may be the most liquid options. The Commission also believes that limiting the program to the specified options on a three-month pilot basis should minimize any potential adverse effects of the proposal. The Commission expects the ISE, and the Exchange represents that it intends, to monitor the effects of the pilot program closely.

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act[11], that the proposed rule change and Amendment Nos. 1 and 2 (File No. SR–ISE–2001–32) be, and it hereby is, approved, as a pilot program, to expire on July 25, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–10811 Filed 5–1–02; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated February 12, 2002 (''Amendment No. 1''). In Amendment No. 1, the ISE proposed to replace the original rule filing in its entirety and specified the options to be included in the pilot program rather than allowing Primary Market Makers (''PMMs'') to choose the options to be included in the pilot.

[4] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division, Commission, dated March 12, 2002 (''Amendment No. 2''). In Amendment No. 2, the ISE proposed to clarify that, in the pilot program, new enhanced size levels would apply to customer and broker-dealer orders, but not to the orders of market makers on either the ISE or other exchanges.

[5] *See* Securities Exchange Act Release No. 45568 (March 15, 2002), 67 FR 13388.

[6] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] This enhanced quotation size requirement will not affect the PMM's obligation under ISE Rule 803(c)(1) to disseminate a quotation of at least ten contracts when the quotation consists, in part, of a customer order for less than ten contracts.

[10] The proposed rule change defined ''deep-in-the-money'' as all options with strike prices that are in the money by four or more pricing intervals in relation to the at-the-money strike price.

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45838; File No. SR–NYSE–2001–40]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1 and Amendment No. 2 Thereto, Regarding Method of Delivery of Annual Reports and Proxy Materials

April 26, 2002.

On October 11, 2001, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to specify that annual reports and proxy materials should be distributed in such format and by such methods as are permitted or required by applicable law and regulations (including any interpretations thereof by the Commission). On January 15, 2002,[3] and March 5, 2002,[4] the Exchange amended the proposal to make technical changes to its rule text.

The proposed rule change, as amended, was published for comment in the **Federal Register** on March 27, 2002.[5] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[6] and, in particular, the requirements of Section 6 of the Act[7] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act[8] because it requires the Exchange's members to distribute annual reports and proxy materials in a manner that is consistent with federal securities laws. The Commission believes such consistency should foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–NYSE–2001–40), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–10867 Filed 5–1–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, from Darla C. Stuckey, Corporate Secretary, NYSE, dated January 11, 2002 (''Amendment No. 1'').

[4] *See* letter to Nancy Sanow, Assistant Director, Division, Commission, from Darla C. Stuckey, Corporate Secretary, NYSE, dated March 4, 2002 (''Amendment No. 2'').

[5] *See* Securities Exchange Act Release No. 45602 (March 20, 2002), 67 FR 14756.

[6] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45824; File No. SR–Phlx–2001–63]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Philadelphia Stock Exchange, Inc. Relating to New Product Allocations

April 25, 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 June 18, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Phlx. On February 28, 2002, Phlx submitted Amendment No. 1 to the proposed rule change.[3] On April 5, 2002, Phlx submitted Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes to amend Phlx Rule 511(b), Allocations, to permit the Committees to allocate a new product to a specialist unit that develops such new product or is instrumental in developing or bringing such new product to the Exchange without soliciting applications from any other specialist units.

The proposal would also permit the Committees, as a condition to allocating a book for any equity, option, or futures product that involves the licensing or other acquisition of an index, trademark, tradename, patent or other intellectual property, to: (1) Require a specialist unit to indemnify the Exchange and/or any third party against any potential liabilities associated with the product; (2) require a specialist unit to agree to pay the Exchange and/or any third party any amounts related to the product or use of the product; and (3) enter into any necessary agreements or undertakings with the Exchange and/or third party concerning the intellectual property, however, no such agreement or undertaking may confer any ownership or proprietary rights upon the specialist unit with respect to the intellectual property or the book.

The text of the proposed rule change follows. Additions are italicized.

* * * * *

Specialist Performance Evaluation

Rule 511

(a) No change.

(b) Allocations.

* * * * *

(i) New[5] *Product Specialist Unit Allocation. When an eligible specialist*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Linda C. Christie, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated February 26, 2002 (''Amendment No. 1''). In Amendment No. 1, Phlx: (1) proposed a definition of ''new product''; (2) proposed a definition of ''operating company'' for purposes of the proposed rule change; (3) described the Exchange's current criteria for its Equity Allocation, Evaluation and Securities Committee's and the Options Allocation, Evaluation and Securities Committee's (collectively ''Committees'') consideration when allocating equity books and options classes and that these criteria would still apply if the proposed changes are approved; (4) represented that a specialist unit must be an eligible specialist unit to be allocated a new product under the proposed changes; (5) asserted that Phlx Rule 1023 may operate to prevent specialist from entering into certain types of business transactions; and (6) elaborated on the purpose behind the proposed changes involving licensing or acquisition of an index, trademark, tradename, patent, or other intellectual property.

[4] *See* letter from Linda C. Christie, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated April 4, 2002 (''Amendment No. 2''). In Amendment No. 2, Phlx removed rule text stating that the proposed changes would take effect notwithstanding anything to the contrary in Phlx Rules 500 through 526 and amended rule text to clarify that the proposed definition of new product would only apply for purposes of proposed Phlx Rule 511(b).

[5] The Commission notes that the proposed rule text will follow the current text of Phlx Rule 511(b). Telephone conversation between Linda S. Christie, Counsel, Phlx, and Frank N. Genco, Division, Commission, on April 19, 2002.

unit develops or is instrumental in developing or bringing a new product to the Exchange, the Committee may consider such fact as a conclusive factor in the allocation of the new product and may allocate the new product to such specialist unit without soliciting any other specialist units pursuant to Rule 506. For the purposes of this rule, a new product is anything other than common stock of an operating company, or options or futures on common stock of an operating company or straight debt of an operating company. An operating company, for purposes of this definition, is any issuer other than one which is or holds itself out as being engaged solely in the business of investing in securities; provided that operating company shall include any issuer referred to in Sections 3(b), 3(c)(2)(A), 3(c)(3), 3(c)(5), 3(c)(6), 3(c)(8) or 3(c)(9) of the Investment Company Act of 1940 or Rules 3a–2, 3a–5 and 3a–6 thereunder (17 CFR 270. 3a–2; 17 CFR 270.3a–5 and 17 CFR 270.3a–6, respectively).

(ii) Licensing or Other Acquisition of a Product. In the case of any equity, options or futures product that involves the licensing or other acquisition of an index, trademark, tradename, patent or other intellectual property, the Committee may, as a condition of allocating the book, require a specialist unit (i) to indemnify and hold harmless the Exchange and/or any third party against any potential liabilities associated therewith and/or (ii) to pay or undertake to pay the Exchange and/or any third party any amounts related to the licensing of the product or any amounts related to the use of intellectual property; and/or (iii) to enter into any agreement or undertakings with the Exchange and/or any third party otherwise concerning the intellectual property; provided that no such agreement or undertaking shall confer upon such specialist unit any proprietary or ownership rights with respect to such intellectual property or the book.

(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, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of 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

Currently, Phlx Rule 511(b) provides, among other things, certain criteria for the Committees' consideration when allocating equity books and option classes to specialist units.[6] The criteria include: the number and type of securities in which the applicant is currently registered; the personnel, capital, and other resources of the applicant; and the results of the evaluations of specialists conducted pursuant to Phlx Rule 515. Additionally, Phlx Rule 506(b) requires an allocation application to be submitted in writing to the Exchange's designated staff and shall include, at a minimum, the name and background of the head specialist and assistant specialist(s), and the units experience and capitalization demonstrating an ability to trade the particular equity book or options class sought. The Committee may also require that an application include other information such as system/execution levels and guarantees. In addition, the designated Exchange staff person will provide to the Committee any other information that the Committee deems relevant.[7]

Phlx Rule 506(a) states in relevant part, ''When an equity book or option class is to be allocated or reallocated by the Committee, the Committee will solicit applications from all eligible specialist units.'' The proposal would give the Committees the ability to eliminate the requirement to solicit applications for a book if a specialist unit meets the proposed criteria respecting a particular new product. The Exchange represents that such specialist would, of course, have to be an eligible specialist unit. The proposal would also permit the Committees to require specialists to pay certain licensing fees, indemnify the Exchange and/or any third party, and enter into agreements regarding new product allocations.

(a) New Product Specialist Allocation.

The first aspect of the proposal would permit the Committees to allocate a new product[8] to a specialist unit that develops a new product or is instrumental in developing or bringing a new product to the Exchange without soliciting applications from other specialist units. The Exchange believes that it is appropriate to modify the allocation process for specialist units meeting the proposed criteria for a new product. The purpose of the proposal is to provide an incentive and encourage specialist units to develop and bring new products to the Exchange floor, thereby increasing the amount of new investment products the Exchange may offer to the investing public. Further, the Exchange believes that the willingness of specialist units to invest the capital and other necessary resources associated with developing a new product or bringing a new product to the Exchange are factors the Committees should have the ability to consider as conclusive in allocating a new product. Although Phlx Rule 511(b) generally permits the Committee to consider various relevant factors, including product development, under the proposal, the Committee would be able (but not required) to view product development as a conclusive factor.

(b) Licensing or Other Acquisition of a Product.

The second aspect of this proposal would permit the Committee to require certain indemnifications and agreements regarding payment and intellectual property.[9] Specifically, the proposed rule would permit the Committees to require a specialist unit allocated any equity, option or futures

[6] Pursuant to Phlx Rule 501, Specialist Appointment, in order for a member organization to establish a specialist unit, an application by a member organization must be submitted and approved by the Committee. The application must include, among other things, the identity of the person who will act as head specialist, as well as those individuals who will act as assistant specialist. The application must also include the following: (1) the identity of the unit's staff positions and who will occupy those positions; (2) the unit's clearing arrangements; (3) the unit's capital structure, including any lines of credit; and (4) the unit's back-up arrangements endorsed by both parties providing the following support: a back-up specialist unit not associated with the specialist unit to provide staffing when necessary, and a substitute specialist unit not associated with the specialist unit (which may be the same as the back-up specialist unit), which shall serve as a substitute specialist unit in the event that the specialist unit is unable to perform the duties of a specialist. In short, the Exchange represents that securities can only be allocated to approved specialist units, even under this proposal.

[7] The Exchange represents that the Committees will continue to consider the same or similar criteria when allocating new products under the proposed rule change.

[8] Phlx proposes to define a new product for purposes of Phlx Rule 511(b)(i) as anything other than common stock of an operating company, or options or futures on common stock of an operating company or straight debt of an operating company.

[9] Phlx notes that Phlx Rule 1023 may operate to prevent a specialist from entering into certain business transactions.

product that involves the licensing or other acquisition of an index, trademark, tradename, patent or other intellectual property to: (1) Indemnify and hold harmless the Exchange and/or any third party against any potential liabilities associated with the product; (2) agree to pay the Exchange and/or any third party any amounts related to the licensing of the product or use of intellectual property; and (3) enter into any agreements or undertakings with the Exchange and/or third party concerning the intellectual property; provided that no such agreement or undertaking shall confer upon such specialist any proprietary or ownership rights with respect to the intellectual property or the book.[10] The Exchange believes that this, in turn, should cause the specialist unit to have a stronger financial stake in the success of the product, which may foster more aggressive marketing and market making.

The Exchange believes that the proposal balances the interests of the Exchange and the specialist units by encouraging the specialist units to actively participate and support the development and marketing of equity, options, and futures products. From a business standpoint, many products often involve strategic risks and rewards. The Exchange represents that the costs involved can be both burdensome and complex, including legal, audit, consulting, and marketing costs, as well as serious opportunity costs. Further, the liability and intellectual property issues can be equally complex. Thus, by helping to defray costs to the Exchange, assure that appropriate agreements are executed, and address issues related to intellectual property, the proposal is also intended to enable the Exchange to more readily list new products.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(5) of the Act,[12] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect the investors and the public interest, because the benefit of allocating a new product without solicitation is limited to those specialist units that develop a new product or are instrumental in developing or bringing a new product to the Exchange. Further, the proposed rule change, as amended, is designed to encourage specialist units to bring new products to the floor, thereby, increasing the amount of new products available to the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, 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, as amended.

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, as amended; 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, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as amended, 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 the filing will also be available for inspection and copying at the principal offices of the Exchange. All submissions should refer to File No. SR–Phlx–2001–63 and should be submitted by May 23, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–10869 Filed 5–1–02; 8:45 am]

BILLING CODE 8010–01–P

[10] If a specialist unit is unwilling to abide by these provisions, the Exchange would be able to solicit applications from other specialist units.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4003]

Bureau of Educational and Cultural Affairs Request for Grant Proposal: Fulbright American Studies Institute on U.S. National Security: American Foreign Policy Formulation in an Era of Globalization

NOTICE: Request for Grant Proposal (RFGP).

SUMMARY: The Study of the U.S. Branch, Office of Academic Exchange Programs, Bureau of Educational and Cultural Affairs, announces an open competition for an assistance award. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code Section 26 USC 501 (C)(3) may apply to develop and implement a post-graduate level Fulbright American Studies program designed for a multinational group of 15 experienced foreign educators and professionals entitled:

''U.S. National Security: American Foreign Policy Formulation in an Era of Globalization''

This program is intended to provide participants with a deeper understanding of American life and institutions, past and present, in order to strengthen curricula and to improve the quality of teaching about the United States at universities abroad. Programs should therefore be designed to elucidate the topic or theme of the Institute as well as American civilization as a whole.

The program will be four weeks in length and will be conducted during January and May of 2003.

The Bureau is seeking detailed proposals from colleges, universities, consortia of colleges and universities, and other not-for-profit academic organizations that have an established reputation in one or more of the following fields: political science, international relations, law, history, and/or other disciplines or sub-

disciplines related to the program theme.

It is the Bureau's intention to fund this program, subject to and contingent on both the number and quality of proposals received and the availability of funding.

Applicant institutions must demonstrate expertise in conducting post-graduate programs for foreign educators, and *must have a minimum of four years experience in conducting international exchange programs*. Bureau guidelines stipulate that grants to organizations with less than four years experience in conducting international exchanges are limited to $60,000. As it is expected that the budget for these programs will exceed $60,000, organizations that can not demonstrate at least four years experience will not be eligible to apply under this competition.

The project director or one of the key program staff responsible for the academic program must have an advanced degree in one of the fields listed above. Staff escorts traveling under the cooperative agreement must have demonstrated qualifications for this service. Programs must conform with Bureau requirements and guidelines outlined in the Solicitation Package. Bureau programs are subject to the availability of funds.

Program Information

Overview and Objectives: Fulbright American Studies Institutes are intended to offer foreign scholars, teachers and other professionals whose work focuses on the United States the opportunity to deepen their understanding of American institutions and culture. Their ultimate goal is to strengthen curricula and to improve the quality of teaching about the U.S. in universities abroad.

This program should be four weeks in length and must include an academic residency segment of at least three weeks duration at a U.S. college or university campus (or other appropriate location). A study tour segment of not more than one week should also be planned and should directly complement the academic residency segment; the study tour should include visits to one or two additional regions of the United States.

The institute should be designed as an intensive, academically rigorous seminar intended for an experienced group of fellow scholars and professionals from outside the United States. The institute should be organized through an integrated series of lectures, readings, seminar discussions, regional travel, site visits and should include some opportunity for limited but well-directed independent research and consultation.

Applicants are encouraged to design a thematically coherent program in ways that draw upon the particular strengths, faculty and resources of their institutions as well as upon the nationally recognized expertise of scholars and other experts throughout the United States. Within the limits of their thematic focus and organizing framework, Institute programs should also be designed to:

1. Provide participants with a survey of contemporary scholarship within the institute's governing academic discipline, delineating the current scholarly debate within the field. In this regard, the seminar should indicate how prevailing academic practice in the discipline represents both a continuation of and a departure from past scholarly trends and practices. A variety of scholarly viewpoints should be included;

2. bring an interdisciplinary or multi-disciplinary focus to bear on the program content if appropriate;

3. give participants a multi-dimensional view of U.S. society and institutions that includes a broad and balanced range of perspectives. Where possible, programs should include the views not only of scholars, cultural critics and public intellectuals, but also those of other professionals outside the university such as government officials, journalists, religious leaders and NGO officials who can substantively contribute to the topics at issue; and,

4. insure access to library and material resources that will enable grantees to continue their research, study and curriculum development upon returning to their home institutions.

Program Description

The Fulbright American Studies Institute on ''U.S. National Security: American Foreign Policy Formulation in an Era of Globalization'' is intended to offer a group of 15 educators and professionals an opportunity to deepen their understanding of the foundations and formulation of U.S. foreign policy, with specific reference to American views on what constitutes basic U.S. national security and defense requirements and how those views have evolved in the post-Cold War era. The program should be multi-disciplinary in its approach and should examine the various historical, geographic, economic, cultural, and political factors involved in the making of U.S. foreign policy. In considering U.S. security and defense issues in light of a changing international environment characterized by the increased flow of information and ideas, capital, and people, organizers may also wish to explore such sub-topics as (a) the role of both the nation state and non-state actors in national and international governance; (b) the implications for U.S. security of demographic changes in both developed and developing countries; (c) the impact of science and technology in such area as communications, health care, and the environment; (d) the growth and development of the global economy; and (e) changing patterns of international conflict, including the threat of terrorism, among others.

Program Dates: Ideally, the program should be 28 days in length (not including participant arrival and departure days) and should take place sometime between January 6 and May 31, 2003.

Participants: As specified in the guidelines in the solicitation package, this program should be designed for a group of 15 motivated and experienced foreign university faculty and professionals from institutions of higher education abroad, which may include national military academies. Educators will be specialists in international affairs; some may hold positions in government ministries, such as defense or foreign affairs. While the educational level of participants will vary, most will have graduate degrees and have substantial knowledge of foreign affairs. Some may have previously studied in the United States. All participants will be interested in participating in an intensive seminar in order to better understand American institutions and to develop and improve courses about the United States at their home universities. All will be fluent in the English language.

Participants will be nominated by Fulbright Commissions and by U.S. Embassies abroad. Nominations will be reviewed by the Study of the U.S. Branch. Final selection of grantees will be made by the Fulbright Foreign Scholarship Board.

Program Guidelines: While the conception and structure of the institute program is the responsibility of the organizers, it is critically important that proposals provide a full, detailed and comprehensive narrative describing the objectives of the institute; the title, scope and content of each session; and, how each session relates to the overall institute theme. The syllabus must therefore indicate the subject matter for each lecture or panel discussion, confirm or provisionally identify proposed lecturers and discussants, and clearly show how assigned readings will

support each session. A calendar of all activities for the program must also be included. Overall, proposals will be reviewed on the basis of their fullness, coherence, clarity, and attention to detail, as stipulated in the Review Criteria cited below.

Programs must comply with J–1 visa regulations. Please refer to the Solicitation Package for further details on program design and implementation, as well as additional information on all other requirements.

Budget Guidelines: Based on groups of 15 participants, the total Bureau-funded budget (program and administrative) should be approximately $150,000. Bureau-funded administrative costs as defined in the budget details section of the solicitation package should be approximately $47,000. Justifications for any costs above these amounts must be clearly indicated in the proposal submission. Proposals should try to maximize cost sharing in all facets of the program and to stimulate U.S. private sector, including foundation and corporate, support. Applicants must submit a comprehensive budget for the entire program. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program, and availability of U.S. government funding.

Please refer to the ''POGI'' in the Solicitation Package for complete institute budget guidelines and formatting instructions.

Announcement Name and Number: All communications with the Bureau concerning this announcement should refer to the following title and reference number:

U.S. National Security: American Foreign Policy Formulation in an Era of Globalization—(ECA/A/E/USS–02–54–Taylor)

FOR FURTHER INFORMATION CONTACT: To request a Solicitation Package containing more detailed program information, award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation, applicants should contact: U.S. Department of State, Bureau of Educational and Cultural Affairs, Office of Academic Exchange Programs, Study of the U.S. Branch, State Annex 44, ECA/A/E/USS—Room 252, 301 4th Street, SW., Washington, DC 20547, Attention: Richard Taylor, *Telephone number:* (202) 619–4557, *Fax number:* (202) 619–6790, *Internet address: rtaylor@pd.state.gov.*

Please specify Senior Program Officer Richard Taylor on all inquiries and correspondence. Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the office listed above or submitting their proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition in any way with applicants until after the proposal review process has been completed.

To Download a Solicitation Package via Internet: The entire Solicitation Package may be downloaded from the Bureau's website at http://exchanges.state.gov/education/rfgps/. Please read all information before downloading.

Deadline for Proposals: All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5:00 p.m. Washington DC time on Friday, June 21, 2002. Faxed documents will NOT be accepted, nor will documents postmarked June 21, 2002 but received at a later date. It is the responsibility of each applicant to ensure that proposal submissions arrive by the deadline.

Submissions: Applicants must follow all instructions in the Solicitation Package. The original and 13 copies of the complete application should be sent to: U.S. Department of State, Bureau of Educational and Cultural Affairs, Reference: (ECA/A/E/USS–02–54–Taylor), Program Management Staff, ECA/EX/PM, Room 534, State Annex 44, 301 4th Street, SW, Washington, DC 20547.

Applicants should also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5'' diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters.

Diversity, Freedom and Democracy Guidlines: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Review Process: The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office. Eligible proposals will then be forwarded to panels of senior Bureau officers for advisory review. Proposals may also be reviewed by the Office of the Legal Advisor or by other Bureau elements or outside experts. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria: Technically eligible applications will be competitively reviewed according to the criteria stated below. More weight will be given to items one and two, and all remaining criteria will be evaluated equally.

1. Overall Quality

Proposals should exhibit originality and substance, consonant with the highest standards of American teaching and scholarship. Program design should reflect the main currents as well as the debates within the subject discipline of each institute. Program elements should be coherently and thoughtfully integrated. Lectures, panels, field visits and readings, taken as a whole, should offer a balanced presentation of issues, reflecting both the continuity of the American experience as well as the diversity and dynamism inherent in it.

2. Program Planning and Administration

Proposals should demonstrate careful planning. The organization and structure of the institute should be clearly delineated and be fully responsive to all program objectives. A program syllabus (noting specific sessions and topical readings supporting each academic unit) should be included, as should a calendar of activities. The travel component should not simply be

a tour, but should be an integral and substantive part of the program, reinforcing and complementing the academic segment. Proposals should provide evidence of continuous administrative and managerial capacity as well as the means by which program activities and logistical matters will be implemented.

3. Institutional Capacity

Proposed personnel, including faculty and administrative staff as well as outside presenters, should be fully qualified to achieve the project's goals. Library and meeting facilities, housing, meals, transportation and other logistical arrangements should fully meet the needs of the participants.

4. Support for Diversity

Substantive support of the bureau's policy on diversity should be demonstrated. This can be accomplished through documentation, such as a written statement, summarizing past and/or on-going activities and efforts that further the principle of diversity within the organization and its activities. Program activities that address this issue should be highlighted.

5. Experience

Proposals should demonstrate an institutional record of successful exchange program activity, indicating the experience that the organization and its professional staff have had in working with foreign educators.

6. Evaluation and Followup

A plan for evaluating activities during the Institute and at its conclusion should be included. Proposals should discuss provisions made for follow-up with returned grantees as a means of establishing longer-term individual and institutional linkages.

7. Cost Effectiveness

Proposals should maximize cost-sharing through direct institutional contributions, in-kind support, and other private sector support. Overhead and administrative components, including salaries and honoraria, should be kept as low as possible.

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries* * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations. * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.''

Notice: The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of this RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification: Final awards cannot be made until funds have been appropriated by Congress, and allocated and committed through internal Bureau procedures.

Dated: April 25, 2002.

Rick A. Ruth,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs Department of State.

[FR Doc. 02–10905 Filed 5–1–02; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF STATE

[Public Notice 4002]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Islamic Life in the United States

SUMMARY: The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs, U.S. Department of State, announces an open competition for two or more grants, each to support an exchange, or a series of exchanges, under the rubric ''Islamic Life in the United States.'' Public and private non-profit organizations or consortia of such organizations meeting the provisions described in Internal Revenue Code section 26 USC 501(c)(3) may submit proposals to develop and implement multi-phased international exchanges involving the travel of foreign Islamic scholars and clerics to the United States and of American Islamic scholars/scholars of Islamic studies and clerics to foreign Islamic communities.

Organizations must have four or more years of documented experience in conducting international exchange to be eligible to apply for a grant under this competition.

Program Information

Overview: The Office of Citizen Exchanges consults with and supports American public and private nonprofit organizations in developing and implementing multi-phased, often multi-year, exchanges of professionals, community leaders, scholars and academics, public policy advocates, non-governmental organization activists, etc. These exchanges address issues crucial to both the United States and the foreign countries involved; they promote focused, substantive, and cooperative interaction among counterparts; and they entail both theoretical and experiential learning for all participants. A primary goal is the development of sustained, international, institutional and individual linkages. In addition to providing a context for professional development and collaborative problem-solving, these projects are intended to introduce foreign participants and their American counterparts to one another's political, social, and economic structures, facilitating improved communication and enhancing mutual understanding. Desirable components of an exchange may be local citizen involvement and activities that orient foreign participants to American society and culture.

The initiative Islamic Life in the United States will support the international exchange of Islamic scholars and clerics—influential and recognized for their ability to communicate, either in scholarly writing or through sermons—from North Africa, the Middle East (including the Arabian Gulf states), South Asia, East Asia, and Southeast Asia. The objectives of the exchange(s) are (1) to enhance participants' understanding about the place of Islam in American society and culture; (2) to broaden participants' awareness of and appreciation for the serious study of Islam that is conducted in the United States (possibly leading to plans for collaborative research and publishing by American and non-American scholars); and (3) to provide a forum for serious discussion, primarily but not exclusively among the American and non-American Islamic scholars and clerics participating in the exchange, of such issues as the compatibility—in theory and practice—of Islam and a democratic social and political structure and the social vitality that grows from mutually respectful co-existence among diverse religious communities in a heterogeneous society.

Projects, to be conducted over a period of six to 18 months, may involve a single exchange or may, depending on the size of the grant requested and

awarded, be separated into several distinct but similar exchanges, e.g., one exchange involving scholars and clerics from the predominantly Arabic-speaking countries of North Africa and the Middle East; one exchange involving scholars and clerics from Afghanistan, Pakistan, India, and Bangladesh; and one exchange focused on scholars and clerics from East and Southeast Asia—primarily the Philippines, Indonesia and Malaysia. It is assumed that these exchanges will be conducted in the languages of the foreign participants, and the proposal should provide and budget for interpretation. Each of these exchanges might entail the travel of from one to three American Muslim scholars/project organizers to several of the countries from which participants would be selected to become familiar with institutions and communities in those countries and with individuals who might serve as advisers to the project or might themselves be exchange participants. Phase two of each exchange would involve travel to and in the United States of a group of from 12 to 16 scholars and clerics—no fewer than two per country—who, over a period of three to four weeks, would visit Islamic centers, consult with American Muslim scholars and clerics, visit and become familiar with libraries and archives of Islamic documents, participate in discussions at institutions—both religious and secular—that represent America's guarantee of human dignity and freedom of worship, and possibly participate in a workshop/seminar at an Islamic institution dedicated to scholarship and research. One exchange visit might be scheduled so that the participants could attend the annual convention of the Islamic Society of North America.

The final phase of each exchange might entail travel to the region, either as a group or individually, of three or four American Muslim scholars and clerics who would meet with counterparts and, ideally, cooperate with participants in the original U.S. visit in presenting a seminar, a series of workshops, etc. in order to expand the network of individuals directly affected by the exchange.

The Office of Citizen Exchanges encourages applicants to be creative in planning project implementation. Activities may include both theoretical orientation and experiential, community-based initiatives designed to achieve objectives. Applicants should, in their proposals, identify any partner organizations and/or individuals in the U.S. with which/whom they are proposing to collaborate and justify the collaboration on the basis of experience, accomplishments, etc.

Selection of Participants

Applications should include a description of a merit-based, focused participant selection process. Applicants should anticipate consulting with the Public Affairs Sections of U.S. Embassies in selecting participants, with the Embassy retaining the right to nominate participants and to advise the grantee regarding participants recommended by other entities.

Public Affairs Section Involvement

The Public Affairs Sections (PAS) of the U.S. Embassies often play an important role in project implementation. Posts may evaluate project proposals, coordinate planning with the grantee organization and in-country partners, facilitate in-country activities, nominate participants and vet grantee nominations, observe in-country activities, debrief participants, and evaluate project impact. U.S. Missions are responsible for issuing DSP2019 forms (formerly known as IAP–66 forms) in order for foreign participants to obtain the necessary J–1 visas for entry to the United States on a government-funded project.

Though project administration and implementation are the responsibility of the grantee, the grantee is expected to inform the PAS in participating countries of its operations and procedures and to coordinate with PAS officers in the development of project activities. The PAS should be consulted regarding country priorities, political and cultural sensitivities, security issues, and logistic and programmatic issues.

Visa Regulations

Foreign participants on programs sponsored by ECA are granted J–1 Exchange Visitor visas by the U.S. Embassy in the sending country. All programs must comply with J–1 visa regulations. Please refer to Solicitation Package for further information.

Budget Guidelines

The Bureau anticipates awarding two or more grants from a total allocation of approximately $500,000 to support program and administrative costs required to implement this exchange initiative. Applicants must submit a comprehensive, line-item budget for the entire program based on guidance provided in the Proposal Submission Instructions (PSI) of the Solicitation Package. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. For clarification, applicants may provide separate sub-budgets for each program component, phase, location, or activity. For a proposal to be eligible for consideration, the budget must present evidence of cost sharing—in cash or in kind—representing no less than *20% of the total cost of the exchange project,* e.g., an applicant requesting $300,000 in grant funds must demonstrate the ability/willingness to provide $60,000 in cost sharing; an applicant requesting $200,000 must demonstrate the ability to provide $40,000 in cost sharing. Allowable costs for the program include the following:

(1) Direct program expenses

(2) Administrative expenses, including indirect costs. Please refer to the Proposal Submission Instructions for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C/NEA–02–71.

To Download a Solicitation Package—Request for Grant Proposal (RFGP) and Proposal Submission Instructions (PSI)—Via Internet

The Solicitation Package may be downloaded from the ECA Web site: *http://exchanges.state.gov/education/RFGPs.* Please read all information before downloading. Should you be unable to download the Proposal Submission Instructions from the Department of State ECA website, you may request this document, which contains required application forms, specific budget instructions, and standard guidelines for proposal preparation from the Office of Citizen Exchanges.

FOR FURTHER INFORMATION CONTACT: The Office of Citizen Exchanges, ECA/PE/C, Room 216, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, attention: Thomas Johnston. Telephone number: 202/619–5325; fax number: 202/619–4350; Internet address: *tjohnsto@pd.state.gov*. Please specify Bureau Program Officer Thomas Johnston on all inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and

Cultural Affairs by 5 p.m. Washington, DC time on June 20, 2002. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and 10 copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/NEA–02–71, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5″ diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs section at the US Embassy for its review, with the goal of reducing the time it takes to receive embassy comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy sections of U.S. Missions overseas. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for grants resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered, and all carry equal weight in the proposal evaluation:

Quality of the program idea: Proposals should be substantive, well thought out, focused on issues of demonstrable relevance to all proposed participants, and responsive, in general, to the exchange suggestions and guidelines provided above.

Implementation Plan and Ability to Achieve Objectives: A detailed project implementation plan should establish a clear and logical connection between the interest, the expertise, and the logistic capacity of the applicant and the objectives to be achieved. The plan should discuss in concrete terms how the institution proposes to achieve the objectives. Institutional resources—including personnel—assigned to the project should be adequate and appropriate to achieve project objectives. The substance of workshops and site visits should be included as an attachment, and the responsibilities of U.S. participants and in-country partners should be clearly delineated.

Institution's Record/Ability: Proposals should include an institutional record of successful exchange programs, with reference to responsible fiscal management and full compliance with reporting requirements. The Bureau will consider the demonstrated potential of new applicants and will evaluate the performance record of prior recipients of Bureau grants as reported by the Bureau grant staff.

Follow-on Activities: Proposals should provide a plan for sustained follow-on activity (building on the linkages developed under the grant and the activities initially funded by the grant) after grant funds have been depleted. This will ensure that Bureau-supported projects are not isolated events.

Project Evaluation/Monitoring: Proposals should include a plan to monitor and evaluate the project's implementation, both as the activities unfold and at the end of the program. Reports should include both accomplishments and problems encountered. A discussion of survey methodology or other disclosure/measurement techniques, plus a description of how outcomes are defined in terms of the project's original objectives, is recommended. Successful applicants will be expected to submit a report after each project component is concluded or semi-annually, whichever is less frequent.

Impact: Proposed projects should, through the establishment of substantive, sustainable individual and institutional linkages and encouraging maximum sharing of information and cross-boundary cooperation, enhance mutual understanding among communities and societies.

Cost Effectiveness and Cost Sharing: Administrative costs should be kept low. Proposal budgets must provide evidence of cost sharing, comprised of cash or in-kind contributions, representing 20 percent or more of the total cost of the exchange. Cost sharing may be derived from diverse sources, including private sector contributions and/or direct institutional support.

Support of Diversity: Proposals should demonstrate support for the Bureau's policy on diversity. Features relevant to this policy should be cited in program implementation (selection of participants, program venue, and program evaluation), program content, and program administration.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the

United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated, and committed through internal Bureau procedures.

Dated: April 22, 2002.

Rick A. Ruth,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 02–10904 Filed 5–1–02; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 4000]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Jazz Ambassadors

SUMMARY: The Cultural Programs Division in the Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs (ECA) announces an open competition for a grant to support the 2002 and 2003 Jazz Ambassadors Program. The Jazz Ambassadors Program sends a selected number of professional American jazz musicians on concert tours in countries where there is limited exposure to American culture. The jazz ensembles selected for this program demonstrate the highest artistic and musical ability, and are conversant with broader aspects of contemporary American society and culture. Tours include workshops and master classes in addition to concerts.

The program goals are to promote mutual understanding and cross-cultural awareness. The tours accomplish this by providing an opportunity for international audiences to experience American life and traditions through a musical genre that highlights our country's cultural history, as well as allowing Americans to learn about life and culture in the foreign host countries.

Public and private U.S. non-profit organizations meeting the provisions described in Internal Revenue Code section 26 USC 501(c)(3) are invited to submit proposals to administer the Jazz Ambassadors Program.

Currently $375,000 is available for this competition. At this time, ECA intends to award one grant for this program. Proposal budgets should include significant cost sharing from the applicant institution and/or other sources. It is possible that supplemental funding may become available later this year to send additional jazz ensembles on overseas tours. All organizations must demonstrate a minimum of four years experience conducting international exchange programs to be eligible for this competition.

Program Information

Overview: Since 1998, the United States Department of State, through the Bureau of Educational and Cultural Affairs, and the John F. Kennedy Center for the Performing Arts have collaborated in the selection and presentation of jazz groups overseas, to present the creativity and artistry of America's unique, original form of music to audiences which rarely have opportunities to hear American music. In 1998, selected jazz ensembles, designated for the first time as ''Jazz Ambassadors,'' toured Africa, the Near East and South Asia. In 1999, Jazz Ambassadors performed in Latin America, the Middle East, and Africa. For 2002, Jazz Ambassadors may travel to Africa, Asia, Latin America and the Caribbean, the Middle East, and certain countries in Europe and Eurasia.

Jazz Ambassadors must be U.S. citizens at least 21 years old; demonstrate the highest artistic and musical ability; are conversant with broader aspects of contemporary American society and culture; and are adaptable to unescorted, rigorous touring through regions where travel and performance conditions may be difficult. In addition to performances, Jazz Ambassadors conduct or participate in master classes, lectures, workshops, recitals, jam sessions, radio and TV appearances, and other activities with local cultural institutions, musicians and students. Each Jazz Ambassadors ensemble begins its tour with a public performance on the Kennedy Center's Millennium Stage.

Guidelines: The grant period will begin approximately mid July 2002 and continue through approximately mid December 2002. The successful applicant will administer the program for approximately six ensembles, which have been auditioned and selected to travel in Fall 2002. The successful applicant will also take part in the selection process for groups that will travel in 2003.

Proposals should reflect a practical understanding of global cultural, political, economic and social issues. Special attention should be given to describing the applicant organization's experience with planning and implementing complex and unpredictable logistical scenarios in the regions mentioned above. Applicants should identify any U.S. and foreign partner organizations and/or venues with whom they are proposing to collaborate, and describe previous cooperative projects in the section on ''Institutional Capacity.''

ECA intends to award a grant to a qualified institution or organization to administer the Jazz Ambassadors program globally. The grant may be renewed up to two times, subject to the grantee organization's successful implementation of the program. Grant activities may include, but are not limited to, tour planning; programming educational and outreach activities in consultation with U.S. embassies abroad; scheduling Millennium Stage dates; assisting Jazz Ambassadors with passport, visa, immunization, and pre-tour preparations; arranging and providing orientation sessions and pre-travel briefings; creating press materials and overseas publicity support; evaluating program activities; reporting; participating in the selection process; and assisting trios and embassies with follow-on program development. Applicants should have experience in global exchange planning and implementation, and should address the above elements in the proposal. The Kennedy Center will manage the Millennium Stage appearances and coordinate the selection process. The successful applicant of this competition would assist with advertising the call for applications and auditions to jazz musicians, and participate in the selection panels for the 2003 program.

The pre-travel briefing session for each ensemble should be held preceding the Millennium Stage appearance, with State Department regional experts and ECA program officers in attendance. The grantee must be highly responsive and able to work in close consultation with the participating U.S. embassies' Public Affairs Sections overseas.

The proposal to administer the Jazz Ambassadors Program must conform to ECA requirements and guidelines outlined in the Solicitation Package.

ECA programs are subject to the availability of funds and must comply with J–1 Visa regulations. Further detail and clarification of specific program responsibilities can be found in the Proposal Submission Instructions (PSI), which is part of the formal solicitation package.

Organizations planning to submit a proposal to administer the Jazz Ambassadors Program are strongly recommended to contact the program office for a consultation before the submission deadline. Contact Sandra Rouse, Senior Program Officer, (202) 619–4800; Fax: (202) 619–6315; email: *srouse@pd.state.gov.*

Budget Guidelines

Currently $375,000 is available to support approximately six ensembles, which have been auditioned and selected to travel in Fall 2002.

It is possible that an additional $475,000 in supplemental funding may become available to fund additional jazz ensembles' to countries with significant Muslim populations in the Middle East, Asia, Africa, Europe and Eurasia. In the event that this funding becomes available, the grant period would be extended and the successful applicant will be expected to administer the program for these additional groups, for an overall total of approximately 12 jazz ensembles.

The Bureau anticipates awarding one grant of over $60,000 under this grant competition. Bureau grant guidelines require that organizations with less than four years experience conducting international exchanges be limited to $60,000 in Bureau funding. Therefore, organizations that cannot demonstrate at least four years experience conducting international exchanges are ineligible to apply under this competition.

Applicants must submit two comprehensive budget requests:

(1) The first budget should not exceed $375,000 in ECA funding for program and administrative costs. For budgeting purposes, applicants should estimate costs based on six (6) trios traveling for approximately four (4) weeks to eight (8) destinations in the following regions: Africa, Latin America & the Caribbean, the Middle East and Asia.

(2) The second budget should not exceed $850,000 in ECA program and administrative costs. For budgeting purposes, applicants should estimate costs based on the items in the first budget, plus six additional (6) trios traveling for approximately four (4) weeks to eight (8) destinations with significant Muslim populations in the Middle East, Asia, Africa, Europe and Eurasia.

Per the example in the Proposal Submission Instructions, there must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants should also provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Final determination of participating regions and countries will be made in collaboration with ECA, U.S. embassies and the successful applicant after the grant has been awarded.

Cost-Sharing: ECA encourages applicants to provide maximum levels of cost-sharing and funding from private sources in support of its programs. Since ECA's grant assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other sources of cost sharing, including financial and in-kind support. In-kind contributions may include, but are not limited to: hotel and/or housing costs, ground transportation, interpreters, educational materials, presentation items, publications/printing and administrative costs. Proposals with private sector support from foundations, corporations or other institutions are encouraged. Applicants for the subject grant *should not* document cost-sharing by the Kennedy Center or by U.S. embassies abroad. Please refer to the statement on cost-sharing in the PSI.

Allowable costs for the Jazz Ambassadors Program include:

(1) Program Expenses, including but not limited to: domestic and international travel for the selected ensembles; visas and immunizations; airport taxes and country entrance fees; honoraria; educational materials and presentation items; excess and overweight baggage fees; trip itinerary booklets; press kits and promotional materials; follow-on activities; monitoring & evaluation; and international travel for program implementation and/or evaluation purposes.

(2) Administrative Expenses. The following guidelines may be helpful in developing a proposed budget:

1. *Travel Costs.* International and domestic airfares (per the Fly America Act), transit costs, ground transportation, and visas for the Jazz Ambassadors to travel to the tour destinations.

2. *Per Diem.* For the Washington, DC portion of the tour, organizations should use the published Federal per diem rates, and estimate per diems based on a two-night hotel stay per ensemble member. The Public Affairs Sections of the participating U.S. embassies and consulates are responsible for per diem abroad. Domestic per diem rates may be accessed at: *http://www.policyworks.gov/.*

3. *Subgrantees & Consultants.* Subgrantee organizations may be used, in which case the written agreement between the prospective grantee and subgrantee should be included in the proposal. Subgrants must be itemized in the budget under General Program Expenses. Consultants may be used to provide specialized expertise. Daily honoraria cannot exceed $250 per day, and applicants are strongly encouraged to use organizational resources and to cost share heavily in this area.

4. *Health Insurance.* Each Jazz Ambassador will be covered under the terms of the ECA-sponsored ASPE health insurance policy. The cost for international travel insurance for staff travel may be included in the proposal budget.

5. *Jazz Ambassadors Honoraria.* Daily honorarium is $200 per day for each performer, including rest days.

6. *Educational and Promotional Items.* Ensemble members may use these funds for individual purchases or they may pool funds for joint purchases. ECA funds for educational and promotional items should not exceed $500 per ensemble.

7. *Excess Baggage.* Excess baggage costs are based on size and weight of instrument. Excess baggage estimates may be subject to change once actual tour itineraries are scheduled, however for proposal budget purposes, costs should be estimated at $2,000 per ensemble.

8. *Immunizations/Visas.* For purposes of a proposed budget, line items for immunizations should be estimated at $800 per musician, and visas/visa photos should be estimated at $650 per musician.

9. *Press Kits.* Each overseas post should receive appropriate contents for press kits. Items may be created and sent electronically, with the understanding that in some cases, posts may not be able to access large files or attachments. This line item may also include funds for shooting and duplicating B&W publicity photos, and duplicating CDs.

10. *Staff Travel.* Allowable costs include domestic staff travel for one staff member to attend selection panels in approximately two U.S. cities. International staff travel will be allowable, especially if associated with monitoring and evaluation, as long as costs for a full four-week tour for each ensemble are completely covered. Cost-

sharing staff travel is strongly encouraged.

11. *Administrative Costs.* Costs necessary for the effective administration of the program may include salaries for grantee organization employees, benefits, and other direct and indirect costs per detailed instructions in the Application Package. While there is no rigid ratio of administrative to program costs, proposals whose administrative costs are less than twenty-five (25) per cent of the total requested from ECA and those that show strong administrative cost-sharing are strongly encouraged.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C/CU–02–35.

For Further Information, Contact: The Cultural Programs Office, ECA/PE/C/CU, Rm. 568, U.S. Department of State, 301 Fourth Street, SW., Washington, DC 20547, Tel: (202) 619–4800, Fax: (202) 619–6315, email: srouse@pd.state.gov to request a Solicitation Package. The Solicitation Package is comprised of the Request for Grant Proposals (RFGP) and Proposal Submission Instructions (PSI) and contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify ''Jazz Ambassadors 2002'' on all inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, ECA staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package via Internet

The entire Solicitation Package may be downloaded from the Bureau's website at: *http://exchanges.state.gov/education/RFGPs.*

Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Thursday, June 13, 2002. Faxed documents will not be accepted at any time. The mailroom closes at 5 p.m.; no late submissions will be accepted. Documents postmarked by June 13, 2002, but received at a later date, will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and ten (10) copies of the application should be sent to: U.S. Department of State/SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/CU–02–35, Program Management, ECA/EX/PM, Room 534, 301 Fourth Street, SW., Washington, DC 20547.

Applicants must also submit the ''Executive Summary,'' ''Proposal Narrative,'' and ''Budget'' sections of the proposal on a 3.5'' diskette. These files will be transmitted electronically to the Public Affairs sections at the U.S. embassies for review, with the goal of reducing the time it takes to get embassy comments for the grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to ECA's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office as well as the Public Affairs Sections of relevant U.S. embassies. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for grants resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Institutional Capacity/Institution's Track Record:* The proposal should include: (1) The U.S. institution's mission and date of establishment, (2) detailed information about the foreign partner institution's capacity and the history of joint projects, (3) descriptions of experienced staff members who will implement the program, and (4) relevant information that establishes at least a four year successful track record, including responsible fiscal management and full compliance with all reporting requirements. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program's goals. The narrative should demonstrate proven ability to handle logistics. ECA will consider the past performance of prior recipients and the demonstrated potential of new applicants.

2. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. *Cost-effectiveness/Cost-sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Applicants are encouraged to cost share a portion of overhead and administrative expenses. Cost-sharing, including contributions from the applicant, the foreign partner, and other sources should be included in the budget. Applicants should attempt to cost share at least 30% of program and/or administrative costs.

4. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. The Bureau recommends that the proposal include a draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project

objectives. Award-receiving organizations/institutions will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

5. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity in the U.S. and/or abroad, insuring that Bureau-supported programs are not isolated events. Innovative and creative ideas are encouraged.

6. *Support of Diversity:* Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity. Applicants should refer to the ''Diversity, Freedom and Democracy Guidelines'' on page four of the Proposal Submission Instructions (PSI).

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: April 23, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–10902 Filed 5–1–02; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 4001]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Moscow State University Journalism Support Project

SUMMARY: The Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs announces an open competition for the Moscow State University Journalism Support Project. Public and private non-profit organizations and educational institutions meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to cooperate with the Bureau in the administration of a two-year project to strengthen the training of journalists at Moscow State University (MSU). The means for achieving this objective may include teaching, research, and exchanges of scholars, administrators, and advanced graduate students from the participating institutions, as well as the acquisition of educational materials and resources.

Program Information

Overview: Journalists and independent media professionals play a critical role in ensuring the free flow of information necessary to the maintenance of democratic systems. Institutions of higher education, as the training ground for future journalists and media practitioners, can play an important role in setting the standards and providing the skills necessary for the maintenance of free media. This project is designed to assist the Faculty of Journalism at MSU to increase its capacity to deliver programs meeting high international standards for instruction and research in journalism training. The primary goal of this project is to promote the development of a curriculum that will meet the evolving needs of journalists in contemporary Russia.

The Moscow State University Journalism Support Project will provide funding for two years to enable a U.S. institution to cooperate with the Faculty of Journalism at MSU. The grantee organization will be expected to assist the Faculty of Journalism through a comprehensive program of exchange and support activities that will foster lasting institutional and individual ties. Applicants may either identify one U.S. college or university to work directly with the Faculty of Journalism or may propose other modes for exchange that will lead to the achievement of program objectives through increased cooperation by the Faculty of Journalism, its teachers and students with U.S. scholars, educators, and other professional experts. Pending availability of funds, the project will award approximately $500,000 to defray the costs of two-way faculty exchanges, of limited exchanges of graduate students, of educational materials, and to support some aspects of project administration. There may be the possibility of a renewal grant of up to $500,000 for a two-year period pending positive program review and the availability of funding.

Objectives: The purpose of this project is to assist the MSU Faculty of Journalism in strengthening its journalism training program. Specific objectives include: (1) Updating and introducing new curricula and approaches to the teaching of journalism; (2) increasing practical skills and experiential learning opportunities in the classroom and in the field; (3) supplementing material resources, including books and journal subscriptions, funding for translations, and upgrading of computer equipment and/or electronic resource materials; (4) providing research and collaborative research opportunities; (5) supporting distance learning and other initiatives providing outreach to journalism educators in other regions of Russia; and (6) fostering enduring relationships with U.S. academic institutions.

The program should enhance the Faculty of Journalism's ability to provide journalists with the skills necessary for practicing journalism in democratic society. Activities should lead to the achievement of project objectives in addressing topics such as: investigative reporting; ethics in journalism; policy analysis, media management; on-line journalism; and new media technologies. Applicants should provide assistance in developing incentives to encourage practicing professional journalists to return to the MSU classroom and share their expertise. Applicants are also encouraged to assist the Faculty of Journalism in securing additional foundation grants and corporate sponsorships to address on-going equipment needs and to undertake activities beyond the scope of this project.

Background: The MSU Faculty of Journalism currently has 125 professors,

associate professors, lecturers, and instructors in addition to 60 researchers. Approximately 3,200 full-time and correspondence students are enrolled in a variety of degree programs. The Faculty consists of twelve departments: Periodical Press; Radio and Television; Mass Media Techniques; Sociology of the Media; Economical Journalism and Advertising; Editing, Publishing, and Computer Science; History of Russian Journalism and Literature; History of Mass Media; History of Foreign Journalism and Literature; Literary Criticism and Publicity; Stylistics of the Russian Language; and the UNESCO Department of Journalism and Communications. In addition, the Faculty of Journalism has a variety of labs, including: computer classrooms, a television studio, a radio studio, a photo lab and an experimental publishing house. Applicants are encouraged to contact the Faculty of Journalism to learn more about its programs and to consult about program priorities.

The institution receiving a grant award will be expected to submit periodic reports of the results of project activities in relation to project objectives. Proposals should outline and budget for a methodology for project evaluation. The evaluation plan should include an assessment of the current institutional needs at the time of program inception with specific reference to project objectives; formative evaluation to allow for mid-course revisions in the implementation strategy; and, at the conclusion of the project, summative evaluation of the degree to which the project's objectives have been achieved together with observations about the projects' continuing potential to influence the participating institutions and their surrounding communities or societies. The final evaluation should also include recommendations about how to build upon project achievements. Evaluative observations by external consultants with appropriate subject and regional expertise are especially encouraged.

Participant Eligibility: This project is designed to support exchanges of faculty, administrators, staff, and advanced graduate students from the Faculty of Journalism at MSU. In addition, participants may include U.S. faculty, administrators and staff, and other qualified professionals with relevant expertise in journalism. All participants traveling to Russia funded under the grant must be U.S. citizens. Foreign participants must be both qualified to receive U.S. J–1 visas and willing to travel to the U.S. under the provisions of a J–1 visa during the exchange visits funded by this program. Foreign participants may not be U.S. citizens.

Logistics: The grantee organization will be responsible for most arrangements associated with this program. These include providing international and domestic travel arrangements for all participants, making lodging and local transportation arrangements for visitors, orienting and debriefing participants, and preparing any other necessary support material.

Programs must comply with J–1 visa regulations. Please refer to the Project Objectives Goals and Implementation (POGI) and Proposal Submission Instruction (PSI) documents for this project for further information.

Budget Guidelines: The Bureau anticipates awarding one grant of approximately $500,000 to support program and administrative costs required to implement this project. Organizations with less than four years of experience in conducting international exchange programs are limited to $60,000, and are not encouraged to apply. The Bureau encourages applicants to provide maximum levels of cost sharing and funding from private sources in support of its programs.

Applicants must submit a comprehensive budget for the entire project. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/S/U–03–08.

For Further Information: To request a solicitation package, contact the Humphrey Fellowships and Institutional Linkages Branch; Office of Global Educational Programs, Bureau of Educational and Cultural Affairs; ECA/A/S/U, Room 349, U.S. Department of State; SA–44, 301 4th Street, SW., Washington, DC 20547; phone: (202) 619–5289, fax: (202)401–1433. The Solicitation Package includes more detailed award criteria, all application forms, and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Applicants desiring more information may contact Program Officer Michelle Johnson at (202)205–8434 or johnsonmi@pd.state.gov.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

Contact Information for the Faculty of Journalism at MSU: Applicants are strongly encouraged to consult with the Faculty of Journalism at MSU. More detailed information can be obtained from their web site at: *http://www.journ.msu.ru.* The designated contact person for this project is Dr. Elena Vartanova who may be reached by e-mail at: *eva@journ.msu.ru.*

To Download a Solicitation Package via Internet: The entire Solicitation Package, consisting of the RFGP, POGI, and PSI documents may be downloaded from the Bureau's website at *http://exchanges.state.gov/education/RFGPs.*

Please read all information before downloading.

Deadline for Proposals: All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Friday, September 20, 2002. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Approximate Program Dates: Pending availability of funds, grants should begin on or about January 1, 2003.

Applicants must follow all instructions in the Solicitation Package. The original and ten copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/S/U–03–08, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

No later than one week after the competition deadline, applicants must also submit the Proposal Title Sheet, Executive Summary, and Proposal Narrative sections of the proposal as e-mail attachments in Microsoft Word (preferred), WordPerfect, or as ASCII text files to the following e-mail address: *partnerships@pd.state.gov* In the e-mail subject line, include the following: ECA/A/S/U–03–08. The Bureau will transmit these files electronically to the Public Affairs section at the U.S. Embassy for its review, with the goal of reducing the time it takes to get embassy comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106—113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as by the Public Diplomacy section overseas. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for grants resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Program planning and ability to achieve program objectives:* Proposals should exhibit originality, substance, precision, and resourcefulness. Proposals should have reasonable and feasible project objectives that are clearly relevant to the Faculty of Journalism. A detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above and should clearly demonstrate how the partnership will meet the project's objectives.

2. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity by explaining how issues of diversity are included in project objectives for all institutional partners. Issues resulting from differences of race, ethnicity, gender, religion, geography, socio-economic status, or physical challenge should be addressed during project implementation. In addition, project participants and administrators should reflect the diversity within the societies which they represent (see the section of this document of ''Diversity, Freedom, and Democracy Guidelines''). Proposals should also discuss how the various institutional partners approach diversity issues in their respective communities or societies.

3. *Institutional Capacity and Commitment:* Proposals should demonstrate institutional resources adequate and appropriate to achieve program goals. Relevant factors include: the match between partner departments and schools; and the availability of sufficient numbers of faculty and/or administrators willing and able to participate. Proposals should provide evidence of strong institutional commitment by all participating institutions and an indication of collaborative program planning. Proposals should demonstrate promise of sustainability and long-term impact which will be reflected in a plan for continued, non-U.S. government support and follow-on activities.

4. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

5. *Project Evaluation:* Proposals should outline a methodology for determining the degree to which a project meets its objectives, both while the project is underway and at its conclusion. The final project evaluation should include an external component and should provide observations about the project's influence within the participating institutions as well as their surrounding communities or societies.

6. *Cost-effectiveness and cost sharing:* Administrative and program costs should be reasonable and appropriate with cost sharing provided by all participating institutions within the context of their respective capacities. Cost sharing is viewed as a reflection of institutional commitment to the project.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * * to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program cited above is provided through the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992 (FREEDOM Support Act).

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: April 25, 2002.

Rick A. Ruth,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 02–10903 Filed 5–1–02; 8:45 am]

BILLING CODE 4710–05–P

TENNESSEE VALLEY AUTHORITY

Notice of Publication of Draft Report Implementing Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information Disseminated by Federal Agencies

AGENCY: Tennessee Valley Authority.

ACTION: Notice of publication of draft report with request for comments.

SUMMARY: On September 28, 2001 the Office of Management and Budget published Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information Disseminated by Federal Agencies. In response to those guidelines, the Tennessee Valley Authority (TVA) has posed a draft report setting forth its proposed information quality guidelines on its Web site at *www.tva.gov/infoquality*.

(Authority: Section 515, Pub. L. 106–554, 66 FR 49718 (Sept. 28, 2001))

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

Comment Date: Comments on TVA's draft report must be submitted on or before June 3, 2002.

ADDRESSES: Please submit comments to Information Quality, 400 West Summit Hill Drive ET–6A, Knoxville, Tennessee 37902.

FOR FURTHER INFORMATION CONTACT: Henry J. Collins, 400 West Summit Hill Drive, WT–8A–K, Knoxville, Tennessee 37902. Telephone 865–632–6127.

Dated: April 26, 2002.

Diane J. Bunch,

Chief Information Officer.

[FR Doc. 02–10828 Filed 5–1–02; 8:45 am]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2002–12146]

Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Number 2115–0050

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of one Information Collection Request (ICR). The ICR concerns the Bridge Permit Application Guide. Before submitting the ICR to OMB, the Coast Guard is requesting comments on it.

DATES: Comments must reach the Coast Guard on or before July 1, 2002.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG 2002–12146] more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. Caution: Because of recent delays in the delivery of mail, your comments may reach the Facility more quickly if you choose one of the other means described below.

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

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

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICR are available through this docket on the Internet at *http://dms.dot.gov,* and also from Commandant (G–CIM–2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; or Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–5149, for questions on the docket.

Request for Comments

The Coast Guard encourages interested persons to submit comments. Persons submitting comments should include their names and addresses, identify this document [USCG 2002–12146], and give the reasons for the comments. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped self-addressed postcards or envelopes.

Information Collection Request

1. *Title:* Bridge Permit Application Guide.

OMB Control Number: 2115–0050.

Summary: The collection of information is a request for a bridge permit submitted as an application for approval by the Coast Guard of any proposed bridge project. An applicant must submit to the Coast Guard a letter of application along with letter-size drawings (plans) and maps showing the proposed project and its location.

Need: 33 U.S.C. 401, 491, 525, and 535 authorize the Coast Guard to approve plans and locations for all bridges, or causeways, that go over navigable waters of the United States.

Respondents: Public and private owners of bridges over navigable waters of the United States.

Frequency: On occasion.

Burden: The estimated burden is 4000 hours a year.

Dated: April 26, 2002.

J.E. Evans,

Acting Director of Information and Technology.

[FR Doc. 02–10934 Filed 5–1–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–34]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of dispositions of certain petitions

previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition.

FOR FURTHER INFORMATION CONTACT: Denise Emrick (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

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

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2002–11992.

Petitioner: Kent State University Flight Operations.

Section of 14 CFR Affected: 14 CFR 135.251, 135.255, and 135.353, and appendixes I and J to part 121.

Description of Relief Sought/ Disposition: To permit Kent State University to conduct local sightseeing flights in the vicinity of Stow, Ohio for its community Aviation Day on September 8, 2002, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 04/15/2002, Exemption No. 7756

Docket No.: FAA–2002–11887.

Petitioner: American Airlines Flight Academy.

Section of 14 CFR Affected: 14 CFR 121.440(a) and SFAR 58, paragraph 6(b)(3)(ii)(A).

Description of Relief Sought/ Disposition: To permit American Airlines to meet line check requirements using an alternative line check program.

Grant, 04/16/2002, Exemption No. 5950D (Previously Docket 27712)

Docket No.: FAA–2002–11723.

Petitioner: United States Coast Guard.

Section of 14 CFR Affected: 14 CFR 91.117(b) and (c), 91.119(c), 91.159(a), and 91.209(a).

Description of Relief Sought/ Disposition: To permit the United States Coast Guard to conduct air operations in support of drug law enforcement and drug traffic interdiction without meeting certain part 91 provisions.

Grant, 04/16/2002, Exemption No. 5231F (Previously Docket 25177)

Docket No.: FAA–2002–12010.

Petitioner: Taunton Airport Association, Inc.

Section of 14 CFR Affected: 14 CFR 135.251, 135.255, and 135.353, and appendixes I and J to part 121.

Description of Relief Sought/ Disposition: To permit Taunton Airport Association to conduct local sightseeing flights at the Taunton Municipal Airport for it's annual charity fundraising event on October 26, 2002, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 04/15/2002, Exemption No. 7758

Docket No.: FAA–2002–11763.

Petitioner: Western North Carolina Air Museum.

Section of 14 CFR Affected: 14 CFR 135.251, 135.255, and 135.353, and appendixes I and J to part 121.

Description of Relief Sought/ Disposition: To permit Western North Carolina Air Museum to conduct local sightseeing flights at Hendersonville, North Carolina airport for an Air Fair on May 4–5, 2002, and August 30–31, and September 1–2, 2002, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 04/15/2002, Exemption No. 7757

Docket No.: FAA–2002–11961.

Petitioner: EK Aviation.

Section of 14 CFR Affected: 14 CFR 135.251, 135.255, and 135.353, and appendixes I and J to part 121.

Description of Relief Sought/ Disposition: To permit EK Aviation to conduct local sightseeing flights at Sidney and Urbana, Ohio for their Airfairs on June 29 and July 4, 2002, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 04/11/2002, Exemption No. 7752

Docket No.: FAA–2002–11570.

Petitioner: Sky Helicopters, Inc.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Sky Helicopters to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft.

Grant, 04/15/2002, Exemption No. 6430C (Previously Docket No. 28499)

Docket No.: FAA–2002–12097.

Petitioner: Mirabella Yachts, Inc.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Mirabella to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft.

Grant, 04/16/2002, Exemption No. 7178A (Previously Docket No. 29973)

Docket No.: FAA–2002–11935.

Petitioner: Challenged Child and Friends, Inc.

Section of 14 CFR Affected: 14 CFR 135.251, 135.255, and 135.353, and appendixes I and J to part 121.

Description of Relief Sought/ Disposition: To permit Challenged Child to conduct charitable airlifts for an event on April 27, 2002, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 04/19/2002, Exemption No. 7180A (Previously Docket No. 29962)

Docket No.: FAA–2001–8871.

Petitioner: Mentone Flying Club, Inc.

Section of 14 CFR Affected: 14 CFR 135.251, 135.255, and 135.353, and appendixes I and J to part 121.

Description of Relief Sought/ Disposition: To permit Mentone to conduct local sightseeing flights at Fulton County Airport for the Round Barn Festival charitable event on June 8, 2002, for compensation or hire, without complying with certain anti-drug and alcohol requirements of part 135.

Grant, 04/16/2002, Exemption No. 7759

Docket No.: FAA–2002–11939.

Petitioner: Civil Air Patrol.

Section of 14 CFR Affected: 14 CFR subpart F of part 91.

Description of Relief Sought/ Disposition: To permit Civil Air Patrol to operate small aircraft under subpart F of part 91 and receive limited reimbursement for certain flights within the scope of and incidental to Civil Air Patrol's corporate purposes and US Air Force Auxiliary status.

Grant, 04/24/2002, Exemption No. 6485C (Previously Docket 28454)

Docket No.: FAA–2002–11937.

Petitioner: Butler Aircraft Company.

Section of 14 CFR Affected: 14 CFR 91.611.

Description of Relief Sought/ Disposition: To permit Butler to conduct ferry flights with one engine inoperative on McDonnell Douglas DC–6 and DC–7 airplanes without obtaining a special flight permit for each flight.

Grant, 04/24/2002, Exemption No. 5204F (Previously Docket 22822)

Docket No.: FAA–2002–12174.

Petitioner: Hageland Aviation Services, Inc.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Hageland to operate certain aircraft under part 135

without a TSO–C112 (Mode S) transponder installed on those aircraft.

Grant, 04/25/2002, Exemption No. 7183A (Previously Docket 29965)

[FR Doc. 02–10948 Filed 5–1–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use a Passenger Facility Charge (PFC) at Phoenix Sky Harbor International Airport, Phoenix, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Phoenix Sky Harbor International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before May 31, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, P.O. Box 92007, Los Angeles, CA 90009. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. David Krietor, Director, City of Phoenix Aviation Department, 3400 Sky Harbor Blvd., Phoenix, AZ 85034. Air carriers and foreign air carriers may submit copies of written comments previously provided to the city of Phoenix under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Kevin Flynn, Supervisor, Arizona Standards Section, FAA Airports Division, P.O. Box 92007, Los Angeles, CA, 90009, Telephone: (310) 725–3632. The application may be reviewed in person at 15000 Aviation Blvd., Lawndale, CA 90261.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Phoenix Sky Harbor International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158). On April 24, 2002, the FAA determined that the application to impose and use a PFC submitted by the city of Phoenix was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 20, 2002.

The following is a brief overview of the application No.: 02–06–C–00–PHX.

Level of proposed PFC: $4.50.

Proposed charge effective date: July 1, 2002.

Proposed charge expiration date: June 1, 2006.

Total estimated PFC revenue: $224,366,000.

Brief description of the proposed projects: Complete Third Runway. (7R–25L) and Associated Projects, Rebuild Center Runway (7L/25R) and Associated Projects, Capital Security Improvements, Community Noise Reduction Program (Voluntary Land Acquisition/Property Exchange), Operating Security Improvements, Residential Sound Assistance Program

Level of proposed PFC: $3.00.

Proposed charge effective date: July 1, 2002.

Proposed charge expiration date: June 1, 2006.

Total estimated PFC revenue: $38,640,000.

Brief description of the proposed project: Automated People Mover System (APM)—Design Only.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Nonscheduled/On-Demand Air Carriers filing FAA form 1800–31 and Commuters or Small Certificated Air Carriers filing DOT form 298–C T1 or E1.

Any person may inspect the application in person at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the city of Phoenix Aviation Department.

Issued in Lawndale, California, on April 24, 2002.

Ellsworth Chan,

Manager, Safety & Standards Branch, Western-Pacific Region.

[FR Doc. 02–10941 Filed 5–1–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2000–7257; Notice No. 28]

Railroad Safety Advisory Committee; Notice of Meeting

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Railroad Safety Advisory Committee (''RSAC'') meeting.

SUMMARY: FRA announces the next meeting of the RSAC, a Federal Advisory Committee that develops railroad safety regulations through a consensus process. The meeting will address a wide range of topics, including possible adoption of specific recommendations for regulatory action.

DATES: The meeting of the RSAC is scheduled to commence at 9:30 a.m. and conclude at 4 p.m. on Wednesday, May 29, 2002.

ADDRESSES: The meeting of the RSAC will be held at the Wyndham Washington, DC, 1400 M Street, NW, Washington, DC 20005, (202) 429–1700. The meeting is open to the public on a first-come, first-served basis and is accessible to individuals with disabilities. Sign and oral interpretation can be made available if requested 10 calendar days before the meeting.

FOR FURTHER INFORMATION CONTACT: Trish Butera, or Lydia Leeds, RSAC Coordinators, FRA, 1120 Vermont Avenue, NW, Stop 25, Washington, DC 20590, (202) 493–6212/6213 or Grady Cothen, Deputy Associate Administrator for Safety Standards and Program Development, FRA, 1120 Vermont Avenue, NW, Mailstop 25, Washington, DC 20590, (202) 493–6302.

SUPPLEMENTAL INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), FRA is giving notice of a meeting of the Railroad Safety Advisory Committee (''RSAC''). The meeting is scheduled to begin at 9:30 a.m. and conclude at 4:00 p.m. on Wednesday, May 29, 2002. The meeting of the RSAC will be held at the Wyndham, Washington, DC, NW., Washington, DC 20005, (202) 429–1700. All times noted are Eastern Standard Time.

RSAC was established to provide advice and recommendations to the FRA on railroad safety matters. The Committee consists of 48 individual voting representatives and five associate representatives drawn from among 32 organizations representing various rail industry perspectives, two associate representatives from the agencies with

railroad safety regulatory responsibility in Canada and Mexico and other diverse groups. Staffs of the National Transportation Safety Board and Federal Transit Administration also participate in an advisory capacity.

The RSAC will commence with opening remarks from the FRA Administrator. The morning session will be dedicated to a discussion of the state of railroad safety presented by the Associate Administrator for the Office of Safety. Status briefings will be held on Locomotive Cab Working Conditions (brief report on the recent approval of the Sanitation Rule and a status report on the noise initiative), Accident/Incident Reporting, Event Recorders, and other Working Group activities. The Committee may be requested to act upon recommendations of the Accident Reports Working Group on OSHA conformity (RSAC Task 01–1), recommendations of the Positive Train Control Working Group for resolution of comments on the proposed rule for Processor-Based Signal and Train Control Systems (RSAC Task 97–6) and recommendations of the Roadway Maintenance Machines Working Group on the proposed rule (RSAC Task 96–7). The RSAC will also be briefed on the 1–800 Highway-Rail Crossing Notification System and the Freight Rolling Stock Reflectorization action.

See the RSAC Web site for details on pending tasks at: http://rsac.fra.dot.gov/. Please refer to the notice published in the **Federal Register** on March 11, 1996 (61 FR 9740) for more information about the RSAC.

Issued in Washington, DC on April 29, 2002.

George A. Gavalla,

Associate Administrator for Safety.

[FR Doc. 02–10953 Filed 5–1–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34188]

ISG South Chicago & Indiana Harbor Railway Company—Acquisition and Operation Exemption—Rail Lines of the Chicago Short Line Railway Company

ISG South Chicago & Indiana Harbor Railway Company (SCIH), a noncarrier,[1] has filed a notice of exemption under 49 CFR 1150.31 to acquire and operate, pursuant to an agreement entered into between ISG and LTV Steel Company, Inc. (LTV), the railroad lines, trackage rights, and substantially all other assets of the Chicago Short Line Railway Company (CSL).[2] SCIH will acquire CSL's interest in approximately 5 miles of railroad line generally located between Pullman Junction and Rock Island Junction, in South Chicago, Cook County, IL. Specifically, SCIH proposes to acquire the following: (1) An undivided one-half interest in and to: 1,595 track feet of track commencing at approximately EPS 155+95 near E. 95th Street and Woodlawn Avenue and ending at approximately EPS 171+90 near E. 95th Street and Stony Island Avenue; 312 track feet of track commencing at approximately EPS 171+90 and ending at approximately EPS 175+02; 193 track feet of crossover track located between approximately EPS 170+95.2 and approximately EPS 172+88.2; the westerly segment of crossover track being 95 track feet located at approximately EPS 174+07 and connecting to the east bound main track as located near E. 95th St. and Stony Island Avenue, in the City of Chicago; (2) 978 track feet extending from approximately EPS 175+02 near E. 95th Street and Stony Island Avenue to approximately EPS 184+80; (3) two parallel main railroad tracks, one comprised of approximately 10,754 track feet and the other comprised of approximately 9,254 track feet, extending from approximately EPS 175+02 near E. 95th St. and South Chicago Avenue to approximately EPS 282+61 near E. 95th and South Chicago Avenue, in the City of Chicago; (4) an undivided one-half interest in approximately 976 track feet of track providing a rail connection with Norfolk Southern Railway Company (NS) at Rock Island Junction near E. 95th Street and South Chicago Avenue as located beginning at approximately EPS 275+44; and (5) one track comprised of approximately 186 track feet at South Chicago Avenue, in the City of Chicago. SCIH also will acquire more than 5 miles of yard, switching, industrial and other trackage owned by CSL in the vicinity of its 98th Street Yard in South Chicago and in the vicinity of the Acme Steel facility in South Deering, IL, over which the Board does not have jurisdiction. *See* 49 U.S.C. 10906.

In addition to the railroad lines owned by CSL, SCIH will acquire any and all trackage rights that are held by CSL over the rail lines of third parties. These trackage rights include the following 9.65 miles of overhead trackage rights that CSL acquired from Consolidated Rail that are currently operated by NS: (1) The 0.05±-mile segment between NS's right-of-way line and the point of switch of the new interlocked switch in NS's Chicago Line at milepost 509.5±, in South Chicago, IL; (2) the 7.40±-mile segment comprising main tracks (including appurtenant sidings, crossovers, and connecting tracks) of the NS Chicago Line between milepost 502.6±, at Indiana Harbor, IN, and milepost 510.0±, at South Chicago; (3) the 0.20±-mile segment of the BRC connection lead between the connection with the NS Chicago Line main track at milepost 509.7±, in South Chicago, then westerly to NS's property line at Rock Island Junction, IL; and (4) the 2.0±-mile segment of NS's Calumet River Line between its connection with the Chicago Line at milepost 0.0±, in South Chicago, and milepost 1.9±, at South Chicago, plus 0.1±-mile through 110th Street Yard.[3]

SCIH also will acquire approximately 13.5 miles of CSL's overhead trackage rights over the following railroad lines: (1) CSXT's Lake Subdivision between approximately milepost 251.3 near Indiana Harbor, IN, and approximately milepost 257.3 near Rock Island Junction, IL, a distance of approximately 6 miles; (2) NS's ex-NKP line and parallel ex-C&WI line between Pullman Junction, IL, and South Deering, a distance of approximately 2 miles; (3) Belt Railway of Chicago's District Tracks between Rock Island Junction and South Deering, a distance of approximately 2.5 miles; and (4) Chicago Rail Link's railroad line between Rock Island Junction and South Deering, a distance of approximately 3 miles.

The total distance of trackage rights proposed to be acquired by SCIH is approximately 23.15 miles. SCIH will also acquire any and all rights held by CSL to operate over the tracks of third parties for interchange, switching and other purposes. Separate Board approval is not required for the acquisition of these rights.

SCIH certifies that its projected annual revenues as a result of this transaction will not result in the creation of a Class I or Class II rail carrier, and further certifies that its projected annual revenues will not exceed those that would qualify it as a Class III rail carrier. SCIH will become a Class III rail carrier after consummation of the transaction proposed here and it will operate as a switching/terminal railroad.

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[1] SCIH is a wholly owned subsidiary of ISG Indiana Harbor Inc., which is a wholly owned subsidiary of International Steel Group, Inc. (ISG).

[2] CSL is a subsidiary of LTV.

[3] *See Chicago Line Railway Company—Trackage Rights Exemption—Consolidated Rail Corporation,* Finance Docket No. 32828 (ICC served Dec. 29, 1995).

The transaction was scheduled to be consummated on or shortly after April 9, 2002, the effective date of the exemption (7 days after the exemption was filed).

If the notice 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 does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34188, 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 Kevin M. Sheys, Kirkpatrick & Lockhart LLP, 1800 Massachussets Avenue NW, 2nd Floor, Washington, DC 20036.

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. 02–10752 Filed 5–1–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 25, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 3, 2002 to be assured of consideration.

Internal Revenue Service

OMB Number: 1545–0863.

Regulation Project Number: LR–218–78 Final.

Type of Review: Extension.

Title: Product Liability Losses and Accumulations for Product Liability Losses.

Description: Generally, a taxpayer who sustains a product liability loss must carry the loss back 10 years. However, a taxpayer may elect to have such loss treated as a regular net operating loss under section 172. If desired, such election is made by attaching a statement to the tax return. The statement will enable the IRS to monitor compliance with the statutory requirements.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 5,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 2,500 hours.

OMB Number: 1545–1126.

Regulation Project Number: INTL–121–90, INTL–292–90, and INTL–361–89 Final.

Type of Review: Extension.

Title: Treaty-Based Return Positions.

Description: Regulation section 301–6114–1 sets forth the reporting requirements under § 6114. Persons or entities subject to this reporting requirement must make the required disclosure on a statement attached to their return, in the manner set forth or be subject to a penalty. Regulation section 301.7701(b)–7(a)(4)(iv)(C) sets forth the reporting requirement for dual resident S corporation shareholders who claim treaty benefits as nonresidents of the United States.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents: 6,020.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 6,015 hours.

OMB Number: 1545–1244.

Regulation Project Number: PS–39–89 NPRM.

Type of Review: Extension.

Title: Limitation on Passive Activity Losses and Credits—Treatment of Self-Charged Items of Income and Expense.

Description: The IRS will use this information to determine whether the entity has made a proper timely election and to determine that taxpayers are complying with the election in the taxable year of the election and subsequent taxable years.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents: 1,000.

Estimated Burden Hours Per Respondent: 6 minutes.

Frequency of Response: Other (First taxable year that entity seeks to make election.).

Estimated Total Reporting Burden: 100 hours.

OMB Number: 1545–1768.

Revenue Procedure Number: Revenue Procedure 2002–16.

Type of Review: Extension.

Title: Optional Election to Make Monthly § 706 Allocations.

Description: This revenue procedure allows certain partnerships with money market fund partners to make an optional election to close the partnership's books on a monthly basis with respect to the money market fund partners.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 1,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 12 hours.

Frequency of Response: Other (once).

Estimated Total Reporting/Recordkeeping Burden: 12,000 hours.

Clearance Officer: Glenn Kirkland, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 02–10887 Filed 5–1–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Annual Letter (A) and Annual Letter (B), Certification of Authority

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning ''Annual Letter (A) and Annual Letter (B), Certification of Authority.''

DATES: Written comments should be received on or before July 1, 2002.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East West Highway, Records and Information Management Branch, Room 135, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Dorothy Martin, Manager, Surety Bond Branch, 3700 East West Highway, Room 608A, Hyattsville, MD 20782, (202) 874–6775.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below.

Title: Annual Letter (A) and Annual Letter (B), Certification of Authority.

OMB Number: 1510–0057.

Form Number: None.

Abstract: This letter is used to collect information from companies to determine their acceptability and solvency to write or reinsure federal surety bonds.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 417.

Estimated Time Per Respondents: 62.5 hours.

Estimated Total Annual Burden Hours: 26,063.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: April 29, 2002.

Judith R. Tillman,

Assistant Commissioner, Financial Operations.

[FR Doc. 02–10849 Filed 5–1–02; 8:45 am]

BILLING CODE 4810–35–M

UNITED STATES INSTITUTE OF PEACE

Announcement of the Fall 2002 Solicited Grant Competition Grant Program

AGENCY: United States Institute of Peace.

ACTION: Notice.

SUMMARY: The Agency Announces its Upcoming Fall 2002 Solicited Grant Competition. The Solicited Grant competition is restricted to projects that fit specific themes and topics identified in advance by the Institute of Peace.

The themes and topics for the Fall 2002 Solicited competition are:

- Solicitation A: Religion, Conflict, and Peacebuilding.
- Solicitation B: Democratic Governance and the Role of the Military.

Deadline (Receipt of Application Material): October 1, 2002.

Notification of Awards: March 31, 2003.

Applications Material: Available Upon Request.

ADDRESSES: For more information and an application package: United States Institute of Peace, Grant Program, Solicited Grants, 1200 17th Street, NW, Suite 200, Washington, DC 20036–3011, (202) 429–3842 (phone), (202) 429–6063 (fax), (202) 457–1719 (TTY), Email: grant_program@usip.org.

Application material available on-line starting mid May 2002: *www.usip.org/grant.html.*

FOR FURTHER INFORMATION CONTACT: The Grant Program, Phone (202)–429–3842.

Dated: April 23, 2002.

Bernice J. Carney,

Director Office of Administration.

[FR Doc. 02–10850 Filed 5–1–02; 8:45 am]

BILLING CODE 6820–AR–M

UNITED STATES INSTITUTE OF PEACE

Announcement of the Fall Unsolicited Grant Competition Grant Program

AGENCY: United States Institute of Peace.

ACTION: Notice.

SUMMARY: The Agency announces its Upcoming Unsolicited Grant Program, which offers support for research, education and training, and the dissemination of information on international peace and conflict resolution. The Unsolicited competition is open to any project that falls within the Institute's broad mandate of international conflict resolution.

Deadline (Receipt of Application Material): October 1, 2002.

Notification of Awards: March 31, 2003.

Applications Material: Available Upon Request.

ADDRESSES: For more information and an application package: United States Institute of Peace, Grant Program, 1200 17th Street, NW., Suite 200, Washington, DC 20036–3011, (202) 429–3842 (phone), (202) 429–6063 (fax), (202) 457–1719 (TTY), Email: *grant_program@usip.org.*

Application material available on-line starting mid May 2002: *www.usip.org/grant.html.*

FOR FURTHER INFORMATION CONTACT: The Grant Program, Phone (202) 429–3842, E-mail: *grant_program@usip.org.*

Dated: April 23, 2002.

Bernice J. Carney,

Director, Office of Administration.

[FR Doc. 02–10851 Filed 5–1–02; 8:45 am]

BILLING CODE 6820–AR–M

DEPARTMENT OF VETERANS AFFAIRS

Research and Development Cooperativese Studies Evaluation Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Research and Development, Cooperative Studies Evaluation Committee will be held at the Hyatt Regency Crystal City at Reagan National Airport, 2799 Jefferson Davis Highway, Arlington, VA 22202, on May 16, 2002. The session is scheduled to begin at 8:00 a.m. and end at 3:00 p.m. The three new studies submitted for review are: Diiodothyroproprionic Acid, a Thyroid Analog to Treat Heart Failure, Phase II Trial; The Midwest Gulf War Cohort Study; and Ft. Devens Gulf War Veteran Cohort, A Longitudinal Study.

The Committee advises the Chief Research and Development Officer through the Director of the Cooperative Studies Program on the relevance and feasibility of the studies, the adequacy of the protocols, and the scientific validity and propriety of technical details, including protection of human subjects.

The meeting will be open to the public from 8:00 a.m. to 8:30 a.m. to discuss the general status of the program. Those who plan to attend should contact Ms. Denise Shorter, Staff Assistant, Department of Veterans Affairs (125D), 810 Vermont Avenue, NW., Washington, DC 20420, at (202) 565–7016.

The meeting will be closed from 8:30 a.m. to 3:00 p.m. This portion of the meeting involves consideration of specific proposals in accordance with provisions set forth in section 10(d) of Public Law 92–463, as amended by sections 5(c) of Public Law 94–409, and 5 U.S.C. 552b(c)(6). During the closed session of the meeting, discussions and recommendations will deal with qualifications of personnel conducting the studies, staff and consultant critiques of research proposals, and similar documents, and the medical records of patients who are study subjects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

By Direction of the Secretary.

Dated: April 29, 2002.

Nora E. Egan,

Committee Management Officer.

[FR Doc. 02–10954 Filed 5–1–02; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 67, No. 85

Thursday, May 2, 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.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 020325069–2069–01; I.D. 071299C]

RIN 0648–AM91

Atlantic Highly Migratory Species (HMS) Fishing Vessel Permits; Charter Boat Operations

Correction

In proposed rule document 02–10341 beginning on page 20716 in the issue of Friday, April 26, 2002, make the following corrections:

1. On page 20716, in the second column, under the **DATES** heading, in the third line, ''May 28, 2002'' should read ''May 23, 2002''.

2. On the same page, in the same column, under the same heading, ''May 28, 2002'' should read ''May 23, 2002''

[FR Doc. C2–10341 Filed 5–1–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
May 2, 2002

Part II

Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of Air Quality Implementation Plans; Montana; Billings/Laurel Sulfur Dioxide State Implementation Plan; Final Rule and Proposed Rule

Environmental Protection Agency

40 CFR Part 52

[MT–001–0007, MT–001–0008, MT–001–0009 and MT–001–0010; FRL–7175–1]

Approval and Promulgation of Air Quality Implementation Plans; Montana; Billings/Laurel Sulfur Dioxide State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is partially approving and partially disapproving the Billings/Laurel sulfur dioxide (SO2) State Implementation Plan (SIP) revisions submitted by the State of Montana in response to a SIP Call. EPA is also limitedly approving and limitedly disapproving one provision of the SIP revisions. The SIP revisions establish, and require seven sources to meet and monitor compliance with, SO2 emission limitations and other requirements in the Billings/Laurel area. The intended effect of this action is to make federally enforceable those provisions that EPA is approving and to disapprove those provisions that do not meet applicable requirements. EPA is taking this action under sections 110 and 179 of the Clean Air Act (Act). In a separate action being published today, EPA is proposing action on other provisions of the Billings/Laurel SO2 SIP.

EFFECTIVE DATE: This final rule is effective June 3, 2002.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202 and copies of the Incorporation by Reference material at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Copies of the State documents relevant to this action are available for public inspection at the Montana Department of Environmental Quality, Air and Waste Management Bureau, 1520 E. 6th Avenue, Helena, Montana 59620.

FOR FURTHER INFORMATION CONTACT: Laurie Ostrand, EPA, Region 8, (303) 312–6437.

SUPPLEMENTARY INFORMATION:

Table of Contents

Definitions

I. Summary of EPA's Final Action
II. EPA's Action on the State of Montana's Submittals
A. Why Is EPA Approving Parts of the State of Montana's Plan?
B. Why Is EPA Disapproving Parts of the State of Montana's Plan?
C. Why Is EPA Proposing Action on Parts of the State of Montana's Plan?
D. What Happens When EPA Approves Parts of the State of Montana's Plan?
E. What Happens When EPA Disapproves Parts of the State of Montana's Plan?
F. What Happens When EPA Limitedly Approves and Limitedly Disapproves Parts of the State of Montana's Plan?
III. Other Issues Pertaining to State Authority
A. How Do the State-Only Provisions Affect EPA's Actions?
B. How Does Montana's Environmental Audit Act Affect EPA's Actions?
IV. Other Rulemaking Actions
A. How Does This Final Action Relate to EPA's SIP Call?
B. Why Is EPA Not Imposing Sanctions?
V. What Comments Were Received on EPA's Proposed Action and How Is EPA Responding to Those Comments?
VI. Administrative Requirements

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The initials *CEMS* mean or refer to continuous emission monitoring systems.

(iii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iv) The initials *FIP* mean or refer to Federal Implementation Plan.

(v) The initials *MBER* mean or refer to the Montana Board of Environmental Review.

(vi) The initials *MDEQ* mean or refer to the Montana Department of Environmental Quality.

(vii) The initials *MSCC* mean or refer to the Montana Sulphur & Chemical Company.

(viii) The initials *NAAQS* mean or refer to the national ambient air quality standards.

(ix) The initials *SIP* mean or refer to the State Implementation Plan.

(x) The initials *SO2* mean or refer to sulfur dioxide.

(xi) The words *State* or *Montana* mean the State of Montana, unless the context indicates otherwise.

(xii) The initials *TSD* mean or refer to the Technical Support Document.

(xiii) The initials *YELP* mean or refer to the Yellowstone Energy Limited Partnership.

I. Summary of EPA's Final Action

Apart from those provisions we are disapproving, limitedly approving/limitedly disapproving, proposing to act on in a separate action published today (*see* discussion below), or not acting on, we are approving all other aspects of the Billings/Laurel SO2 SIP, which the State of Montana submitted in response to our SIP Call. *See* Background section V.D. in our proposed rulemaking action published on July 28, 1999 (64 FR 40791) for a discussion of the SIP Call. Our approval is based on several interpretations of provisions of the SIP. The interpretations described in our proposed approval still apply except that, based on comments received, we have revised the interpretation of ''low sulfur fuel gas.'' *See* section V.Q. below. We caution that if we find it too difficult to enforce certain variable (or pro-rated) emission limitations at several of the sources or if data are not available to determine the emission limitations on a regular basis, we will reconsider our approval. Also, if we determine that the State-only provisions, as implemented, appear to limit or constrain or otherwise have a chilling effect on the Montana Department of Environmental Quality's (MDEQ's) enforcement of the SIP, we will reconsider our approval or take other appropriate action under the Act. Our reconsideration could occur under section 110(k)(6) of the Act or we could complete another SIP Call under sections 110(a)(2)(H) and 110(k)(5) of the Act. We caution that if sources are subject to more stringent requirements under other provisions of the Act (*e.g.,* section 111 new source performance standards; Title I, part C prevention of significant deterioration; or SIP-approved permit programs under Title I, part A), our approval of the SIP (including emission limitations and other requirements), would not excuse sources from meeting these other, more stringent requirements. Also, our action on this SIP is not meant to imply any sort of applicability determination under other provisions of the Act (*e.g.,* section 111; Title I, part C; or SIP-approved permit programs under Title I, part A).

We are disapproving the following provisions of the Billings/Laurel SO2 SIP [1]:

- The escape clause (paragraph 22 in the ExxonMobil [2] and MSCC stipulations and paragraph 20 in the

[1] The SIP was submitted in the form of orders, stipulations, exhibits and attachments for each source covered by the plan. The majority of the requirements are contained in the exhibits. Throughout this document when we refer to an exhibit, we mean exhibit A to the stipulation for the specified source.

[2] Between our July 28, 1999 proposal action and this action, Exxon's name was changed to ExxonMobil. Our July 1999 proposal simply referred to Exxon.

Cenex, Conoco, Montana Power, Western Sugar and YELP stipulations).

• The MSCC stack height credit and emission limitations on the sulfur recovery unit (SRU) 100-meter stack (paragraph 1 of the ExxonMobil stipulation, paragraphs 1 and 2 of the MSCC stipulation, and section 3(A)(1)(a) and (b) and 3(A)(3) of the MSCC exhibit).

• The emission limitation on MSCC's auxiliary vent stacks, section 3(A)(4) of MSCC's exhibit.

• The attainment demonstration, because of improper stack height credit and emission limitations at MSCC.

• The attainment demonstration for lack of flare emission limitations at Cenex, Conoco, ExxonMobil, and MSCC.

• The attainment demonstration, because of the disapproval of the emission limitation for MSCC's auxiliary vent stacks.

• The Reasonably Available Control Measures (RACM) (including Reasonably Available Control Technology (RACT)) and Reasonable Further Progress (RFP) requirements for Cenex.

• The provisions that allow sour water stripper emissions to be burned in the flare at Cenex and ExxonMobil (the following phrase from section 3(B)(2) of Cenex's exhibit A and section 3(E)(4) of ExxonMobil's exhibit A: ''or in the flare''; the following phrases in section 4(D) of Cenex's exhibit A and section 4(E) of ExxonMobil's exhibit A: ''or in the flare'' and ''or the flare''.)

We are limitedly disapproving the following provision:

• The emission limitation for the 30-meter stack at MSCC (section 3(A)(2) of MSCC's exhibit A) because it lacks a reliable compliance monitoring method.

We are not acting on the following provisions:

• The provisions in section 6(B)(3) of MSCC's exhibit that require certain monitoring equipment to support the variable emission limitations.

In a separate action published today, we are proposing action on the following provisions of the Billings/Laurel SO2 SIP submitted on July 29, 1998 [3]:

• YELP's emission limitations (in section 3(A)(1) through (3) of YELP's exhibit).

• ExxonMobil's coker CO-boiler emission limitation (in section 3(B)(1) of ExxonMobil's exhibit).

• ExxonMobil's F–2 crude/vacuum heater stack emission limitations and attendant compliance monitoring methods (specifically, section 3(A)(2) of exhibit A; section 3(B)(3) of exhibit A; the following phrase from section 3(E)(4) of exhibit A ''except that the sour water stripper overheads may be burned in the F–1 Crude Furnace (and exhausted through the F–2 Crude/Vacuum Heater stack) or in the flare during periods when the FCC CO Boiler is unable to burn the sour water stripper overheads, provided that: (a) such periods do not exceed 55 days per calendar year and 65 days for any two consecutive calendar years, and (b) during such periods the sour water stripper system is operating in a two tower configuration.''; section 4(E) of exhibit A; and method #6A of attachment #2,[4] of exhibit A).

• ExxonMobil's fuel gas combustion emission limitations and attendant compliance monitoring methods (in sections 3(A)(1), 3(B)(2), 4(B), and 6(B)(3) of ExxonMobil's exhibit).

• Cenex's combustion sources emission limitations and attendant compliance monitoring methods (specifically, section 3(A)(1)(d) of exhibit A; the following phrase from section 3(B)(2) of exhibit A ''except that those sour water stripper overheads may be burned in the main crude heater (and exhausted through the main crude heater stack) or in the flare during periods when the FCC CO boiler is unable to burn the sour water stripper overheads from the ''old'' SWS, provided that such periods do not exceed 55 days per calendar year and 65 days for any two consecutive calendar years.''; section 4(B) of exhibit A; section 4(D) of exhibit A; and method #6A of attachment #2 [5] of exhibit A).

We have also revised the regulatory text from what was proposed. The regulatory text appears at the end of this notice. The proposed regulatory text started at 64 FR 40807 (July 28, 1999). As indicated later in this notice, we are not selecting the order of sanctions as we had proposed. Therefore, we are *not* including the regulatory text that was proposed for 40 CFR 52.32(b). Also, we proposed to conditionally approve several provisions of the SIP. Since we are not finalizing the conditional approval of those provisions, and instead are proposing action on them in a separate notice being published today, the regulatory text at the end of this notice also excludes from the incorporation by reference the provisions we proposed to conditionally approve. *See* 40 CFR 52.1370(c)(46)(i)(A), (C) and (G). We also expanded 40 CFR 52.1370(c)(46)(i)(A) and (C) to explicitly indicate the phrases not being incorporated by reference at this time. Additionally, based on comments received, we are not acting on an additional provision of MSCC's exhibit and excluding it from the incorporation by reference. *See* 40 CFR 52.1370(c)(46)(i)(E). Finally, we added regulatory text at the end of this notice to indicate those provisions of the stipulations and/or exhibits that we are partially or limitedly disapproving. *See* 40 CFR 52.1384(d).

II. EPA's Action on the State of Montana's Submittals

A. Why Is EPA Approving Parts of the State of Montana's Plan?

On July 28, 1999 (64 FR 40791) we proposed to partially approve the Billings/Laurel SO2 SIP. Our proposed rulemaking action discussed several issues that we resolved with the State as well as interpretations we made of several provisions in the Billings/Laurel SO2 SIP. We have considered the comments received [6] and still believe we should partially approve the plan as proposed except that we are limitedly approving/disapproving one provision of the SIP, the emission limitation for the 30-meter stack at MSCC, that we had proposed to partially approve.

Additionally, EPA believes partially and limitedly approving the Billings/Laurel SO2 SIP meets the requirements of section 110(l) of the Act. The approved provisions of the plan strengthen the Montana SIP by providing specific control strategies and compliance determining methods for SO2 sources in Billings/Laurel, Montana which further the goals of and achieve progress toward attaining the SO2 NAAQS.

[3] In our July 28, 1999 proposed action we proposed to conditionally approve these provisions based on the Governor's commitment to address concerns we had raised. The Governor submitted a SIP revision on May 4, 2000 which was intended to fulfill the commitments. Since the Governor has submitted a SIP revision to fulfill the commitments, we are not finalizing our proposed conditional approval and instead are proposing separate action on parts of the July 29, 1998 submittal (*i.e.,* those parts we proposed to conditionally approve on July 28, 1999) and all of the May 4, 2000 submission (which is some cases modified the provisions of the July 29, 1998 submittal).

[4] In our July 28, 1999 proposal action, we proposed to conditionally approve all of attachment #2 of ExxonMobil's exhibit. We should have limited our proposed conditional approal to only method #6A of attachment #2 of ExxonMobil's exhibit.

[5] In our July 28, 1999 proposal action, we proposed to conditionally approve all of attachment #2 of Cenex's exhibit. We should have limited our proposed conditional approval to only method #6A of attachment #2 of Cenex's exhibit.

[6] The comments received and our response to the comments are discussed below in section V., entitled ''What Comments Were Received on EPA's Proposed Action and How Is EPA Responding to Those Comments?''

B. Why Is EPA Disapproving Parts of the State of Montana's Plan?

In our July 28, 1999 proposed rulemaking, we proposed to partially disapprove portions of the Billings/Laurel SO2 SIP. We have considered the comments received and still believe we should partially disapprove the SIP as proposed. In addition, because of comments received we are not acting on an additional provision of the SIP. *See* the discussion in section II.B.2 below. Finally, because of comments received, we are limitedly disapproving one provision of the SIP. *See* the discussion in section II.B.6 below. The parts of the Plan we are disapproving follow:

1. Escape Clause

Each stipulation contains a paragraph which allows a source to withdraw its consent to the stipulation. The ''escape clause'' is printed in full in our July 28, 1999 proposed rulemaking action (*see* right column of 64 FR 40797).

We are disapproving the escape clause because, if sources invoke the escape clause, the MDEQ will no longer have a plan to implement. Specifically, we are disapproving the following: paragraph 22 in the ExxonMobil and MSCC stipulations; paragraph 20 in the Cenex, Conoco, Montana Power, Western Sugar and YELP stipulations. If sources invoke the escape clause after our final action on the SIP, we expect to respond by issuing another SIP Call under sections 110(a)(2)(H) and 110(k)(5) of the Act or taking other appropriate action under the Act. Additionally, with the disapproval of the escape clause, the provisions of the SIP that we approve will remain federally enforceable even if one or more of the sources invoke the escape clause. While our disapproval of the escape clause eliminates the risk of a source's future attempt to nullify the SIP, we do not believe our disapproval renders the SIP more stringent than the State of Montana intends, because our disapproval does not change the stringency of any of the substantive requirements the State of Montana has imposed and is currently able to enforce under the SIP. Moreover, a source's exercise of the escape clause would not represent the State's decision to suspend its own SIP or constitute any decision on the part of the State to change the SIP's enforceable requirements. Finally, since the escape clause is a provision that EPA could not lawfully approve under title I of the CAA, the only alternative to EPA's partial disapproval would be a total disapproval of the SIP, which we believe the State would not favor over today's action.

2. MSCC Stack Height Credit and Emission Limitations on the Sulfur Recovery Unit (SRU) 100-Meter Stack

We are disapproving MSCC's SRU 100-meter stack height credit and emission limitations (paragraph 2 of the MSCC stipulation and sections 3(A)(1)(a) and (b) and 3(A)(3) of the MSCC exhibit) used in the attainment demonstration modeling for the Billings/Laurel area. We believe it is necessary to disapprove MSCC's emission limitations because the State of Montana has set limitations based on an amount of stack height credit for MSCC that is not supportable under section 123 of the Act or our stack height regulations.

Our July 28, 1999 proposed rulemaking action (starting in the left column of 64 FR 40798), and TSD to that proposal, discuss the Act's stack height requirements (*see* those documents for the complete discussion).

Additionally, because of comments received we are not acting on the monitoring provisions in section 6(B)(3) of MSCC's exhibit. Since we are disapproving MSCC's variable emission limitation, we believe it does not make sense to approve section 6(B)(3) of MSCC's exhibit, which requires MSCC to install certain monitoring equipment to support the use of the variable limitation. Section 6(B)(3) would be needed only if we were approving MSCC's variable emissions limitation.

3. Language in ExxonMobil and MSCC's Stipulations Related to Incorporation of Earlier Stipulations and Apportionment of the Airshed

Paragraph 1 of the ExxonMobil and MSCC stipulations discusses a contested case hearing and resultant February 2, 1996 stipulation and incorporates the February 2, 1996 stipulation by reference. We do not believe it is appropriate to incorporate the February 2, 1996 stipulation into the SIP because it discusses procedures and schedules for developing emission limitations for ExxonMobil and MSCC that have subsequently been developed and that, for MSCC, are not approvable (*see* discussion on stack height issue at MSCC in section II.B.2, above). Paragraph 1 of the ExxonMobil and MSCC stipulations also contains a statement that the company enters into the stipulation ''in part, to preserve [the company's] rights to apportionment of the airshed resulting from the present SIP revision.'' Insofar as this statement implies that the companies or other air pollution sources are entitled to a property interest in the ambient air in the Billings/Laurel area or enjoy a right to pollute the ambient air, this statement conflicts with the purpose and requirements of the Act and has no basis under federal law. By this statement we do not mean that we do not recognize emission rights created by statute (*e.g.*, Titles I and IV of the Act). However, the phrase ''right of apportionment of the airshed'' implies possessory rights to the ambient air. We are concerned that the phrase might imply rights less conditional than those created by the Act. Therefore, we are disapproving paragraph 1 of the ExxonMobil and MSCC stipulations.

4. MSCC Auxiliary Vent Stacks

We are disapproving the MSCC auxiliary vent stacks emission limitation (section 3(A)(4) of MSCC's exhibit). We believe it is necessary to disapprove this emission limitation because the exhibit does not restrict the sulfur content of the fuel burned in the boilers and heaters, when they are exhausting from auxiliary vent stacks, and lacks a monitoring method that would make the emission limitation practically enforceable. Without a restriction on the fuel burned and a compliance monitoring method, there is the potential that exceedances of the emission limitation would go undetected.

5. Attainment Demonstration [7]

For us to fully approve a SIP, the SIP must show that the NAAQS will not be violated, *i.e.,* that the area demonstrates attainment. Attainment demonstrations are usually carried out with computer models that are approved by us. The computer models take numerous factors into consideration to predict the effects that emissions from various sources will

[7] One commenter stated that we did not acknowledge that Montana submitted two separate attainment demonstrations for SO2—one for the Billings area and one for the Laurel area. The commenter indicated that the Laurel area was modeled assuming the SIP prescribed emission limitations for Cenex and the pre-SIP potential emissions for the Billings sources. Therefore, the Laurel SIP demonstrates compliance with the NAAQS regardless of whether a revised SIP is approved and implemented in Billings. The Billings area was modeled assuming all sources in Laurel and Billings area are at SIP prescribed emission rates. Therefore, the Billings SIP depends upon approval of the Laurel SIP to demonstrate attainment. The commenter is requesting that we acknowledge the two attainment demonstrations in our final action and treat the two separately in that action. We agree with the commenter and acknowledge that there are two attainment demonstrations—one for the Billings area and one for the Laurel area. However, since the flare issue applies to sources in Billings and in Laurel, we still believe the attainment demonstration for both areas should be disapproved for lack of enforceable flare emissions at the applicable sources.

have on levels of pollutants in the air. Models consider the typical meteorology and topography of the area, as well as physical parameters at a plant site, *e.g.,* the height, temperature, and velocity at which pollutants are emitted. Based on these factors, as well as restrictions placed on sources to control their emissions, models are used to predict the highest pollution levels that can be expected to occur in the future. For the reasons discussed below, we are disapproving the attainment demonstrations for the Billings/Laurel SIP.

a. Improper Stack Height Credit and Emission Limitation at MSCC

The MDEQ used EPA-approved dispersion models to demonstrate attainment of the SO2 NAAQS in the Billings/Laurel area. However, the modeling for the July 29, 1998 submittal of the SIP relied on emission limitations at MSCC that were established with a stack height credit that exceeded the good engineering practice (GEP) stack height. As discussed above in section II.B.2, we are disapproving the emission limitations and stack height credit for the 100-meter stack at MSCC. We are also disapproving the attainment demonstration because it relies on these improper emission limitations and stack height credit.

b. Lack of Flare Emission Limitations

With the July 29, 1998 submittal of the SIP, the State of Montana removed all reference to flare emission limitations from the exhibits submitted for Federal approval. In June 1998, the MBER adopted ''Additional State Requirements'' (hereinafter referred to as ''State-only provisions'') for each of the seven sources in the Billings/Laurel area. The State-only provisions include flare emission limitations and reporting requirements for the four sources that have flares (Cenex, Conoco, ExxonMobil, and MSCC). Because the State-only provisions were not submitted for inclusion in the Billings/Laurel SO2 SIP, they may be enforced only by the MDEQ.

Since flare emissions were considered part of the attainment demonstration and since there appear to be routine emissions from flares, we believe the SIP should contain enforceable emission limitations for these emission points. Therefore, we are disapproving the SIP as it applies to the attainment demonstration for lack of enforceable emission limitations for flares. *See* our July 28, 1999 proposed rulemaking action, middle column, 64 FR 40801, for more information on this issue.

c. Disapproval of MSCC Auxiliary Vent Stacks Emission Limitation

As indicated above, we are disapproving the emission limitation on the auxiliary vent stacks in MSCC's exhibit because the exhibit does not restrict the sulfur content of the fuel burned in the boilers and heaters, when they are exhausting from auxiliary vent stacks, and lacks a monitoring method that would make the emission limitation practically enforceable. The attainment demonstration relies on the auxiliary vent stacks emission limitation at MSCC. Since we are disapproving the emission limitation, we believe it is also necessary to disapprove the attainment demonstration.

6. MSCC 30-Meter Stack

We are limitedly disapproving/limitedly approving the MSCC 30-meter stack emission limitation (section 3(A)(2) of MSCC's exhibit). We believe it is necessary to limitedly disapprove this emission limitation because the exhibit does not adequately limit the fuel burned in the boilers and heaters that are exhausting from the 30-meter stack, and does not provide a monitoring method that would make the emission limitation practically enforceable.[8]

7. Burning of Sour Water Stripper (SWS) Emissions in the Flare at Cenex and ExxonMobil

With the July 29, 1998 submittal of the SIP, Cenex's and ExxonMobil's exhibits now allow SWS emissions to be burned in the flare. As discussed above, flare emission limitations were deleted from the July 1998 submittal. Therefore, SWS emissions, if burned in the flare, are unregulated. We believe that unless flares have an enforceable emission limitation, it is unacceptable to allow SWS emissions to be burned in the flare. Because we believe that allowing SWS emissions to be burned in the unregulated flare is not an acceptable approach, we are disapproving those provisions of the Cenex and ExxonMobil stipulations that would allow such approach (the following phrase from section 3(B)(2) of Cenex's exhibit A and section 3(E)(4) of ExxonMobil's exhibit A: ''or in the flare''; the following phrases in section 4(D) of Cenex's exhibit A and section 4(E) of ExxonMobil's exhibit A: ''or in the flare'' and ''or the flare''.)

8. Reasonably Available Control Measures (RACM) Including Reasonably Available Control Technology (RACT) and Reasonable Further Progress (RFP) at Cenex

As indicated earlier, we are disapproving the attainment demonstration for the SIP. Because we are disapproving the attainment demonstration, we conclude that the RACM (including RACT) and RFP requirements have not been met in the Laurel SO2 nonattainment area.[9] *See* discussion in sections III.C.(15) and (16) of our TSD for further information.

C. Why Is EPA Proposing Action on Parts of the State of Montana's Plan?

In our July 28, 1999 proposed rulemaking action, we proposed to conditionally approve several provisions of the Billings/Laurel SO2 SIP based on a commitment from the Governor of Montana to adopt specific enforceable measures by a specified date. *See* the July 28, 1999 action, 64 FR 40802—40803, for a complete discussion of those parts of the plan we proposed to conditionally approve. On May 4, 2000, the Governor of Montana submitted a SIP revision to fulfill his commitment. Since the Governor has fulfilled his commitment, we believe it is not necessary to finalize the conditional approval. Instead, a separate proposed rulemaking on parts of the July 29, 1998 submittal (*i.e.,* those parts we proposed to conditionally approve on July 28, 1999) and all of the May 4, 2000 submittal (which in some cases modified the July 29, 1998 submittal) is also being published today.

The specific provisions of the July 29, 1998 submittal on which we are proposing a separate action today include:

(1) YELP's emission limitations (section 3(A)(1) through (3) of YELP's exhibit);

[8] In some cases, a SIP rule may contain certain provisions that meet the applicable requirements of the Act, but that are inseparable from other provisions that do not meet all the requirements. Although the submittal may not meet all of the applicable requirements, we may consider whether the rule, as a whole, has a strengthening effect on the SIP. If this is the case, limited approval may be used to approve a rule that strengthens the existing SIP as representing an improvement over what is currently in the SIP and as meeting some of the applicable requirements of the Act. At the same time we would disapprove the rule of the SIP for not meeting all of the applicable requirements of the Act. Under a limited approval/disapproval action, we approve and disapprove the entire rule even though parts of it do and parts do not satisfy requirements under the Act. The rule remains a part of the SIP, even though it has been limitedly disapproved, because the rule strengthens the SIP. The disapproval only concerns the failure of the rule to meet a specific requirement of the Act and does not affect incorporation of the rule as part of the approved, federally enforceable SIP.

[9] RACM (including RACT) and RFP requirements only apply in areas designated as nonattainment.

(2) ExxonMobil's coker CO-boiler emission limitation (section 3(B)(1) of ExxonMobil's exhibit);

(3) ExxonMobil's F–2 crude/vacuum heater stack emission limitations and attendant compliance monitoring methods (section 3(A)(2) of exhibit A; section 3(B)(3) of exhibit A; the following phrase from section 3(E)(4) of exhibit A ''except that the sour water stripper overheads may be burned in the F–1 Crude Furnace (and exhausted through the F–2 Crude/Vacuum Heater stack) or in the flare during periods when the FCC CO Boiler is unable to burn the sour water stripper overheads, provided that: (a) such periods do not exceed 55 days per calendar year and 65 days for any two consecutive calendar years, and (b) during such periods the sour water stripper system is operating in a two tower configuration.''; section 4(E) of exhibit A; and method #6A of attachment #2, of exhibit A);

(4) ExxonMobil's fuel gas combustion emission limitations and attendant compliance monitoring method (sections 3(A)(1), 3(B)(2), 4(B), and 6(B)(3) of ExxonMobil's exhibit); and

(5) Cenex's combustion sources emission limitations and attendant compliance monitoring methods (section 3(A)(1)(d) of exhibit A; the following phrase from section 3(B)(2) of exhibit A ''except that those sour water stripper overheads may be burned in the main crude heater (and exhausted through the main crude heater stack) or in the flare during periods when the FCC CO boiler is unable to burn the sour water stripper overheads from the ''old'' SWS, provided that such periods do not exceed 55 days per calendar year and 65 days for any two consecutive calendar years.''; section 4(B) of exhibit A; section 4(D) of exhibit A; and method #6A of attachment #2 of exhibit A.)

Because we are proposing separate action on the above provisions, at this time we are not incorporating these provisions into the Federally approved SIP. *See* the regulatory text that follows at the end of this document.

D. What Happens When EPA Approves Parts of the State of Montana's Plan?

Once we approve a SIP, or parts of a SIP, the portions approved are legally enforceable by us and citizens under the Act.

E. What Happens When EPA Disapproves Parts of the State of Montana's Plan?

Once we disapprove a SIP, or parts of a SIP, the disapproved portions are still enforceable at the State level but not at the Federal level. By disapproving parts of the plan, we are determining that the requirements necessary to demonstrate attainment in the area have not been met and we may develop a plan or parts of a plan to assure that attainment will be achieved. Also, in some cases, once we disapprove a plan, sanctions may be imposed. As noted below, at this time, sanctions will not be imposed in the Billings/Laurel area as a result of this partial and limited disapproval.

F. What Happens When EPA Limitedly Approves and Limitedly Disapproves Parts of the State of Montana's Plan?

Once we limitedly approve/disapprove a SIP, or parts of a SIP, those provisions are legally enforceable by us and citizens under the Act. Under a limited approval/disapproval action, we approve and disapprove the entire rule even though parts of it do and parts do not satisfy requirements under the Act. The rule remains a part of the SIP, however, even though there is a disapproval, because the rule strengthens the SIP. The disapproval only concerns the failure of the rule to meet specific requirements of the Act and does not affect incorporation of the rule as part of the approved, federally enforceable SIP. To the extent the rule fails to satisfy requirements of the Act, we intend to develop a plan or parts of a plan to meet such requirements.

III. Other Issues Pertaining to State Authority

A. How Do the State-Only Provisions Affect EPA's Actions?

In our July 28, 1999 proposed rulemaking action we indicated that in June 1998, the MBER adopted ''Additional State Requirements'' for each of the seven sources in the Billings/Laurel area. These requirements (hereinafter referred to as the ''State-only provisions'') were not submitted for inclusion in the SIP and are enforceable only by the State of Montana. *See* 64 FR 40803, bottom right column of our July 28, 1999 action for a complete discussion of the State-only provisions.

We have considered the comments received on our discussion of State-only provisions in our proposal and still believe it is appropriate to conclude that since the State-only provisions were not included in the Billings/Laurel SO2 SIP, we are not approving or disapproving these provisions nor are we relying on these provisions in approving or disapproving other provisions in the submitted SIP. Nothing in this action should be construed as making any determination or expressing any position regarding the State-only provisions or their impact on the SIP. State-only provisions can affect only State enforcement of the SIP and cannot have any impact on federal enforcement authorities. We may at any time invoke our authority under the Act, including, for example, sections 113, 114, or 167, to enforce the requirements of the Billings/Laurel SO2 SIP independent of any State enforcement effort. We may take action to enforce the SIP regardless of any State compliance determination or any constraint on State enforcement discretion which the State-only provisions may impose. In addition, citizen enforcement under section 304 of the Act is likewise unaffected by the State-only provisions.

If we were to determine that the State-only provisions, as implemented, appeared to limit, constrain, or otherwise have a chilling effect on state enforcement of the SIP, we would reconsider our approval or take other appropriate action under the Act. Our reconsideration could occur under section 110(k)(6) of the Act or we could complete another SIP Call under sections 110(a)(2)(H) and 110(k)(5) of the Act. Other appropriate action could include a finding of failure to implement the SIP under section 179(a)(4) of the Act or enforcement action under section 113(a)(2) of the Act, or both.

B. How Does Montana's Environmental Audit Act Affect EPA's Actions?

On May 5, 1997, the Governor of Montana signed a bill enacted by the legislature (the Voluntary Environmental Audit Act, Mont. Code Ann. §§ 75–1–101 *et seq.* (1999), (H.B. 293, effective October 1, 1997)) that creates immunity under State law from penalties for violations discovered during a voluntary environmental audit and creates a judicial privilege under State law for information contained in an environmental audit report.

In our July 28, 1999 action we indicated that nothing in our proposal action should be construed as making any determination or expressing any position regarding the State of Montana's audit privilege and penalty immunity law or its impact upon any provisions in the SIP, including the proposed revision at issue.

However, our concerns about the effect of the audit law on the State's ability to enforce the SIP have been addressed by a formal agreement with the State. On December 13, 1999, EPA and the State entered into a Memorandum of Agreement (''MOA'') (*see* document # IV.C–32) concerning the effects of the audit law on state implementation and enforcement of all federal environmental programs in

Montana. Under the MOA, as long as the agreement and the State's legal interpretations of the audit law are in effect and functioning as intended, we and the State agree that State environmental programs, including the SIP, have sufficient authority to obtain and maintain EPA approval.

The State of Montana's audit privilege and immunity law affects only state enforcement and does not have any impact on federal enforcement authorities. We may at any time invoke our authority under the Act, including for example, sections 113, 114, or 167, to enforce the requirement or prohibitions of the State of Montana's plan, independent of any state enforcement effort. In addition, citizen enforcement under section 304 of the Act is likewise unaffected by a state audit privilege or immunity law.

IV. Other Rulemaking Actions

A. How Does This Final Action Relate to EPA's SIP Call?

In our July 28, 1999 proposal we indicated that our March 4, 1993 letter requesting revision of the Billings/Laurel area SO2 SIP (*see* document # II.G–1) stated that the letter was not final Agency action subject to judicial review, and that a final Agency action would occur when we made a binding determination regarding the State's response. We have considered the comments received on our proposed rulemaking action and still believe it is appropriate to finalize action on the SIP Call and on the State of Montana's response to the March 4, 1993 letter; we are making a binding determination regarding the SIP Call and the State of Montana's response to the letter with this final rulemaking action.

B. Why Is EPA Not Imposing Sanctions?

In our July 28, 1999 proposed rulemaking action, starting at 64 FR 40804, right column, we proposed that the sanctions specified in section 179(b) of the Act should apply if our proposed disapproval action became a final disapproval action. We also requested comment on whether we should accelerate the sanctions under section 110(m) of the Act. After reviewing the comments[10] received on our proposal action, we have decided not to select the order of sanctions that would apply in the Billings/Laurel area at this time. Consequently, if the 18-month sanctions clock that starts with today's disapproval of Montana's SIP expires without the State having corrected the identified deficiencies, no sanctions will be imposed. In the future, if we choose to select the order of mandatory sanctions or to apply early discretionary sanctions, we would do so through rulemaking.

[10] *See* footnote 7 above.

V. What Comments Were Received on EPA's Proposed Action and How Is EPA Responding to Those Comments?

Summary of Comments and Responses

Following is a summary of the comments received on the proposed rulemaking and our responses. The following is an outline of the subjects on which we received comments:

A. SIP Call
B. Sanctions
C. Flares
D. Dispersion Modeling
E. EPA's Partial Approval
F. Due Process for SIP Approval
G. Escape Clause
H. Language in ExxonMobil and MSCC Stipulations Related to Incorporation of Earlier Stipulations and Apportionment of the Airshed
I. Default Approval of SIP
J. Department Discretion
K. Quarterly Data Recovery Rate (QDRR)
L. Effect of the Montana Voluntary Environmental Audit Act
M. Effect of State-only Provisions
N. Enforcement and MDEQ Staffing
O. Reasonably Available Control Measures (RACM) Including Reasonably Available Control Technology (RACT) and Reasonable Further Progress (RFP) at Cenex
P. MSCC Auxiliary Vent Stacks
Q. MSCC's 30-meter Stack
R. ExxonMobil's and Cenex's Refinery Fuel Gas Limitation
S. Variable Emission Limitations
T. Minor Sources
U. Compliance Determining Method—ExxonMobil's Coker CO-Boiler Stack and F–2 Crude/Vacuum Heater Stack
V. Effect of the 1990 Amendments to the Clean Air Act
W. Stack Height Issues

A. SIP Call

We issued a request for revision of the Billings/Laurel area SO2 SIP by letter to the Governor of Montana, dated March 4, 1993 (*see* document # II.G–1). The request letter reflected our preliminary finding regarding the SIP's substantial inadequacy (SIP Call), and was published in the **Federal Register** on August 4, 1993 (58 FR 41430) (*see* document # II.G–3). In the request letter, we declared that the SIP Call would become final agency action when we made a binding determination regarding the State of Montana's response to the SIP Call. We proposed to make such binding determination regarding the SIP Call when we proposed to partially approve, conditionally approve, and partially disapprove the Billings/Laurel SO2 SIP revisions submitted by the State on Montana in response to the request letter. *See* 64 FR 40791, 40804 (July 28, 1999) (*see* document # III.A–2).

Summary of Comments and Response

Two commenters objected that the SIP Call is invalid and should be withdrawn.

We have considered the comments received and still believe our March 4, 1993 letter was appropriate and that we should make the SIP Call for the Billings/Laurel area a final agency action.

The following is a summary of the comments received and our response to the comments:

(1) *Comment:* Two commenters (MSCC letter, document # IV.A–19, comment #'s 1, 125; Goetz letter, document # IV.A–18, exhibit D, comment # III, p. 43) stated that the SIP Call is invalid and that subsequent actions by the State in response to the 1993 letter and by EPA on the State's SIP revision are invalid as well. These commenters submitted extensive comments on the dispersion modeling that was the basis of the 1993 letter, claiming that the modeling was defective and was not supported by monitoring data.

Response: We will address the comments on dispersion modeling and monitoring in section V.D. of this document, together with similar comments concerning the State's modeled demonstration of the effectiveness of the new SIP emission limitations. Please *see* section V.D., below (''Dispersion Modeling''). Here we will address other comments on the validity of the SIP Call.

(2) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment # 1; MSCC letter, document # IV.A–20, comment #'s 3.A, 3.B), stated that the SIP Call violates due process because it undoes an earlier approval of the existing SIP, while the letter was not made by rulemaking, was not properly noticed, and did not provide for timely and effective challenge because it was not denoted a final agency action. The commenter further stated that irreversible changes occurred without opportunity to challenge the underlying premises of the 1993 letter. Another commenter (Goetz letter, document # IV.A–18, exhibit D, comment # III, p. 43) stated that because the 1993 letter was not binding, presumably because it was not issued by rulemaking, no one could challenge its validity.

Response: The SIP Call does not violate due process. The provisions of the Act that authorize us to call for SIP revisions do not require rulemaking

until the Agency proceeds to make the SIP Call binding and final. Sections 110(a)(2)(H) and 110(k)(5) of the Act require (1) that we notify the State when we find that the applicable implementation plan is substantially inadequate to protect the NAAQS, and (2) that we make the notice public. When we sent our letter to the Governor of Montana on March 4, 1993 and published the letter in the **Federal Register**, see 58 FR 41430 (August 4, 1993) (document # III.G–3), we in effect provided our preliminary views regarding the SIP's substantial inadequacy and provided the State an early opportunity to respond to our assessment. Thus, we did not make a final, binding finding, and thus were not required to use notice and comment rulemaking procedures to issue the letter. Rather, the final binding action regarding the SIP Call, as well as our action on the State's response to the 1993 letter, is occurring in today's rulemaking. The SIP Call does not ''undo'' our prior approval of the 1977 SIP for the area or turn that approval into a disapproval. Any SIP Call denotes that the existing SIP has become inadequate, whether due to changes in conditions such as increased emissions, a change in requirements, or, as in this case, a change in our ability to measure the effectiveness of the SIP control strategy to protect air quality.

The opportunity to participate in the SIP development process that began with our letter to the Governor was provided by the public participation requirements of the Montana SIP and the proposed rulemaking in this action. *See* 64 FR 40791, 40806 (July 28, 1999) (document # III.A–2). The opportunity to review and comment on the proposed rule, which the commenters have exercised, satisfies the requirements of procedural due process mandated for SIP approval actions by sections 110(a) and 110(k) of the Act and section 553 of the Administrative Procedure Act. Under those provisions, the requirements of due process are satisfied by publication of a notice of proposed rulemaking with an opportunity for submission of written comments prior to final action. The Act does not require formal adjudication or formal rulemaking. *See Cleveland Electric Illuminating Co.* v. *E.P.A.,* 572 F.2d 1150, 1157 (6th Cir. 1978); *Buckeye Power, Inc.* v. *EPA,* 481 F.2d 162, 172 (6th Cir. 1973).

The appropriate mechanism for obtaining a formal hearing on our rulemaking on the SIP Call and on the SIP is to file a petition for review of this final action in the United States Court of Appeals for the Ninth Circuit, as provided by section 307(b) of the Act. The procedural requirements for exercising the opportunity for judicial review of our final action are discussed elsewhere in this document.

(3) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment #'s 1, 2nd page, 3, 4, 66 and other comments) stated that our SIP Call is an entirely discretionary act that was inadequately justified.

Response: The statutory provision authorizing SIP Calls provides that ''[w]henever the Administrator finds that the applicable implementation plan for any area is substantially inadequate to attain or maintain the relevant national ambient air quality standard.* * * the Administrator *shall* require the State to revise the plan as necessary to correct such inadequacies.'' Section 110(k)(5) of the Act (emphasis added). While it is true that EPA has some discretion in finding whether a SIP is substantially inadequate, the use of the imperative ''shall,'' rather than the optional ''may,'' appears to require EPA action as mandatory and not discretionary, once we make a finding of substantial inadequacy.

The same commenter believes the SIP Call is not adequately justified and that the Administrator should withdraw the 1993 letter. We believe our technical support document for the SIP Call (document # II.G–2) adequately justifies our final binding decision to call for a SIP revision and that no withdrawal of the1993 letter is necessary.

(4) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment # 1, 2nd page) stated that our SIP Call intrudes on the primary responsibility of the State to implement the Clean Air Act, contrary to section 101 of the Act. Another commenter (Goetz letter, document # IV.A–18, exhibit D, comment # V, p. 61) raised the same objection to our proposed action on the SIP.

Response: Section 101 of the Act, ''Congressional findings and declaration of purpose,'' is not a prescriptive provision and does not require particular action by anyone. But it does provide a statement of Congressional intent, which the remaining provisions of the Act effectuate. For example, section 101(a)(3) states a congressional finding that air pollution prevention and control are the ''primary responsibility of States and local governments''; section 101(a)(4) states a finding that ''[f]ederal financial assistance and leadership is essential for the development of cooperative Federal, State, regional, and local programs to prevent and control air pollution.''

These and other provisions of section 101 of the Act declare an intent to create a cooperative relationship between the federal government and the States ''to protect and enhance the quality of the Nation's air resources, so as to promote the public health and welfare'' as expressed by section 101(b). As the courts have recognized, ''The CAA simply 'establishes a program of cooperative federalism that allows the States, within limits established by federal minimum standards, to enact and administer their own regulatory programs, structured to meet their own particular needs.' '' *Commonwealth of Virginia* v. *Browner* (80 F.3d 869, 883 (1996) (quoting *Hodel* v. *Virginia Surface Mining & Reclamation Ass'n,* 452 U.S. 264, 289, 101 S.Ct. 2352, 2367–68 (1981)).

The intent to create a cooperative relationship for air pollution control is effected by the other provisions of the Act, including section 109, which authorizes us to establish NAAQS; by section 110(a), which directs States to assume the primary responsibility of developing SIPs to protect the NAAQS; and by section 110(k)(5), which authorizes us to take a leadership role by calling for revision when SIPs are found inadequate. Montana's action here, developing and submitting a SIP revision in response to our 1993 letter, fulfills the congressional intent that States take primary responsibility for air pollution control. In the federal partnership, both functions are necessary: both the primary responsibility assumed by the States and our standard-setting and oversight role.

(5) *Comment:* Two commenters (MSCC letter, document # IV.A–19, comment # 2; Goetz letter, document # IV.A–18, exhibit D, comment, p. 9) stated that we improperly constrained the State's action in responding to the 1993 letter, by placing time limits on the State's response and threatening to impose sanctions and withhold federal funds if the State did not submit timely SIP revisions. One of the commenters (MSCC letter, document # IV.A–20, comment # 4F) also stated that until we have promulgated a formal SIP Call for Montana, and given Montana the statutory time following final promulgation of the formal SIP Call, we are not required and may not be authorized to promulgate a FIP. Another commenter (McGarity letter, document # IV.B–1) stated that the process has taken too long.

Response: The maximum allowable time limits for submission of revisions in response to a SIP Call are established by statute. Section 110(k)(5) of the Act

provides that we ''*may* establish reasonable deadlines (not to exceed 18 months after the date of such notice) for the submission of such plan revisions.'' (Emphasis added.) However, the statute does not require us to establish a deadline in all cases. In our letter of March 4, 1993, we requested that Montana submit its revisions within an 18-month timeframe, which is consistent with the maximum allowable time where we are making a SIP Call binding and final. Under the letter, the SIP revisions were due on September 4, 1994 if the State chose to comply with the request. The State submitted the revisions on September 6, 1995, nearly a year later than this date. These revisions were modified and resubmitted on August 27, 1996, April 2, 1997 and July 29, 1998. In light of these facts, it is not necessary to establish a further schedule and deadline for the State to respond to the SIP Call in today's rulemaking, since we already have received the State's response.

We did not impose sanctions on Montana for failure to submit the revisions on time, but we did indicate that sanctions would apply in a letter to the State dated September 19, 1994 (document # IV.C–31). This letter and subsequent letters to the State on the timing of sanctions, dated March 14, 1996 (document #'s II.B–16 and B–17), were premature, and we later corrected them. Our authority to impose sanctions under section 179 of the Act can only be implemented after we conduct rulemaking to select the order of the sanctions to be imposed for failure to meet requirements of the Act. *See* section 179(a) of the Act. Because we did not promulgate a general rule for applying sanctions for failure to meet a SIP Call, we can impose them only through specific rulemaking that achieves two things: first, making the SIP Call binding and final so that the State's response becomes a ''required'' submission under the Act; and second, selecting the order of mandatory sanctions that will apply if the State fails to respond or if EPA disapproves the State's response. In our proposed rulemaking action we proposed to take the prerequisite rulemaking actions and to apply sanctions in the event that our partial disapproval of the SIP revisions became final action. *See* 64 FR 40791, 40804 (July 28, 1999) (document # III.A–2). (Our final action on the proposal to impose sanctions is discussed in section V.B., below.)

With respect to whether we can promulgate a FIP without completing formal rulemaking on the SIP Call, by this action, we are promulgating a formal SIP Call and can now propose a FIP to fill any gaps created by our disapproval of the Billings/Laurel SO2 SIP. We do not agree with the commenter that the Act requires us to give the State additional time to respond to the SIP Call and SIP disapproval, before we propose a FIP. Section 110(c) of the Act requires that we promulgate a FIP ''at any time within 2 years after'' we disapprove a SIP revision in whole or in part. There is no minimum time period before we may promulgate a FIP, but rather a two-year maximum time within which we *must* promulgate a FIP. Because the State has already had nearly nine years in which to respond to the initial 1993 letter, we do not believe that allowing additional time will serve the public interest in protecting the NAAQS through federally enforceable limitations on SO2 emissions.

(6) *Comment:* Two commenters (MSCC letter, document # IV.A–19, comment # 2; Goetz letter, document # IV.A–18, exhibit D, comment # 2, p. 9) also stated that the untimely threat to impose sanctions exerted improper and extreme pressure on Montana and the sources in the area to respond to the 1993 letter. One commenter (MSCC letter, document # IV.A–19, comment # 1, 3rd page) stated that the threat of sanctions was coercive and had the effect of forcing the State to impose emission limitations that were unauthorized and unconstitutional.

Response: These comments will be addressed in section V.E., below, discussing the Tenth Amendment and other constitutional and statutory challenges to our SIP action.

(7) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment # 1, 1st page) stated that the 1993 letter was invalid because the letter incorrectly stated that the existing SIP for the area did not contain enforceable emission limitations.

Response: Contrary to the commenter's statement, the 1993 letter does not contain a statement that the pre-1993 SIP did not include enforceable emission limitations. When we issued the 1993 letter, we were aware that some enforceable limitations on SO2 emissions were in place. We took those limitations into account in our analysis. For example, the modeling demonstration that formed the basis of the 1993 letter showed violations of the NAAQS for SO2 at emission levels allowed under existing emission limitations. The 1993 letter did state our view that the SIP in effect at that time was inadequate to attain and maintain the SO2 NAAQS and that emission reductions would likely be necessary to protect the NAAQS.

(8) *Comment:* One commenter (MSCC letter, document # IV.A–20, comment #'s 3J, 3K, 3N, 3Q, 3R) stated that the SIP Call is not binding, adequate or legally effective to say the SIP was inadequate because allowable and actual emissions have been reduced and voluntary improvements have occurred since 1993. Additionally, the commenter stated that since the 1993 letter additional information and facts have become available to further dispute or moot the results of the 1993 modeling and any opinion based thereon.

Response: The 1993 letter was supported by the evidence available at the time it was issued. That evidence could not have taken into account future events such as more restrictive emission limitations in state permits. Such later actions are irrelevant to the validity of the 1993 letter, though possibly relevant to Montana's response to the letter. Voluntary reductions in emissions since the 1993 letter are also irrelevant; they do not affect the validity of the 1993 letter or our rulemaking on the SIP Call and the SIP revisions.

(9) *Comment:* Two commenters (MSCC letter, document # IV.A–20, comment #'s 3.H., 3.L; Goetz letter, document # IV.A–18, exhibit D, comment # III.B, pp. 44–45) stated that the SIP Call is not binding, adequate or legally effective to say the SIP was inadequate because ambient monitoring in the Billings/Laurel area, both before and after the 1993 letter, did not show any violations of the SO2 NAAQS.

Response: For a discussion of whether contrary monitoring data invalidate the computer modeling used for the SIP Call and SIP development, readers are referred to the response to comments on modeling in section V.D., below. With respect to measurements of current concentrations, the emissions inventory for the Billings/Laurel area indicates that actual SO2 emissions have declined since 1993. One commenter (MSCC letter, document # IV.A–20, comment # 3.Q) notes that CEMS at the sources show lower emission rates now than at the time of the modeling. Ambient concentrations of SO2 measured by the area's monitoring network, not surprisingly, show a similar decline. To the extent that these reductions reflect the State's efforts to restrict emissions as part of its control strategy, they demonstrate the effectiveness of Montana's response to the SIP Call.

B. Sanctions

We proposed that the regulatory scheme issued for sanctions generally, under 40 CFR section 52.31, should also

apply here if our proposed partial disapproval of the SIP became a final action or if our adopted final conditional approvals later converted to disapprovals. We proposed to apply the sanction rule's provisions regarding the timing of sanctions. We also asked for comment on whether we should impose sanctions under section 110(m) of the Act to make the sanctions effective immediately upon the effective date of partial disapproval or conversion from conditional approval to disapproval, and on the geographic scope of any such discretionary sanctions.

Summary of Comments and Response

Eight commenters submitted comments on our sanctions proposal. Five of the eight commenters were opposed to our imposing sanctions, one commenter seemed only opposed to sanctions in Billings, and two commenters felt we should go beyond what was proposed and apply sanctions throughout the State. Some commenters were also opposed to applying sanctions immediately.

We have considered the comments received, and in our final rule, at this time, we have decided not to select the order of sanctions that would be necessary to apply mandatory sanctions (section 179(b)), or to impose discretionary sanctions (section 110(m)) in the Billings/Laurel area or anywhere else in the State of Montana. Thus, sanctions are not automatic in the Billings/Laurel area as a result of our partial and limited disapproval of the SIP, even if the State does not correct the identified deficiencies within the 18-month period starting with today's disapproval. To apply mandatory sanctions under section 179, we must complete a rulemaking action to specify the order of sanctions. Because the sanctions are not automatic before such action is completed, we believe we can use some of the principles of discretionary sanctions in deciding whether or not sanctions should be applied in the Billings/Laurel area.

We are not required to apply discretionary sanctions under section 110(m) of the Act. Section 110(m) says ''[t]he Administrator *may* apply any of the sanctions listed in section 179(b) at any time (or at any time after) the Administrator makes a finding, disapproval or determination under paragraphs (1) through (4), respectively, of section 179(a) in relation to any plan or plan item...required under the Act...'' Further, in the preamble of our rulemaking action for discretionary sanctions we indicated that we will exercise section 110(m) sanctions earlier than 18 months only in cases where: (1) the State has indicated an explicit resistance to resolving a plan or program deficiency or to making a required plan or program submittal; or (2) special circumstances, particular program needs, or time constraints dictate the need for use of such sanctions. *See* 59 FR 1481 (middle column), January 11, 1994.

In this particular case, the State initially submitted a SIP in September 1995 and then spent several years revising and updating the SIP to, among other things, address our concerns with previous SIP submittals. In a letter dated September 27, 1999 from Mark Simonich, Montana Department of Environmental Quality (MDEQ), to William Yellowtail, EPA, the MDEQ expressed a desire to correct the SIP so that it is approvable. (*See* document # IV.A–31.)

This history shows that the State has not shown resistance to resolving its plan deficiency or to making the required plan submittal. In addition, sources were required to meet the emission limitations in the Billings/Laurel SO2 SIP when the State's Board Order was signed (June 12, 1998), except where another effective date is specified in the exhibit A or attachment(s). Therefore, on the whole, the plan is being implemented now.

Because of the State's efforts to submit an approvable SIP and because the SIP is being implemented, we believe that it is not appropriate to apply discretionary sanctions in the Billings/Laurel area, or anywhere else in the State of Montana, at this time. In the future, if we choose to apply discretionary sanctions or to select the order of mandatory sanctions that would apply, we would do so through rulemaking.

The following is a summary of the comments received and our response to the comments:

(1) *Comment:* Several commenters stated that sanctions are not appropriate in any form, because there have been substantial reductions in SO2 emissions and ambient concentrations in the area; the area meets the NAAQS; and the State and industry have made a good faith effort to submit a SIP to us. (*See* State letter, document # IV.A–23, comment #'s 1A, 1B, 1C, 1D, 1E; Cenex letter, document # IV.A–26, Montana Petroleum Association letter, document # IV.A–17; ExxonMobil letter, document # IV.A–28, State letter, document # IV.A–31, MSCC letter, document # IV.A–20, comment # 4B, 6A; MSCC letter, document # IV.A–19, comment #'s 112, 114.)

Response: We agree that the State of Montana has made a good faith effort to submit an approvable SIP and that is why we have decided not to apply sanctions at this time. However, we do not agree that substantial reductions in SO2 emissions and ambient concentrations alone should warrant not applying the sanctions. Although sources over the past several years have reduced their actual SO2 emissions, and there has been a corresponding reduction in monitored ambient concentrations, the SIP allows sources to emit more SO2 than they actually do. Also, we have long held that SO2 monitoring may not be a true indication of ambient concentrations because of the nature of SO2 plumes. *See* our September 16, 1982 memorandum from Sheldon Meyers, Director, Office of Air Quality Planning and Standards to David Kee, Director, Air and Management Division, Region V, entitled ''Milwaukee SO2 Nonattainment Designation,'' and April 21, 1983 memorandum from Sheldon Meyers, Director, Office of Air Quality Planning and Standards to Regional Air Division Directors, entitled ''Section 107 Designation Policy Summary'' (document #'s IV.C–26 and IV.C–27, respectively). In both memoranda, we indicate that in most SO2 cases, a small number of monitors is usually not representative of the air quality for the entire area. See also response to comments D.2.a. and b.

(2) *Comment:* One commenter stated that imposing sanctions on Montana is unfair because the State made a good faith effort to develop the plan; the plan contains all the necessary elements and shows attainment; the plan may be unnecessary and later overturned by a court or even a subsequent Administrator; and EPA's criticism of the lack of approved emission limitations at this point source arises solely from EPA's failure to approve a reasonable plan and demonstration, and not the State's failure to submit it. The commenter also stated that Montana is not being treated equally with other areas that are attaining the NAAQS. (*See* MSCC letter, document # IV.A–20, comment #'s 4B, 4D, 4E, 6; MSCC letter, document # IV.A–19, comment # 112.)

Response: As indicated above, we agree that the State of Montana has made a good faith effort to submit an approvable SIP and that is why we have decided not to apply sanctions at this time. We do not agree that the plan submitted by the State contains all the necessary elements and shows attainment. *See* our proposed rulemaking action and TSD, document #'s III.A–2 and III.B–1, respectively, for a complete explanation of why we do not believe the submitted plan contains all the necessary elements. We do not

agree that we should not impose sanctions because of speculation about future challenges to our action or subsequent EPA Administrators. Finally, we do not agree that Montana is not being treated equally with other areas that are attaining the NAAQS.

(3) *Comment:* Several commenters stated acceleration of sanctions is not appropriate. (*See* Conoco letter, document # IV.A–24; Cenex letter, document # IV.A–26.) One commenter stated it is not appropriate to accelerate sanctions for failure to submit a SIP that we could approve in response to a SIP Call the commenter believes was not binding. (*See* MSCC letter, document # IV.A–19, comment # 111.)

Response: We agree that it is not appropriate to accelerate sanctions, at this time. The ability to accelerate sanctions comes under our discretionary sanction authority in section 110(m) of the Act. As indicated above, in the preamble of our rulemaking action for discretionary sanctions we indicated that we will exercise section 110(m) sanctions earlier than 18 months only in cases where: (1) the State has indicated an explicit resistance to resolving a plan or program deficiency or to making a required plan or program submittal; or (2) special circumstances, particular program needs, or time constraints dictate the need for use of such sanctions. *See* 59 FR 1481 (middle column) January 11, 1994. We believe the State has not shown an explicit resistance to resolving a plan deficiency or making a required plan submittal. At this time we do not believe there are special circumstances which warrant accelerating sanctions.

We do not agree with the commenter who stated that we should not accelerate sanctions because the plan is approvable and the 1993 letter was not binding. The issue of whether the 1993 letter was binding is discussed in section V.A., above. Our proposed rulemaking action and TSD provides a full explanation of why we believe the SIP is not fully approvable. *See* document #'s III.A–2 and III.B–1, respectively.

(4) *Comment:* Several commenters stated that sanctions are not appropriate since we were involved when the SIP was developed. The commenters stated our involvement blurred the State's primary role in developing the SIP and our role in approving the SIP. (*See* State letter, document #IV.A–23, comment #'s 1B, 1C, 1E; Cenex letter document # IV.A–26)

Response: We do not agree that we should not impose sanctions since we were involved when the SIP was being developed. We generally review and comment on SIPs as they are being developed and during the public comment period. Often states will ask for our interpretation of the Act, regulations and guidance so that SIPs, once submitted, will be approvable. In its comments on the proposal, the State of Montana portrayed our involvement in the SIP development as ''extensive and at times, overreaching.'' We do not agree with this characterization of our involvement and review. However, since we are not applying sanctions, at this time, we do not believe it worthwhile to debate the appropriateness of our involvement with respect to whether that should have any bearing on whether to apply sanctions.

(5) *Comment:* Several commenters stated that imposing sanctions sends the wrong message to the State and sources for their efforts and is inconsistent with the intent of Congress, which is clean air, not punishment. (*See* State letter, document # IV.A–23, comment # 1E.)

Response: We do agree that, in this case, sanctions may send the wrong message to the State for its SIP efforts and therefore we are not applying the sanctions. We do not agree, however, that applying sanctions would be inconsistent with Congressional intent. By authorizing sanctions for certain kinds of state planning failures, Congress intended to assure that SIPs and SIP revisions would be developed on time, would provide adequate controls, and would otherwise satisfy Act planning requirements.

(6) *Comment:* Several commenters stated that imposing sanctions in this case is a discretionary act by EPA and due to the circumstances in this case the sanctions should not be imposed. (*See* State letter, document # IV.A–23, comment # 1E; Cenex letter, document # IV.A–26; MSCC letter, document # IV.A–20, comment # 4A; MSCC letter, document # IV.A–19, comment # 112.) One commenter stated we are creating a rule structure just so that we could impose sanctions in Montana. (*See* MSCC letter, document # IV.A–20, comment # 4A.) One commenter questions whether we can impose discretionary sanctions under section 110(m) of the Act in cases such as this where section 179 is not applicable. (*See* State letter, document # IV.A–23, comment # 1E.)

Response: We agree that applying sanctions is a discretionary act in this case and due to the circumstances the sanctions should not be applied at this time. We also agree with the commenter that in our proposal we were creating a rule structure to impose sanctions. Because sanctions are not automatic in this particular case we believed we had to create a rule to impose them.

With respect to the commenter who questioned whether we could apply section 110(m) in cases where EPA is not exercising its authority under section 179, we already addressed this issue when we finalized our criteria for exercising discretionary sanctions under the title I of the Act (59 FR 1476, January 11, 1994). In the January 11, 1994 action, 59 FR 1479–1480, we indicated that ''EPA believes that section 110(m) and section 179, although interrelated, do set up two distinct sanctions processes.'' Additionally, on page 1480 of the January 11, 1994 action, third column we indicated that ''EPA disagrees that section 179 provides the sole authority for imposing sanctions. * * * In fact, the EPA believes the reference to statewide sanctions under section 110(m) makes it clear that section 110(m) establishes a different authority to sanction states.* * *''

While our sanctions authority under both provisions is triggered by a state failure regarding a required submission under the Act, we believe we have independent authority under section 110(m) to impose sanctions, even if we have not completed a separate rulemaking under section 179 to select the sequence of mandatory sanctions. We are choosing not to impose discretionary sanctions at this time. If we decide to impose sanctions in the future under section 110(m) we would propose them through notice and comment rulemaking and the public could comment at that time.

(7) *Comment:* One commenter stated that sanctions are not appropriate because the 1993 letter was not binding, adequate and/or legally effective as a determination that the SIP was inadequate. The same commenter stated we need to go through a rulemaking process on the SIP Call before we can start a sanction clock. The commenter stated that until we go through a rulemaking process we have circumvented the public notice, comment and appeals process that should precede any sanctions. (*See* MSCC letter, document # IV.A–20, comment #'s 3A, 3B, 4B, 4C, 4D, 5E.)

Response: In this case, we do not agree that sanctions would be inappropriate merely because the 1993 letter was not binding. Today's final action itself makes the SIP Call binding, and partially and limitedly disapproves the State's response to the SIP Call. Section 179(a) of the Act provides the statutory authority to apply sanctions for disapprovals of a SIP, in whole or in part, that is required to be submitted

under a SIP Call (section 110(k)(5)). Today's rulemaking renders the SIP Call binding and final, and takes final disapproval action on the State's required response. Therefore, under the statute, EPA would have the authority to select the order of sanctions that would be necessary to apply mandatory sanctions (section 179(b)), or impose discretionary sanctions (section 110(m)), if we conducted the prerequisite rulemaking and if the State failed to correct the identified deficiencies within 18 months of such rulemaking.

(8) *Comment:* Several commenters stated the geographic scope of the highway sanctions should be the entire state and the offset sanctions the Billings/Laurel area. (*See* YVCC letter, document # IV.A–30.) One commenter stated the geographic scope of the sanctions should be just the Laurel area. (*See* Conoco letter, document # IV.A–25).

Response: As indicated above, at this time, we are deciding not to apply sanctions anywhere in the State of Montana. Two commenters felt we should apply 2-to-1 emission offset sanctions in the Billings area. For the most part, 2-to-1 emissions offset sanctions can only be applied in areas designated as nonattainment. If we had elected to apply sanctions, since Billings is not a designated nonattainment area, we could not apply 2-to-1 emission offset sanctions there. *See* our January 11, 1994 final rulemaking action on discretionary sanctions, 59 FR 1479–1480, for a more detailed discussion on the geographic scope of sanctions.

(9) *Comment:* Several commenters stated sanctions would disproportionately affect Laurel and Cenex. (*See* Cenex letter, document # IV.A–26; MSCC letter, document # IV.A–20, comment # 5; MSCC letter, document # IV.A–19, comment # 114.) One commenter stated it is unfair to apply sanctions in Laurel because Laurel is a nonattainment area only in name; ambient data show the area is attaining the standard; Laurel is being punished for issues that are occurring in Billings and to which Laurel does not contribute. (*See* MSCC letter, document # IV.A–20, comment #'s 5A, 5C; MSCC letter, documment # IV.A–19, comment # 114.) This same commenter stated that once an area is designated nonattainment it is impossible to be redesignated to attainment. (*See* MSCC letter, document # IV.A–20, comment # 5B.) Finally, this commenter stated that Laurel's nonattainment designation occurred many years ago and was not the result of the issues identified in the current SIP. (*See* MSCC letter, document # IV.A–20, document 5D; MSCC letter, document # IV.A–19, comment # 114.) This commenter further stated that the CAA 1990 requirement that designations be reaffirmed is unreasonable in this case. (*See* MSCC letter, document # IV.A–19, comment #65.) This commenter stated that the area is more controlled now than at the time of Laurel's nonattainment designation and that it is hard to believe that not approving the SIP will jeopardize the NAAQS. (*See* MSCC letter, document # IV.A–20, comment # 5G.)

Response: As indicated above, at this time, we are deciding not to apply sanctions in Montana. If we had decided to apply sanctions just in the nonattainment area impacted by the Billings/Laurel SO2 SIP, then the commenters are correct that Laurel and Cenex would have been impacted more by the sanctions then the rest of the area and sources. We do not agree with the commenter who stated that applying sanctions in Laurel would be punishing Laurel for a Billings issue. Our proposed disapproval of the SIP, because of the lack of flare provisions, also pertains to Laurel; flare issues pertain in Laurel and Billings.

One commenter questions whether Laurel should be designated as a nonattainment area (presumably because the designation of Laurel impacts the sanctions that could apply). The fact is that Laurel is a designated nonattainment area. We cannot redesignate the area until the State submits a redesignation request and maintenance plan which we can approve. Contrary to the commenter's suggestion, redesignations of SO2 areas from nonattainment to attainment have occurred across the country. *See, for example,* 66 FR 14087 (March 9, 2001) and 65 FR 35577 (June 5, 2000). Prior to the Clean Air Act Amendments of 1990 (1990 CAAA), Laurel had an approved Part D plan but was still designated as nonattainment because the State had not submitted a redesignation request. Because Laurel was designated as nonattainment prior to enactment of the 1990 CAAA, upon enactment of the 1990 CAAA, Laurel remained a nonattainment area by operation of law. *See* section 107(d)(1)(C)(i) of the Act. Although one of the commenters states these requirements are unreasonable, we are required to implement the law. Since the 1990 CAAA, we determined that the SIP for the Billings/Laurel area was not adequate to protect the NAAQS. We do not believe we could approve a redesignation request and maintenance plan for Laurel until we determine that the SIP for Laurel is adequate to protect the NAAQS, *i.e.,* until we approve the SIP submitted in response to the SIP Call.

One commenter wonders how non-approval of the SIP will jeopardize attainment since the area is more controlled now than when Laurel was initially designated as nonattainment. What the commenter seems to be asserting is that there is no need for a SIP. We disagree. We found the SIP inadequate under the Act, and, thus, it is incumbent on the State to submit an adequate SIP. Whether emissions in the area have gone down since we issued our 1993 letter or since the State adopted the stipulations for the SIP is irrelevant. Our concern under the Act must be whether the federally approved and enforceable SIP meets the requirements of the Act. Congress gave EPA the ultimate approval role for SIPs.

(10) *Comment:* One commenter stated that damage done by sanctions can not be undone. Because of offset sanctions, sources may avoid projects, shut down or spend more money than is necessary (leaving sources at a competitive disadvantage). Withholding highway funds could cause a safety problem for people. Also, once a highway budget is lost it is irretrievable. (*See* MSCC letter, document # IV.A–20, comment # 5F; MSCC letter, document # IV.A–19, comment # 113.)

Response: It is difficult to respond to comments which speculate about what might happen in the future. At this point, we are deciding not to apply sanctions. However, as indicated above, Congress intended sanctions to be used to assure that SIPs and SIP revisions would be developed on time, would provide adequate controls, and would otherwise satisfy Act planning requirements. Applying sanctions may have adverse effects. However, highway funds used for safety and environmental projects cannot be withheld for sanctions applied under section 179 or 110(m) of the Act.

(11) *Comment:* One commenter stated that sanctions should not be imposed because of a dispute between the State and Federal governments regarding an interpretation of a regulation. The commenter stated sanctions should not be imposed until the differences are resolved or adjudicated. (*See* MSCC letter, document # IV.A–20, comment #'s 4D, 4E; MSCC letter, document # IV.A–19, comment # 114.)

Response: We do not agree that sanctions should not be applied merely because of a dispute between the State and EPA regarding an interpretation of a regulation. In this particular case, we told the State in 1996 that we could not

approve the plan based on its interpretation of the stack height regulations. In 1998, the State submitted revisions to the plan knowing that the plan would be disapproved in part.

C. Flares

We proposed to disapprove the SIP as it applies to the attainment demonstration because of the lack of enforceable emission limitations for flares. We also proposed to disapprove provisions of the SIP that allowed certain gas streams at Cenex and ExxonMobil to be burned in the flare.

Summary of Comments and Response

Eleven commenters submitted comments pertaining to our proposal impacting flares. Seven of the commenters opposed and three supported our proposed disapproval of the attainment demonstration for lack of flare limitations. Two commenters opposed and two supported our proposed disapproval of provisions that allowed certain gas streams at Cenex and ExxonMobil to be burned in the flare. One commenter noted that agencies across the country have struggled with flares.

We have considered the comments received and still believe it is appropriate to disapprove the SIP as it applies to the attainment demonstration for lack of flare emission limitations.

The following is a summary of the comments received and our response to the comments:

(1) *Comment:* Several commenters (State letter, document # IV.A–23, comment # 3; YVCC letter, document # IV.A–29; Zaidlicz letter, document # IV.A–30) stated that the attainment demonstration is incomplete without flare limitations. Several commenters (State letter, document # IV.A–23, comment # 3; Conoco letter, document # IV.A–28) stated that the State's current flare provisions should be or have been sufficient. Other commenters (Conoco letter, document # IV.A–24; ExxonMobil letter, document # IV.A–28; MSCC letter, document # IV.A–19, comment #'s 55, 76; MSCC letter, IV.A–20, comment # 7; Cenex letter, document # IV.A–26) stated we are mistaken in disapproving the attainment demonstration because the SIP lacks flare emission limitations and that we did not provide a valid reason for the proposed disapproval or why flares must have specific emission limitations. One commenter (MSCC letter, IV.A–20, comment #'s 7B, C and D) stated that our disapproval of the attainment demonstration for lack of enforceable flare limitations even though flares are modeled is in error and that the modeling of the flares provides a small degree of conservatism in the modeling and is an exercise of state discretion for determining the background SO2 concentrations.

Response: We continue to believe that the SIP as it applies to the attainment demonstration is not approvable since it does not have enforceable limitations on flares. Additionally, we believe our rationale in the proposed approval (64 FR 40801 of our July 28, 1999 proposal) provided a simple and logical reason why the attainment demonstration should not be approved and why flares must have emission limitations. We have not reviewed the State's current flare provisions because they were never submitted to us for review or approval. However, we did review and comment on earlier versions of the flare provisions that the State had adopted.

In the following documents we provided comments on earlier flare provisions adopted by the State: December 15, 1994 letter from Douglas M. Skie, Chief, Air Programs Branch, EPA, to Jeffrey Chaffee, Acting Administrator, Air Quality Division, Montana Department of Health and Environmental Sciences (*see* document # IV.C–17); April 19, 1995 letter from Douglas M. Skie, Chief, Air Programs Branch, EPA, to Jeffrey Chaffee, Administrator, Air Quality Division, Montana Department of Health and Environmental Sciences (*see* document # IV.C–18); June 3, 1997 letter from Jack W. McGraw, Acting Regional Administrator, EPA, to Mark Simonich, Director, Montana Department of Environmental Quality (*see* document # II.C–8); March 6, 1998 letter from Richard R. Long, Director, Air Program, EPA to Mark Simonich, Director, Montana Department of Environmental Quality (*see* document # II.C–10); and June 5, 1998 letter from Richard R. Long, Director, Air Program, EPA to Mark Simonich, Director, Montana Department of Environmental Quality (*see* document # II.E–7).

(2) *Comment:* Several commenters (Conoco letter, document # IV.A–24; American Petroleum Institute letter, document # IV.A–25; Cenex letter, document # IV.A–26; ExxonMobil letter, document # IV.A–28; MSCC letter, document # IV.A–19, comment # 55) stated that neither our regulations (40 CFR 51.281) nor the Act (section 110(a)(2)(A)) require that all control strategies in the SIP must be federally enforceable; State enforceability is sufficient. One commenter (MSCC letter, document # IV.A–20, comment # 7A) stated our proposed disapproval of the attainment demonstration is in error since flare limitations exist on the State level.

Response: We do not agree that some of the control strategies adopted by the State do not need to be submitted to us and made part of the federally approved SIP. The general air quality management philosophy is that we establish NAAQS; States develop, and submit to us, control programs to attain and maintain these NAAQS. We either approve or disapprove these control programs and to the extent they are approved they are legally enforceable by us and citizens under the Act.[11]

This philosophy is reiterated in the General Preamble, 57 FR 13497 (April 16, 1992)[12] (document # II.A–15), at page 13567, right column: ''[i]t is important to note that projections of the effect of planned air pollution control measures contained in the SIP's are not merely assumed but are enforced by regulations adopted as part of the SIP. Therefore, if the control measures are not implemented sufficiently to result in required reductions, the State or local agency, or EPA, can take action to enforce implementation of the regulations. This provides a means of achieving, at least in part, the goal of attainment and further progress required in the Act.'' The control measures cannot be enforced by citizens and us if the State does not submit them as a SIP revision and we do not make them federally enforceable by our approval of the SIP.

Further, our discussion on the lack of flare emission limitations in our TSD and proposed rulemaking[13] provides citations in 40 CFR part 51 to support the philosophy that all the control measures necessary for attainment and maintenance of the NAAQS must be included as part of the SIP.

The commenters point to 40 CFR 51.281 and section 110(a)(2)(A) of the Act as not requiring that every control strategy (relied on for attainment and maintenance of the NAAQS) be included as part of the federally approved SIP. The commenters state that State enforceability of certain control strategies satisfies these provisions. We believe the commenters are reading the Act and CFR incorrectly.

Section 110(a)(2)(A) of the Act says ''[e]ach implementation plan submitted by the State under this Act shall be adopted by the State after reasonable

[11] *See* our TSD (document # III.B–1, at p. 5) and 64 FR 40791 at p. 40805 (document # III.A–2).

[12] The General Preamble, a document we issued following the 1990 Clean Air Act Amendments, describes our preliminary views on how we should interpret various provisions of title I of the Act.

[13] *See* our TSD (document # III.B–1, at p. 37) and 64 FR 40791 at p. 40801 (document # III.A–2).

notice and public hearing. Each such plan shall—(A) include enforceable emission limitations and other control measures, means, or techniques * * *, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the Act.'' There are several important ideas in this section that the commenters are ignoring. First, the section presumes that the plan is being *submitted* to us. The State enforceable provisions for flares, which the commenters say meet section 110(a)(2)(A), have *not* been submitted to us. Second, the plan that is submitted to us shall contain enforceable emission limitations to meet the applicable requirements of the Act, *e.g.,* show attainment and maintenance of the NAAQS. If a plan is lacking in certain control measures necessary for attainment, then it does not meet section 110(a)(2)(A) of the Act. Finally, the definition of ''applicable implementation plan,'' in section 302(q) of the Act, supports the notion that the implementation plan is what is submitted and approved by us. The implementation plan, under the Act, does not consist of measures that are only enforceable by the State and were not included in the submission to EPA.

Forty CFR 51.281 indicates that any emission limitations necessary for attainment and maintenance of the NAAQS must be adopted as rules and regulations and be enforceable by the State. The commenters rely on the first sentence of this section as evidence that control measures for attainment and maintenance need only be State enforceable and do not need to be submitted as part of the plan. However, the commenters are ignoring the second sentence of this section which says that ''[c]opies of all such rules and regulations must be submitted with the plan.'' The definition of ''plan,'' in 40 CFR 51.100(j), supports the notion that the implementation plan is what is submitted and approved by us. Forty CFR 51.281 and 40 CFR 51.100(j), read together, support the theory that all control measures relied on for attainment and maintenance of the NAAQS *must* be submitted as part of the plan. The implementation plan, under 40 CFR part 51, does not consist of unsubmitted measures that are only State-enforceable.

(3) *Comment* Several commenters (Conoco letter, document # IV.A–24; Cenex letter, document # IV.A–26; ExxonMobil letter, document # IV.A–28) stated that since our modeling guidance in 40 CFR part 52, appendix W, footnote (e) of section 9.1.2 does not require modeling of malfunctions (these are not normal operations and not considered in determining allowable operations when modeling), emissions from flares during operations that are not normal (startup, shutdown, malfunctions and process upsets) should not be considered in determining the allowable emissions when modeling relative to the SIP.

Response: We agree with the commenters that our modeling guideline in 40 CFR part 52, appendix W, section 9.1.2, footnote (e) indicates that malfunctions are not modeled to determine the allowable limitation. We do not agree with commenters that our modeling guideline explicitly or implicitly does not require the modeling of emissions that result from operations that are not normal and routine or that operation of flares at the Billings/Laurel sources is not normal and routine, at least in part. The 150 lbs/3-hr flare emission limitation used in the attainment modeling does not reflect malfunction emissions, but rather emissions from routine operations at the refineries. Bob Raisch's September 28, 1995 letter to us (document # II.B–18, first page of the enclosure to the letter) says ''[t]he Department and each of the refineries estimated that amount of sulfur dioxide which is emitted from each flare during routine operations of the refinery.'' Tim Schug's January 22, 1999 letter to us (document # IV.C–12) indicates that a flare is a safety device that is used to manage combustible gases. Mr. Schug also indicates that ''[i]n addition, small and continuous quantities of gases may routinely be directed to the flare.'' Conoco's comments on our proposal (document # IV.A–24) says ''[r]outine emissions are expected to be less than 150 lbs SO2 per 3-hour period * * *'' Therefore, it appears that the State and industry agree that emissions from the flares occur on a routine basis.

Thus, for purposes of this action, we need not reach the issue of whether non-routine startups, shutdowns, etc. should be modeled. In this case, the State modeled routine flare emissions assuming they would be limited to 150 lbs of SO2 per 3-hour period, but did not include corresponding emission limits in the SIP submitted to us. This is the basis for our disapproval of the attainment demonstration for lack of flare emission limitations.

(4) *Comment* One commenter (Conoco letter, document # IV. A–24) referred to our concern that if we approved the SIP without making the State-only requirements federally enforceable, the sources could direct emissions from other process units to the flares to avoid violating any emission limitation or other requirement. Further, we indicated that it did not appear that sources could be penalized through the SIP if such circumvention occurred. Conoco stated that these concerns are misplaced since Montana Regulations and the ''Other Minor Sources'' provision of the stipulations prevent this. Two other commenters (YVCC letter, document # IV.A–29; Zaidlicz letter, document # IV.A–30) stated flares could be used to circumvent other emission limitations.

Response: In our proposed action we indicated that if there were no emission limitations on flares it appeared that sources could direct emissions from other process units to the flare to avoid violating an emission limitation or other requirement. We indicated that it did not appear that sources could be penalized through the SIP if such a circumvention occurred. One commenter stated our concern was misplaced because of existing State regulations and the ''Other Minor Sources'' provisions in the SIP.

The ''Other Minor Sources'' provision in the SIP does not alleviate our concern because this provision addresses the emissions of sulfur bearing gases from other minor sources which *are not* otherwise subject to the SIP. Our concern assumes that emissions being diverted to the flare *are* otherwise subject to the SIP.

We assume that the commenter is referring to the State's circumvention regulation as ''existing State regulations.'' The State's circumvention regulation, approved into the SIP, states, ''(1) No person shall cause or permit the installation or use of any device or any means which, without resulting in reduction in the total amount of air contaminant emitted, conceals or dilutes an emission of air contaminant which would otherwise violate an air pollution control regulation.'' Based on the title, it seems that the State's circumvention regulation should address the concern we raised. However, after further review of the regulation we are not convinced that it could prevent sources from directing emissions from other process units to the flare to avoid violating an emissions limitation or other requirement.

Therefore, we continue to believe that establishing emission limitations on flares or some other enforceable mechanism is necessary to prevent sources from redirecting emissions to the flare in order to avoid violating emission limitations elsewhere.

(5) *Comment:* Several commenters (Conoco letter, document # IV.A–24; American Petroleum Institute letter, document # IV.A–25; Cenex letter,

document # IV.A–26; ExxonMobil letter, document # IV.A–28; MSCC letter, document # IV.A–19, comment #'s, 55, 75, 76, 118; MSCC letter, document # IV.A–20, comment # 7F; Goetz letter, document # IV.A–18, exhibit C) stated that other SIPs do not limit emissions from flares, that this SIP should not either, and that our action here is arbitrary. One commenter (MSCC letter, document # IV.A–20, comment #'s 7E, 7F) stated our proposal to disapprove the attainment demonstration was in error because flare limitations are not required federally and flares are not stacks. One commenter (Goetz letter, document # IV.A–18, exhibit C) found that the Utah, Washington and Wyoming SIPS do not require limitations on flares. Finally, one commenter (MSCC letter, document # IV.A–19, comment #'s 77, 118) stated that if we determine that the Billings SIP is inadequate because of the lack of flare limitations we need to determine that all SIPs are inadequate and do a national rulemaking.

Response: We do not agree that just because other SIPs may not have limitations on flares that the Billings/Laurel SO2 SIP should not either. We believe that when an area has been determined to not be attaining the NAAQS, it is reasonable to apply extra measures to assure that the area attains and maintains the NAAQS. Since the State identified a concern with flare emissions and included the emissions in the attainment demonstration, we believe it is reasonable to make restrictions on flares federally enforceable. With respect to Utah, the commenters are correct that the federally approved PM–10 SIP for Salt Lake and Utah Counties does not contain SO2 flare emission limits.[14] We have identified this as an issue with the Utah PM–10 SIP and are working with the State to address the issue. Wyoming does not contain any SO2 nonattainment areas, and the one PM–10 nonattainment area, Sheridan, does not contain any refineries. Washington does not have any SO2 nonattainment areas. However, the Tacoma PM–10 nonattainment area in Washington does contain a refinery (*see* document #IV.C–14). EPA found in our October 12, 1994 (59 FR 51506) and October 25, 1995 (60 FR 54599) approvals of the PM–10 SIP for Tacoma that it is unlikely that precursors of PM–10 contribute significantly to PM–10 levels which exceed the NAAQS in that area. PM–10 precursor emissions (SO2) were not controlled as part of this SIP.

Therefore, although commenters cite specific examples of states near Montana that do not limit SO2 emissions from flares, we believe the situation in the Billings/Laurel area is sufficiently different to warrant the establishment of SO2 limitations on flares.

For the same reasons stated above, we do not agree that we need to do a national rulemaking to require that all SIPS contain limitations on flares.

Finally, we do not agree that flare limitations are not required on a federal level. What is required on a federal level are emission controls that will assure attainment of the NAAQS. In this particular case, since the attainment demonstration assumes flare emissions were controlled we believe the SIP should contain federally enforceable emission limitations on flares. With respect to the comment that flares are not stacks, the commenter is correct in that our definition of stack in 40 CFR 51.100(ff) indicates that flares are not included. However, just because an emission point is not a stack by definition does not mean that the emission point should not be controlled. There are numerous examples of fugitive emissions, which are not emitted from stacks, being controlled in SIPS. *See, for example,* the East Helena Lead SIP which was approved at 66 FR 32760 (June 18, 2001); the SIP establishes emission limits and work practices for loading, unloading and movement of material containing lead, for emissions from buildings, and for emissions from roads and parking lots on and off the facility property.

(6) *Comment:* Several commenters (Conoco letter, document # IV.A–24; Cenex letter, document # IV.A–26; MSCC letter, document # IV.A–20, comment # 7G) stated that instead of disapproving the SIP, flare emissions should be removed from the attainment demonstration. One commenter (MSCC letter, document # IV.A–20, comment # 7G) stated that flare emissions should be included with other background sources.

Response: We do not agree that the appropriate way to address flare emissions is to ''sweep them under the carpet'' or incorporate them with background sources. As mentioned above, it is widely accepted that routine emissions occur at flares. The State was concerned enough about these emissions that it chose to regulate them at the State level and considered them in the attainment demonstration. We believe that turning our back on an issue simply because it is difficult to address is not appropriate under the Act. The Act presumes that states will develop an appropriate mix of controls to protect air quality. The State identified the flares as an attainment issue. If the flares are not limited by enforceable limitations, attainment will not be assured.

(7) *Comment:* Several commenters (American Petroleum Institute letter, document # IV.A–25; Cenex letter, document # IV.A–26; Montana Petroleum Association letter, document # IV.A–27; MSCC letter, document # IV.A–19, comment #'s 55, 76) stated that flares are primarily emergency relief devices and limiting flares puts a refiner in an untenable position of having to choose between possible limitation violations or endangering the plant or its workers. These commenters also stated that flare use is essential and no reasonable alternative exists.

Response: Our proposed action is not intended to jeopardize the safety of refineries, their workers, or neighbors. Our SIP policy [15] has long recognized that imposing penalties for violations of emission limitations for sudden and unavoidable malfunctions caused by circumstances entirely beyond the control of the owner or operator may not be appropriate. States and EPA have the ability to exercise enforcement discretion to refrain from taking enforcement action in these circumstances.

However, we are not convinced that flare use is always essential or that no reasonable alternative exists. We know that other refineries, either because of enforcement action or a company decision, have reduced flaring through better operation and maintenance procedures throughout the refinery and/or by installing flare gas recovery systems to compress and recycle to the gas plant(s), gases that had previously been sent or released to the flare. *See* EPA's Enforcement Alert entitled ''Frequent, Routine Flaring May Cause Excessive, Uncontrolled Sulfur Dioxide Releases,'' Volume 3, Number 9, EPA 300–N–00–0014 (revised), October 2000 (document # IV.C–72).

(8) *Comment:* Several commenters (American Petroleum Institute letter,

[14] In PM–10 nonattainment areas, the control requirements applicable to major stationary sources of PM–10 also apply to major stationary sources of PM–10 precursors unless we determine such sources do not contribute significantly to PM–10 levels in excess of the NAAQS in that area (*see* section 189(e) of the Act). The General Preamble (document # II.A–15) contains guidance addressing how EPA intends to implement section 189(e) of the Act (*see* 57 FR 13539–13540 and 13541–13542). In the Utah PM–10 SIP, SO2 emissions at sources were controlled because SO2 is a precursor of PM–10.

[15] *See* document # IV.C–13, September 20, 1999 memorandum entitled ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown.'' This policy updates previous EPA policy, dating back to 1982, on this issue.

document # IV.A–25; Goetz letter, document # IV.A–18, exhibit C; MSCC letter, document # IV.A–19, comment #'s 55, 75) stated that since measuring flow and concentration of hydrogen sulfide of the gas stream flowing to the emergency flare is very difficult, the flares should not be controlled.

Response: We do not agree. First, we are not convinced that measuring flow and content of the flare is impossible. We are evaluating potential methods for measuring flare flow and content in preparation of our FIP. Second, other means are available to determine SO2 emissions from flares apart from measuring flare flow and content. To meet the ''State-only'' requirements for flares it appears that the refineries and MSCC are calculating SO2 emissions based on good engineering judgement.

(9) *Comment:* Several commenters (American Petroleum Institute letter, document # IV.A–25; Cenex letter, document # IV.A–26; ExxonMobil letter, document # IV.A–28; Montana Petroleum Association letter, document # IV.A–27; Conoco letter, document # IV.A–28) stated our action is precedent-setting and more data should be collected to justify the costs and the benefits of imposing emergency flare limitations.

Response: At this point we are not imposing flare limitations; we are disapproving the attainment demonstration for lack of flare emission limitations.

(10) *Comment:* Several commenters (Cenex letter, document # IV.A–26; American Petroleum Institute letter, document # IV.A–25; MSCC letter, document # IV.A–19, comment # 75; Conoco letter, document # IV.A–28) stated the emissions from flares are inconsequential based on the potential to emit levels in the SIP modeling and have little ambient impact. Two commenters (YVCC letter, document # IV.A–29; Zaidlicz letter, document # IV.A–30) stated SO2 emissions from flaring are significant. Other commenters (ExxonMobil letter, document # IV.A–28; American Petroleum Institute letter, document # IV.A–25; Conoco letter, document # IV.A–28) stated that SO2 emissions and ambient concentrations are at an all-time low and the imposition of extraordinary flare limitations is unnecessary.

Response: We do not agree that flare emissions are inconsequential and have little ambient impact.

The State modeled emissions from flares at 150 lbs of SO2/3-hours. This 3-hour modeled value equates to 219 tons of SO2/year for each source (((150 lbs SO2/3-hrs) * (8 3-hr periods/day) * (365 days/year))/(2000 lbs/ton)). A major source in a nonattainment area, under 40 CFR section 51.165, is a source that emits 100 tons per year or more of a pollutant subject to regulation under the Act. Under 40 CFR section 51.166, a major source in an attainment area, is a source that emits 100 tons per year or more of a pollutant subject to regulation under the Act if the source is a listed source category (refineries are a listed source category) and 250 tons per year or more of a pollutant subject to regulation under the Act if it is not a listed source category. Under the Title V operating permit regulations, 40 CFR section 70.2, a major source is a source that emits or has the potential to emit 100 tons per year or more of any pollutant. Therefore, based on our regulations, the modeled emissions from flares at each source, in and of themselves, are considered major. Also, as part of the attainment demonstration, the State assumed each of the refineries and MSCC had one flare; the cumulative flare emissions from all sources is 876 tons of SO2/year. We do not think flare emissions are inconsequential.

Also, there is the real possibility that flares emit more than the modeled SO2 level. Following its flare velocity and energy performance test, Conoco estimated flare emissions from the flare header at its Billings refinery at approximately 91 lbs of SO2/hour (*see* document # IV.C–2). This is equivalent to 399 tons of SO2/year.

Regarding the ambient impact of flare emissions, Bob Raisch's September 28, 1995 letter to us (document # II.B–18, first page of the enclosure to the letter) indicates that ''[t]he inclusion of routine flare emissions actually required lowering of the emission limitations at other sources within the refinery.'' Based on this statement, we believe that flares do have significant ambient impact.

(11) *Comment:* One commenter (Cenex letter, document # IV.A–26) stated that over-reliance on or misapplication of three of our policy memoranda pertaining to excess emissions during startup and shutdown (*i.e.,* the Bennett/Rasnic memos) has contributed to our concerns about the flare issue. Another commenter (MSCC letter, document # IV.A–19, comment #'s 55, 75) stated we cannot apply startup, shutdown and malfunction policy to events that cannot reasonably be controlled; that flares must be used during maintenance activities and neither industry nor the State agree with our interpretation that startup, shutdown and malfunction are avoidable.

Response: We do not agree that our flare concerns stem from any over-reliance on or misapplication of our policy pertaining to excess emissions during startup, shutdown and malfunction. Our proposed disapproval of the SIP stems from the fact that gas streams are sent routinely to the flare to be burned, causing SO2 emissions from flares. The attainment demonstration assumes that flares are limited yet the SIP submitted by the State does not contain limitations on flares. Therefore, we believe that attainment of the SO2 NAAQS cannot be assured without limitations on flares.

Earlier versions of the State's SIP (those submitted prior to the July 1998 submittal) contained exemptions from the flare limitations for startups, shutdowns and malfunctions. We were concerned about the automatic exemptions to emission limitations because attainment and maintenance of the SO2 NAAQS cannot be assured if exemptions to limitations are allowed. However, since the State removed the flare provisions from the SIP submitted to us, our concerns about startup, shutdown and malfunction were mooted. Note that our policy on excess emissions during startup, shutdown and malfunctions has been reaffirmed and reissued (document # IV.C–13).

(12) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment #75) stated we insisted that the State model flares and that we objected long after the State made clear it would not regulate flare emissions.

Response: We do not recall requiring the State to model flares. Our recollection is that we deferred to the State's judgement as to which flares should be explicitly modeled.

Also, EPA did not wait until the last minute to voice concerns about flares. Our initial comments on the flare provisions date back to December 1994. In the following documents we provided comments on the flare provisions: December 15, 1994 letter from Douglas M. Skie, Chief, Air Programs Branch, EPA, to Jeffrey Chaffee, Acting Administrator, Air Quality Division, Montana Department of Health and Environmental Sciences (*see* document # IV.C–17); April 19, 1995 letter from Douglas M. Skie, Chief, Air Programs Branch, EPA, to Jeffrey Chaffee, Administrator, Air Quality Division, Montana Department of Health and Environmental Sciences (*see* document # IV.C–18); June 3, 1997 letter from Jack W. McGraw, Acting Regional Administrator, EPA, to Mark Simonich, Director, Montana Department of Environmental Quality (*see* document # II.C–8); March 6, 1998 letter from

Richard R. Long, Director, Air Program, EPA to Mark Simonich, Director, Montana Department of Environmental Quality (*see* document # II.C–10); and June 5, 1998 letter from Richard R. Long, Director, Air Program, EPA to Mark Simonich, Director, Montana Department of Environmental Quality (*see* document # II.E–7).

(13) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment #75) stated the State carefully considered this and determined flares should not have federal limitations. Another commenter (McGarity letter, document # IV.B–1) stated that regulating emissions from flares is a technical area that state agencies around the country have struggled with. There are many valid technical difficulties associated with monitoring and controlling emissions from flares.

Response: We do not agree with the commenter that the State carefully considered the flare issue and determined flares should not have federal limitations. Based on the State's comments submitted in response to our proposed action (*see* document # IV.A–23), the commenter is not representing the State's position accurately.

In its comments to our proposed action (*see* document # IV.A–23, comment #3) the State said, ''[t]he State agrees with EPA that the SIP is incomplete without enforceable emission limitations applicable to flares, and that such limitations should correspond to the emission rates used in the attainment demonstrations. However, after significant effort to address the issue, the State was unable to find a workable solution that would meet EPA's concerns.''

We agree with the commenter that it appears that state agencies across the country have struggled with limiting emissions from refinery flares. However, as indicated in response to comment # 7, above, it appears that there have been recent strides in reducing and measuring emissions from flares.

(14) *Comment:* Two commenters (Cenex letter, document # IV.A–26; ExxonMobil letter, document # IV.A–28) stated that we should not disapprove the provisions that allow the burning of certain gas streams at Cenex and ExxonMobil in the flare because ExxonMobil and Cenex have a way to account for the emissions and under the State-only provisions the flare emissions are limited. Two commenters (YVCC letter, document # IV.A–29; Zaidlicz letter, document # IV.A–30) agree that sour water stripper emissions, if burned in the flare would be unregulated. These commenters stated that sour water stripper emissions should be sent to a sulfur recovery unit instead of burned in a combustion unit.

Response: We proposed to disapprove provisions of the SIP that allow Cenex and ExxonMobil to burn sour water stripper emissions in the flare (in Cenex's exhibit sections 3(B)(2) and 4(D), only as they apply to flares, and in ExxonMobil's exhibit sections 3(E)(4) and 4(E), only as they apply to flares). Commenters stated we should not propose to disapprove these provisions since Cenex and ExxonMobil have methods to determine SO2 emissions when these specific gas streams are burned in the flare. Although we understand that the SIP provides a means to determine SO2 emissions when these gas streams are burned in the flare, the flare does not have any limitations that are enforceable under the federal SIP. Therefore, although the SO2 emissions from the gas streams burned in the flare can be accounted for, the emissions are not limited. We believe that attainment of the SO2 NAAQS can not be assured without enforceable limitations on the flare. We continue to believe that the provisions that allow the burning of sour water stripper emissions in Cenex and ExxonMobil's flare should be disapproved. However, in this action we cannot require that the sources be prohibited from burning sour water stripper emissions in a combustion unit or that they send the sour water stripper emissions to the sulfur recovery unit. We can only approve or disapprove the SIP as submitted by the State. Likewise, we cannot create any new requirements by our action on the SIP.

(15) *Comment:* Several commenters (Conoco letter, document # IV.A–24; Montana Petroleum Association letter, document # IV.A–27; ExxonMobil letter, document # IV.A–28) recommend that we conditionally approve, rather than disapprove, the SIP as it applies to flares, so that differences between us and the State can be worked out.

Response: We cannot conditionally approve the SIP with respect to flares unless the Governor of Montana commits to revise the SIP to address our concerns. *See* section 110(k)(4) of the Act. At this time we have not received such a commitment.

D. Dispersion Modeling

Based on our regulations and the characteristics of the Guideline models in appendix W, in our proposed rulemaking we found that the State of Montana used the appropriate computer models for analyzing the adequacy of the existing SIP and for setting emission limitations in the SIP revision to protect the SO2 NAAQS. However, for several reasons discussed in our proposed rulemaking and TSD we proposed to disapprove the attainment demonstration.

Summary of Comments and Response

Two commenters believed that the dispersion modeling that formed the basis for both the 1993 letter and the attainment demonstration was invalid. Two commenters also proposed using other models for attainment demonstration purposes. One commenter wanted us to acknowledge that there were two modeling attainment demonstrations; one for the Laurel area and one for the Billings area.

We have reviewed the comments received and still believe that Montana used the appropriate computer models for analyzing the adequacy of the existing SIP and for setting emission limitations in the SIP revision to protect the SO2 NAAQS. We also acknowledge that there are two modeling demonstrations.

The following is a summary of the comments received and our response to the comments:

1. Validity of the Computer Models

(a) *Comment:* Two commenters (MSCC letter, document # IV.A–19, comment # 1; MSCC letter, document # IV.A–20, comment # 8.B; Goetz letter, document # IV.A–18, exhibit D, comment # III, p. 43) stated that computer modeling of SO2 concentrations in the Billings/Laurel area was invalid because the models used by the State were screening models that over-predict concentrations. One of the commenters (MSCC letter, document # IV.A–20, comment # 3D) stated that EPA's conclusion that the existing SIP was inadequate was not based on the output of an Appendix A model.

Response: We do not agree with the commenters that only screening models were used. We also disagree with the assertion that EPA's SIP Call was not based on the output of an appendix A model. Appendix A to appendix W of part 51, Summaries of Preferred Air Quality Models, provides key features of refined air quality models preferred for specific regulatory applications. In the modeling studies for both the SIP Call and the attainment demonstration of the revised SIP, an analysis was performed using the modeling techniques and data bases recommended in our ''Guideline on Air Quality Modeling (Revised)'' (''EPA Guideline'' or ''Guideline''). Our Guideline is found in 40 CFR part 51, appendix W.

Two Guideline models were used. For ''simple terrain'' below the tops of stacks, the ISC2 model was used. ISC2,

a revised version of ISC, is a refined dispersion model that is preferred by EPA for a wide range of regulatory applications in simple terrain. *See* 40 CFR part 51, appendix W, section 4.1.a and appendix A to appendix W. ISC2 was listed in appendix A to the Guideline at the time the modeling analyses for the Billings/Laurel SIP were performed. (The current version of the Guideline lists ISC3 as a preferred model. *See* 40 CFR part 51, appendix A to appendix W, A.5. ISC3 is a more refined version of ISC2 and did not exist at the time of the modeling analyses for the Billings/Laurel area.) For terrain above the tops of stacks, COMPLEX I was used. This is a preferred screening technique, which is incorporated into ISC2 to evaluate concentrations of SO2 in ''complex terrain.'' *See* appendix W at section 5.2.1. A screening model may over-predict concentrations or may under-predict concentrations in comparison to concentrations that will actually occur in the future. COMPLEX I is not an appendix A model; however, as mentioned above, it is part of ISC2/ISC3 which is an appendix A model. Section 5.2.1.a of the Guideline indicates that for complex terrain any of the identified screening techniques (including COMPLEX I) may be used consistent with the needs, resources and available data of the user. Section 5.2.2.a of the Guideline indicates that when results of the screen analysis demonstrate a possible violation of the NAAQS or the controlling PSD increments, a more refined analysis may need to be conducted. For reasons discussed later in this section, a more refined model could not be applied for complex terrain in the Billings/Laurel area.

(b) *Comment:* One commenter, (MSCC letter, document # IV.A–19, comment # 6) stated that modeling is required under the Act only for reports to Congress and for prediction of the effect of emissions (presumably from new sources)—not for determination of SIP adequacy.

Response: The statutory provision that authorizes the use of modeling is not limited as the comment suggests. Section 110(a)(2)(K) of the Act requires that all SIPs must

provide for—

(i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and

(ii) the submission, upon request of data related to such air quality modeling to the Administrator.

By its terms, this provision does not limit the use of modeling to making reports to Congress or permitting new sources. An essential function of air quality modeling is determination of SIP adequacy; so, too, is the establishment of emission limitations for existing sources as part of SIP development. Air quality modeling is, in fact, the only reliable means of determining the adequacy of an SO2 SIP to protect the NAAQS, as will be explained in more detail below.

(c) *Comment:* Two commenters (MSCC letter, document # IV.A–19, comment # 107; Goetz letter, document # IV.A–18, exhibit D, comment #'s III.C, p. 46, and III.F, p. 55) stated that the models should have been validated in the Billings/Laurel area.

Response: As EPA Guideline models, ISC2 and COMPLEX I have been standardized and validated through scientific study and application in many areas of the country. We authorize the direct use of Guideline models in regulatory applications such as SIP Calls and SIP development, ''without a formal demonstration of applicability'' in the local area, as long as the models are used as directed in appendix W. *See* 58 FR 38816, 38825 (July 20, 1993) (rulemaking by which our modeling guideline was codified as a regulatory requirement).

Validation of the model in the local area where it will be applied is not required for any of the standardized Guideline models or approved screening techniques. On-site validation is required only for alternative models, which are proposed by industry or states to be used in lieu of our Guideline model. Industry in the Billings/Laurel area and the State of Montana did not propose to collect the necessary air quality/meteorological data and perform the statistical performance evaluation and comparison of models that would be necessary to apply an alternative model for the Billings/Laurel area SIP revision. If an alternative model could be shown to perform better than ISC2/COMPLEX I, it would yield somewhat more accurate predictions of ambient impacts of SO2 emissions, but such an effort would require a minimum of one year of on-site data gathering and considerable expense in research costs. The results of such a study could dictate the need for either higher or lower emission control limitations.

(d) *Comment:* Two commenters (MSCC letter, document # IV.A–20, comment #'s 3.G and 3.S; Goetz letter, document # IV.A–18, exhibit D, comment # III.C, p. 46) stated that a prior agreement (1977 Stipulation) required the State to validate any models used in the Billings/Laurel area, but that the State's 1984 studies showed that the model used was ''invalid'' for the area. The model determined to be invalid in 1984 is being used in the Billings/Laurel area now. The MDEQ has completed a ''performance evaluation'' of the model, not a validation study. One of the commenters (Goetz letter, document # IV.A–18, comment # III, p. 43) stated that, in response to a SIP Call based on defective modeling, the State developed a SIP based on defective modeling.

Response: Although our regulations do not require local validation of the models (see D.1.(c), above), MDEQ did perform an evaluation study in the Billings/Laurel area in 1994, using monitoring data to determine how accurately the models were performing. The evaluation study compared monitored data with modeled predictions for the same site. The evaluation study showed that model performance by ISC2 and COMPLEX I exceeded the levels of accuracy that we expected for this application and exceeded the performance of the models in similar tests elsewhere in the country. We do not believe the SIP Call and subsequently developed SIP are based on defective modeling. *See* also the response to Comment (g), below.

(e) *Comment:* One commenter (Goetz letter, document # IV.A–18, exhibit D, comment # III.F, p. 56) stated that the 1994 evaluation study showed a failure to correlate modeled results and monitored data at 13 of 88 data points.

Response: The evaluation study showed that the model passed the statistical test at 75 data points, an acceptable level. Moreover, the study showed that the ISC2/COMPLEX I model predicted concentrations within plus or minus 20 percent of monitored levels. This is an unusually high correlation. We would expect errors in the highest estimated concentrations of plus or minus 10 to 40 percent to be typical for models of this type. *See* the Guideline on Air Quality Models, appendix W at 10.1.2. (We would not expect the study to predict concentrations within a ''factor of two,'' the correlation which the commenter (Goetz letter, document # IV.A–18, exhibit D, comment # III.A, p. 44) attributed to us as an acceptable test of model performance.) Where the model failed the test, MDEQ attributed the discrepancy to an underestimate of actual SO2 emissions at Cenex, not a flaw in the model itself.

(f) *Comment:* One commenter (Goetz letter, document # IV.A–18, exhibit D, comment # III.F) also stated that ISC2

should have been evaluated in elevated terrain near the tops of stacks.

Response: Such an evaluation might be possible in an area that has a single source with only one or a few stacks. Because of the large number of stacks in Billings, all at different elevations, it would be impossible to establish a single value for ''stack-top'' elevation; such a study would not be meaningful. In any case, a local validation study is not required for a nationally validated model, such as ISC2/COMPLEX I.

(g) *Comment:* Two commenters (MSCC letter, document # IV.A–20, comment #; Goetz letter, document # IV.A–18, exhibit D, comment # III.C, p. 46) stated that MDEQ conducted a validation study of COMPLEX I in the Billings/Laurel area in 1983–84 and that the model failed miserably.

Response: Having reviewed the test report (*see* document # IV.A–17, exhibit # 88), we conclude that this was not a true validation study. A true validation study of COMPLEX I would involve placing large numbers of temporary monitors, called ''sampling bags,'' on nearby hillsides and measuring the impacts of tracer gases emitted from individual stacks to determine which stacks are impacting which areas of elevated terrain. The data collected from the array of monitors would then be compared with modeled predictions based on real-time measured emissions from all the sources. We conducted studies of this kind, at great expense, to validate COMPLEX I and other dispersion models on a national level in the 1980's. Our validation studies showed that COMPLEX I did not perform as well as refined models, but performed well enough to serve as a screening tool for use in valley areas with multiple stacks, like the Billings/Laurel area.

The State study in 1983–84 used the existing limited monitoring network of seven monitors, few of which were located in elevated terrain. Tracer gases were not employed, and SO2 emissions estimates for the Billings sources were unreliable at the time. The MDEQ's conclusion that COMPLEX I was not appropriate for modeling sources in Billings, as reported by one commenter (Goetz letter, document # IV.A–18, exhibit D, comment III.C, p. 46), was based on an inadequate evaluation and is not pertinent to the validity of the SIP Call or the attainment demonstration.

(h) *Comment:* One commenter (Goetz letter, document # IV.A–18, exhibit D, comment III.E, pp. 51–54) cited case law to support his assertion that the computer models that were used to develop the SIP for the Billings/Laurel area required on-site validation.

Response: The cases cited in the comment are concerned with the less reliable models that predated the standardized Guideline models now incorporated into appendix W. For example, in *State of Ohio* v. *United States* EPA, 784 F.2d 224 (6th Cir. 1986), the Sixth Circuit held that EPA arbitrarily relied on the CRSTER computer model to set air pollution limitations for two electric utility plants on Lake Erie. The CRSTER model, now obsolete, was used to predict concentrations of SO2 over the Lake under unusual meteorological and topographic conditions for which the model had not been validated. The facts in the *Ohio* case distinguish it from the Billings/Laurel area SO2 SIP. Unlike the CRSTER model, the models used for the Billings/Laurel area have performed well in similar applications elsewhere in the country involving similar topographic features and similar meteorological characteristics. There are no unusual conditions in the Billings/Laurel area that would tend to undermine the reliability of ISC2 and COMPLEX I; on-site validation would be redundant.

(i) *Comment:* One commenter (MSCC letter, document # IV.A–20, comment # 8.A) stated that models must take into account the unique characteristics of the area where they are used and that modeling for the Billings/Laurel SIP failed to take the area's unique characteristics into account.

Response: Modeling for the SIP considered all Billings/Laurel area sources, stack parameters, building dimensions, emission rates, terrain elevations, and five years of continuous meteorological data collected at a representative location. We believe that this data set adequately accounts for the unique characteristics of the area.

(j) *Comment:* One commenter (Goetz letter, document # IV.A–18, exhibit D, comment # III.E. p. 52) quoted the *State of Ohio* opinion as supporting the position that ''EPA's own guidelines'' recognize the importance of validating a model with monitored data from the local area.

Response: The ''guidelines'' referred to have been superseded. The court was referring to the 1978 version of the *EPA Guideline on Air Quality Models 6,* which did encourage local validation. This version was superseded in 1986 by an extensive revision of the Guideline. At that time, we conducted national validation studies on all existing computer models and replaced some of them with more reliable models. In 1993, the revised Guideline was incorporated directly into 40 CFR part 51 as appendix W. *See* 58 FR 38816 (July 20, 1993).

(k) *Comment:* One commenter (Goetz letter, document # IV.A–18, exhibit D, comment # III.E. p. 53–54) also cited *Cincinnati Gas* & *Electric Co.* v. *Environmental Protection Agency,* 578 F.2d 660 (6th Cir. 1978) and *Columbus & Southern Ohio Elec. Co.* v. *Costle* (638 F.2d 910 (6th Cir. 1980) as indicating the necessity for on-site validation.

Response: In these cases, the Sixth Circuit remanded regulatory decisions to EPA when the agency's model (MAXT–24) used assumptions that were successfully challenged by local studies. The MAXT–24 model, again, has been superseded nationally and is not an EPA Guideline model. These cases do not discredit the application of nationally validated Guideline models, ISC2 and COMPLEX I, in the Billings/Laurel area.

2. Effect of ''Contradictory'' Monitoring Data

(a) *Comment:* Two commenters (MSCC letter, document # IV.A–19, comment # 1; MSCC letter, document # IV.A–20, comment #'s 3.H and 3.I; Goetz letter, document # IV.A–18, exhibit D, comment #'s III.A and III.B, pp. 44–45) stated that ambient air monitoring is more accurate than computer modeling and that monitoring data for the Billings/Laurel area do not support the models' predicted violations of the SO2 NAAQS. One commenter (MSCC letter, document # IV.A–19, comment # 119) suggested that rather than issuing a SIP Call, we should have questioned how our models or the State's monitors could be so far wrong.

Response: Monitoring is not more accurate than computer modeling, except for determining ambient concentrations under real-time conditions at a discrete location. Monitoring is limited in time as well as space. Monitoring can only measure pollutant concentrations as they occur; it cannot predict future concentrations when emission levels and meteorological conditions may differ from present conditions. Computer modeling, on the other hand, can analyze all possible conditions to predict concentrations that may not have occurred yet but could occur in the future. As stated in the Guideline on Air Quality Models (''the Guideline'') ''[m]odeling is the preferred method for determining emission limitations for both new and existing sources. When a preferred model is available, model results alone (including background) are sufficient.'' 40 CFR part 51, appendix W, section 11.2.2. In the usual case, regulators may rely on the results of modeling and are not required to

consider measured data from local ambient monitoring.

(b) *Comment:* One commenter (Goetz letter, document # IV.A–18, exhibit D, comment # III.A, p. 44) stated that monitoring data may reasonably be used as an acceptable technique to demonstrate that the air quality in a region is being protected; monitoring data are facts, while models use assumptions.

Response: The Guideline states, ''Due to limitations in the spatial and temporal coverage of air quality measurements, monitoring data normally are not sufficient as the sole basis for demonstrating the adequacy of emission limits for existing sources.'' Forty CFR part 51, appendix W, section 1.0.b. The use of measured data in lieu of model predictions for SIP development is discouraged, because it is impossible to capture worst case conditions, for either emission levels or meteorology, with only a few monitors. Monitored data may be used in certain, limited circumstances and only if monitors are located at points of maximum concentration. *See id.* at section 11.2.2. Even then, locations of maximum concentration may not remain the same, but may change from year to year in response to changes in emission patterns and emission rates from existing sources, installation of new emission sources, and meteorological variability.

Even the most extensive monitoring network does not represent future concentrations of pollutants and thus cannot predict future violations. Modeling, on the other hand, can predict for all possible conditions and can show how well the emission limitations in the SIP will protect air quality under future conditions. Modeling assumes the maximum emission levels allowed under applicable emission limitations and assumes worst case meteorological conditions based on evidence of historical meteorological patterns. Models operate on assumptions, but the assumptions are based on facts. The models analyze the combined effects of the worst case values of the two variables (emission levels and meteorology) on ambient concentrations of pollutants at a multitude of ''receptors'' or sites, to predict maximum concentrations that may not have occurred yet, but could occur in the future.

In general, appendix W and the Guideline models have been adopted by rulemaking in accordance with the Administrative Procedures Act. They may not be challenged in this action; they could have been challenged only by timely petition to the U.S. Court of Appeals for the D.C. Circuit in accordance with section 307(b) of the Act.

(c) *Comment:* Two commenters (MSCC letter, document # IV.A–19, comment # 1; Goetz letter, document # IV.A–18, exhibit D, comment # III, p. 43) stated that we ignored contradictory information from the monitors in favor of modeling when we issued the 1993 letter, thus invalidating the SIP Call.

Response: Historically, the seven monitors in the Billings/Laurel area (the State added a new monitor in 1999) have not measured violations of the SO2 standards. We were aware of the non-supportive monitoring information at the time of the 1993 letter and discussed the data in our letter (*see* document # II.G–1). There we cited cases that approve EPA's reliance on modeling results in the face of apparently contrary monitoring data. In *Northern Plains Resource Council* v. *U.S. Environmental Protection Agency*, 645 F. 2d 1349 (9th Cir. 1981), for example, the court held that EPA's reliance on a model would be arbitrary and capricious only if ''EPA ignored reliable data that so undermined EPA model projections that reliance on the model was irrational.'' *See* 645 F.2d at 1362.

In the SIP Call, we are not ignoring reliable data. We analyzed the available monitoring data, compared it with modeling results, and determined that it did not undermine the modeling results because the data had not been obtained at locations where the models predicted maximum concentrations of SO2. In addition, real time monitoring data was available to the operators of some of the industry sources, who could have controlled their operations to avoid NAAQS exceedances when concentrations approached critical levels. For these reasons, we conclude that the lack of monitored violations do not undermine the models' projections.

(d) *Comment:* Two commenters (MSCC letter, document # IV.A–20, comment # 3.L; Goetz letter, document # IV.A–18, exhibit D, comment # III.B, p. 45) stated that, after the 1993 letter, the State moved its monitors to two of the locations where maximum concentrations were predicted, but that these monitors still have not registered violations of the SO2 NAAQS.

Response: The monitors' failure to register violations is not surprising. Information provided by the sources and MDEQ indicates that actual emissions have declined since 1993. Modeling can analyze the combined effects of the highest allowable emission levels and worst-case meteorological events at numerous receptors to predict violations. Any one monitor is unlikely to measure such synchronous events at a single location. When actual emission levels are lower than allowable emissions and, as in the Billings/Laurel area, are actually declining, monitored levels cannot be expected to match computer modeling results.

In *Northern Plains Resource Council*, the Ninth Circuit observed that monitored data can only be used to validate (or, by implication, invalidate) a model, if the data are collected under the same conditions for which the model is predicting ambient concentrations. *See* 645 F.2d at 1364. For the Billings/Laurel SIP Call, the model predicted violations at allowable levels, the maximum levels of emissions permitted under the existing SIP. It is unlikely that the sources in the area were emitting SO2 at maximum allowable levels at the same time, during the most adverse meteorological conditions. Furthermore, even now, monitors are not located at many locations where the SIP Call modeling indicated NAAQS violations. Therefore, the monitoring data were not collected under the same conditions for which the models were predicting violations. Although these conditions may not have occurred yet, they can occur in the future. The SIP Call is necessary to protect the air quality in the Billings/Laurel area now and in the future.

The same point was made in another case, *PPG Industries, Inc.* v. *Costle*, 630 F.2d 462 (6th Cir. 1980). There the court agreed with EPA that ''projected future violations may provide the basis for a nonattainment designation in currently clean areas.'' 630 F.2d at 464. Contrary monitoring data would not necessarily bar a nonattainment designation (or a SIP Call) based on modeling to protect the NAAQS in the future. The court held that ''EPA need only offer record support of the accuracy of the model used.'' *Id.* at 467. Record support for the model used for the Billings/Laurel SIP Call is provided by the EPA Guideline, appendix W.

The *PPG Industries* court observed that if EPA based its action on predictions of future violations, ''monitored data which merely show historical attainment of air quality standards'' do not undermine the agency's decision. *Id.* at 468. The monitored data being offered to contradict modeling results must show that the modeled predictions are ''unsupportable.'' *Id.* The commenters have not shown that the modeled predictions of violations in Billings/Laurel are unsupportable in comparison to monitoring data, for the reasons already cited—the lack of monitoring

data from locations of predicted maximum concentrations, the lack of monitoring data for impacts of maximum allowable emissions, the possibility that source operators changed operations when feedback from monitors indicated concentrations of SO2 approaching the critical values, and the possibility that sources were emitting at reduced levels when the most adverse meteorological conditions occurred.

3. Usefulness of More Refined Models

(a) *Comment:* Two commenters (MSCC letter, document # IV.A–20, comment #'s 3.T, 3.U, and 8C; Goetz letter, document # IV.A–18, exhibit D, comment #'s III.D.3, pp. 50–51) stated that a more refined computer model should have been used to develop the revised SIP for the Billings/Laurel area. They commented that the CTDMPLUS model, in particular, is more accurate and predicts lower concentrations in areas of complex terrain than COMPLEX I. These commenters pointed out that CTDMPLUS was used instead of COMPLEX I to develop the SO2 SIP for East Helena, Montana.

Response: The Billings/Laurel area differs in several respects from the East Helena area. East Helena has only one significant source of SO2, the Asarco lead smelter. The smelter has three tall stacks that emit most of the source's SO2. In the Billings/Laurel area, there are seven industrial sources with a combined total of several dozen different stacks that must be modeled. CTDMPLUS is limited in its ability to consider the impacts of more than a few emission points at the same time. The complexity involved in applying CTDMPLUS to develop emission limitations and show attainment for so many different emission points would make the modeling analysis infeasible in the Billings/Laurel area. The complexity of the analysis would also preclude the use of variable emission limitations, which are now in place at some of the Billings/Laurel sources.

In addition, it is not possible to accurately apply CTDMPLUS without a scientifically rigorous set of local meteorological data. Such data were available for East Helena, but not for the Billings/Laurel area. In East Helena, Asarco collected the appropriate on-site meteorological data for use in CTDM-PLUS modeling, including upper air measurements that were representative of conditions at plume height. The meteorological monitoring program was submitted to EPA and MDEQ in August 1992 for approval, and data collection began in May 1993. There are no similar data available in the Billings area for application of CTDMPLUS.

(b) *Comment:* Two commenters (MSCC letter, document # IV.A–19, comment # 54; MSCC letter, document # IV.A–20, document # 3V; Goetz letter, document # IV.A–18, exhibit D, comment #'s III.D.3, p. 51; III.H, p.59) stated that MSCC proposed to gather the necessary meteorological data for the Billings/Laurel area. These commenters asserted that MDEQ's and EPA's failure to approve the proposal resulted in an arbitrary and capricious reliance on an outdated and over-predictive screening model (COMPLEX I).

Response: MSCC submitted a meteorological monitoring proposal in 1996, nearly three years after the modeling protocol for Billings/Laurel was developed and applied. Within a month of receiving MSCC's meteorological monitoring proposal from MDEQ, we reviewed it and responded that the proposal raised serious problems that could potentially invalidate any data collected. *See* letter from Kevin Golden, EPA, to John Coefield, MDEQ, September 26, 1996 (document # IV.C–28). To our knowledge, the company did not revise and re-submit its proposal.

(c) *Comment:* Two commenters (MSCC letter, document # IV.A–20, comment # 3.U; Goetz letter, document # IV.A–18, exhibit D, comment # III.D.1 and 2, p. 48) stated that MSCC's consultant, Michael Machler, applied CTDMPLUS in modeling tests at a site in Billings called Sacrifice Cliffs, located in elevated terrain. The results were 50–60 percent lower than those predicted by COMPLEX I and were in close agreement with monitoring data at the site, which indicated levels one-half to one-third the concentrations predicted by COMPLEX I.

Response: One of the commenters (Goetz letter, document # IV.A–18, exhibit D, comment # III.D.3) admitted that meteorological data from East Helena were used for these modeling tests, because the specific data inputs needed for the model were not available for Billings. For CTDMPLUS, unlike ISC2/COMPLEX I, predictions may be very sensitive to changes in upper air meteorological conditions, such as plume altitude, wind, and turbulence. These conditions must be measured locally to generate appropriate data inputs for the model. Using critical meteorological data from another site would invalidate any testing with CTDMPLUS. In addition, a single monitor is insufficient to test any model. In areas such as Billings, where SO2 concentration gradients are high (*i.e.*, a significant change in concentrations between receptor points), a dense monitoring network is necessary to adequately test a model.[16]

(d) *Comment:* One commenter (Conoco letter, document # IV.A–24, p.3) suggested that if we believe the SIP needs to be modeled again to address the modeling concerns EPA raised in the proposed rulemaking, we should consider using the CALPUFF model for future modeling. The commenter noted that CALPUFF was used in a study in West Virginia and Ohio to establish SO2 controls within the study area. Another commenter (Goetz, document # IV.A–18, exhibit D, comment # III.D.2) stated that MSCC's consultant, Michael Machler suggested that CALPUFF could be used in the Billings/Laurel area.

Response: We do not agree that CALPUFF should be used in the Billings/Laurel area. CALPUFF is a refined model that has been applied in complex terrain, but is not listed in the Guideline on Air Quality Models as a preferred model. It is not appropriate for regulatory applications, without further study. A similar model, MESOPUFF, is listed in appendix W for evaluating long-range transport issues (*i.e.,* distances greater than 50 kilometers from the source). This model would not be considered appropriate, however, for evaluating near-source impacts, such as those evident in the Billings/Laurel area. Ohio and West Virginia used CALPUFF in a non-guideline application, following the protocol for an on-site modeling evaluation study provided in appendix W, section 3.2 (''Use of Alternative Models''). Alternative models are used on a case-by-case basis, when the EPA Regional Office believes such use is justified. We do not believe that application of CALPUFF is appropriate for the Billings/Laurel area at this time because its applicability has not been established (or even proposed).

(e) *Comment:* One commenter (Goetz letter, document # IV.A–18, exhibit D, comment # III.D.2, p. 49) indicated that Michael Machler, a consultant for MSCC, suggested that another model, AERMOD, be used in complex terrain.

Response: AERMOD is a new model that was not available when the SIP modeling protocol was developed in 1993. It has been discussed as a possible future replacement for ISC in the modeling Guideline. At this time, it has not been proposed for public review and comment. Reviewing all the facts, we conclude that MDEQ used the best

[16] ''Interim Procedures for Evaluating Air Quality Models (Revised),'' EPA–450/4–84–023, September 1984, page 48 (document # IV.C–78).

available models to perform computer modeling for the Billings/Laurel SIP.

(f) *Comment:* One commenter (Goetz letter, document # IV.A–18, exhibit D, comment # III.D, p. 47) stated that the modeling receptor on Sacrifice Cliffs is the most controlling and ''drives the entire SIP,'' implying that modeling for complex terrain is the most critical element of the attainment demonstration and that a refined model should have been used for complex terrain. The commenter also stated that the most controlling receptors for MSCC, ExxonMobil and YELP are not on Sacrifice Cliffs, but in the hills to the south.

Response: There are in fact a number of different receptor sites where predicted concentrations of SO2 in the pre-SIP revision scenarios exceeded the SO2 NAAQS, both in complex terrain and in simple terrain. There is not one receptor site that is most controlling for the SIP. Many of the sources in the current SIP attainment demonstration have emission limitations based on predictions from ISC2, the refined EPA Guideline model. Other sources are controlled based on the approved screening model, COMPLEX I.

It is not clear what the commenter means by ''controlling receptors'' for various sources. As one might expect, the maximum incremental contributions from each source generally were predicted to occur close to that individual source. If a receptor location close to a specific source is predicted to exceed the NAAQS, the State would have the option of controlling emissions from the nearby source, or reducing emissions from the ''background sources.'' Given the large number of facilities and emission points in the Billings/Laurel area, emission reductions were needed from a number of sources to show NAAQS attainment at all receptors.

(g) *Comment:* One commenter (Goetz letter, document # IV.A–18, exhibit D, comment #'s III.D.3, p.50; III.H, p. 59) stated that using the less refined, less accurate COMPLEX I model for complex terrain for the SIP Call and SIP modeling is entirely arbitrary and capricious.

Response: COMPLEX I is a Guideline screening model, and its application is appropriate under our regulations as long as it is applied as directed by appendix W. COMPLEX I results may be used for all regulatory purposes unless a refined model is available, which was not the case for the Billings/Laurel area. If any approved model were to over-predict ambient concentrations and call for more restrictive emission limitations than a hypothetical, more refined model, the modeled attainment demonstration would not be invalid. Courts have accepted that a certain level of over-prediction is allowed by the Act. In *Cleveland Electric Illuminating Co.* v. *EPA,* 572 F.2d 1150 (6th Cir. 1978) *cert. den.* 439 U.S. 910, 99 S.Ct. 278 (1978), for example, the Sixth Circuit approved EPA's reliance on an earlier computer model (RAM) for setting SO2 limitations in a federal implementation plan, even though an industry study showed that the RAM model over-predicted violations and was contradicted by data from ambient monitoring.

The court observed:

> SO2 emissions have a direct impact upon the health and the lives of the population of Ohio—particularly its young people, its sick people, and its old people. If the RAM model did over-predict emission rates, such a conservative approach was apparently contemplated by Congress in requiring that EPA plans contain ''emission limitations * * * necessary to *insure* attainment and maintenance'' of national ambient air standards. 572 F.2d at 1164 (emphasis in original) (citing former 42 U.S.C. section 1857c–5(a)(2)(B), now revised and recodified at 42 U.S.C. 7410(a)(2)).

4. Inputs Used in Computer Models

(a) *Comment:* One commenter (Goetz letter, document # IV.A–18, exhibit D, comment # III.G, pp. 57–58) stated that the use of non-local meteorological data ''exacerbates the arbitrariness'' of the computer modeling; the commenter objected to the use of data from Great Falls, Montana and from the Billings airport. Another commenter (MSCC letter, document # IV.A–20, comment # 8.D) also criticized us for using non-local data in the models.

Response: The computer modeling was not rendered unreliable by the use of non-local meteorological data. The modeling protocol that was used for the SIP revision was developed by the State in early 1993 and approved by us in August 1993. The protocol development process included substantial input and comments from the public, including industry groups and their constituents. No meteorological towers or vertical temperature soundings were available in the Billings/Laurel area to provide on-site data for upper air conditions, one component of the meteorological data needed for computer modeling. Instead, MDEQ used representative data from Great Falls, which, although 180 miles from Billings/Laurel, is similarly located on the high plains to the east of the Rocky Mountains. Thus MDEQ made use of available data for upper air conditions that were most representative of the conditions in the Billings/Laurel area. This approach is approved by us. *See* 40 CFR part 51, appendix W, section 9.3.

MDEQ used temperature sounding data from Great Falls in the ISC2/COMPLEX I model to determine mixing height. For point source emissions with significant plume rise, such as the emissions from the Billings/Laurel sources, predicted concentrations from ISC2/COMPLEX I are relatively insensitive to changes in mixing height, and use of non-local meteorological data for this purpose would not make a significant difference. CTDMPLUS, by contrast, requires considerably more detailed upper air input information than ISC2. CTDMPLUS predictions may be very sensitive to changes in several conditions that can only be measured with a meteorological tower, such as plume altitude, wind, and turbulence. As we discussed in section V.D.3.a, above, specialized local meteorological data, which were unavailable for the Billings/Laurel area, would be needed to apply this model accurately.

(b) *Comment:* One commenter (Goetz letter, document # IV.A–18, exhibit D, comment # III.G) stated that MDEQ improperly used data from the Billings airport to represent meteorological conditions in the lower atmosphere, that this location is not representative, because it is miles from both the sources and the critical receptors, and that data from the ambient monitors should have been used.

Response: We agree with MDEQ that the Billings airport data are representative of the area. Meteorological data from the ambient monitors at Lockwood Park, Brickyard Lane, Coburn Road and Laurel were not used because these monitors, located in the Yellowstone River Valley, are subject to variable ground-level conditions and are not representative of conditions affecting plume-height emissions as they are transported over the valley. The most representative data available were those obtained at the airport, which is located on a bluff above the valley, not subject to localized meteorological effects that occur along the valley floor.

(c) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment # 1; MSCC letter, document # IV.A–20, comment #'s 3M, 3O) stated that the SIP Call is flawed because the modeling used factually inaccurate assumptions for emission rates, stack parameters, and other factors.

Response: The SIP Call modeling used data inputs from an earlier emissions inventory that did contain some errors. These errors were corrected, and the corrected inputs were used in the modeling for SIP development. The SIP

Call modeling showed NAAQS violations at many sites at allowable emission levels. With corrected inputs, the modeling continued to predict NAAQS violations as much as two times over the national standard, thus supporting the SIP Call.

(d) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment # 108) stated that CEMS data now indicate an error in the assumed buoyancy flux for MSCC's main stack; the current modeling protocol contains an assumption which significantly underestimates the average rise in emissions. Any revised modeling should correct this assumption.

Response: We agree that future modeling should include all corrected data. In any modeling analysis, input data are based on the best available information at the time of the analysis. CEMS measurements of flow and temperature data provide the best estimates of stack parameters, and values based on CEMS data should be used in any future SIP modeling for Billings provided the CEMS data are accurate. Other data inputs have been corrected and added, as we discussed in the TSD for this rulemaking (document # III.B–1). Any future modeling in the Billings/Laurel area should incorporate all corrections. The SIP limitations are based on the best information available at the time the attainment demonstration was modeled, and the same will be true for any FIP limitations that are developed.

(e) *Comment:* MSCC's consultant, Michael Machler, stated that he had identified problems in the past with the way mixing heights are calculated in dispersion modeling. He stated that EPA has apparently corrected the problem and that ISC3, the newer version of the ISC2 model used for the Billings/Laurel SIP, now provides for more accurate calculations of mixing height. The modeling for the SIP used the older version, however, and has not been updated with respect to calculation of mixing heights. *See* Goetz letter, document # IV.A–18, exhibit E, page 1.

Response: In 1994, when the State performed the modeling for the attainment demonstration, MDEQ used the most accurate information and the best data base available at the time. ISC2 was then the preferred Guideline model. The newer ISC3 is comparatively more refined, but the correction in calculation of mixing heights would not make a significant difference in this case, because the Billings SIP modeling predictions (ISC2 and COMPLEXI) are relatively insensitive to changes in mixing height. We would not expect to see any significant changes in predicted concentrations with the newer version of the model. In addition, dispersion models and data bases are continually being improved. The task of demonstrating attainment could never be completed if we or the State were compelled to update the analysis with each new refinement. For the FIP, we intend to continue to use ISC2 as the applicable model to fill in the gaps in the State's attainment demonstration created by our disapproval of the emission limitations for MSCC's 100-meter stack. Some source parameters have been corrected since the 1994 modeling analysis (*see* Response V.D.4.(d), above), but we intend to use the same meteorological data and modeling protocols the State used, so that the results will be comparable.

5. Two Modeling Demonstrations

(a) *Comment:* One commenter (State letter, document # IV.A–23) stated that we did not acknowledge that Montana submitted two separate attainment demonstrations for SO2—one for the Billings area and one for the Laurel area. The commenter indicated that the Laurel area was modeled assuming the SIP prescribed emission limitations for Cenex and the pre-SIP potential emissions for the Billings sources. Therefore, the Laurel SIP demonstrates compliance with the NAAQS regardless of whether a revised SIP is approved and implemented in Billings. The Billings area was modeled assuming all sources in the Laurel and Billings areas are at SIP prescribed emission rates. Therefore, the Billings SIP depends upon approval of the Laurel SIP to demonstrate attainment. The commenter is requesting that we acknowledge the two attainment demonstrations in our final action and treat the two separately in that action.

Response: We agree with the commenter and acknowledge that there are two attainment demonstrations—one for the Billings area and one for the Laurel area. However, since the flare issue applies to sources in both Billings and in Laurel, we still believe the attainment demonstration for both areas should be disapproved for lack of enforceable flare emissions at the applicable sources. *See* flare discussion in section C, above.

E. EPA'S Partial Approval

In our July 28, 1999 action (64 FR 40791), we proposed to partially approve, conditionally approve and partially disapprove the Billings/Laurel SO2 SIP.

Summary of Comments and Response

Two commenters objected because we did not fully approve the SIP. Among other things, the commenters stated that our proposed action intruded on State responsibility; raised Tenth Amendment concerns; and may violate the U.S. Constitution. One commenter submitted concerns regarding the conditional approval.

We have considered the comments received and still believe our proposal to partially approve and partially disapprove[17] the Billings/Laurel SO2 SIP was a correct action.

The following is a summary of the comments received and our response to the comments.

1. Intrusion Into State Regulatory Decision

(a) *Comment:* More than one commenter (Goetz letter, document #IV.A–18, exhibit D, pp.61–63; MSCC letter, document #IV.A–19, comment #16; MSCC letter, document #IV.A–20, comment #1.C) argued that EPA's proposed action intrudes on the primary responsibility of State and local governments to implement the Clean Air Act. In the view of one of the commenters (Goetz), it is the State's role to balance the interests of the seven emitting sources in the Billings/Laurel area, and EPA has no authority to disturb the balance the State has struck. The commenter claimed that EPA may not approve the emission limits for some of the sources while disapproving MSCC's emission limits. According to the commenter, if EPA is going to disapprove MSCC's limits, the whole SIP should be remanded to the State to allow the State to re-evaluate the entire mix of emission limits in the area. The commenter cited case law to support these comments, including case law that suggests that EPA may not interfere with the State's choices of emission limitations as long as the NAAQS are met. The commenter also cited case law from the 7th Circuit that suggests that EPA may not render a SIP more stringent through partial approval. In the commenter's view, EPA's proposed actions trigger serious Tenth Amendment concerns.

Response: We agree that the Act grants the States the primary

[17] We had also proposed to conditionally approve the SIP. On May 4, 2000 the Governor of Montana submitted a SIP revision to fulfill the commitments on which the proposed conditional approval was based. Since the Governor has fulfilled has commitment, we believe it is not appropriate to finalize the conditional approval. Instead, we will complete notice-and-comment rulemaking on those portions of the July 29, 1998 submittal we proposed to conditionally approve on July 28, 1999 and all of the May 4, 2000 submittal.

responsibility to select emissions limitations for sources. However, the Act also reserves to us a fundamental responsibility to ensure that SIPs meet the requirements of the Act. *See, e.g., Union Electric Company* v. *EPA,* 96 S.Ct. 2518 (1976); sections 110(a)(2)(A), 110(k), and 110(l) of the Act. In the instant case, our responsibility is broader than the commenter portrays it—yes, we must ensure that the SIP shows attainment of the NAAQS, but we must also ensure that the SIP meets the requirements of section 123 of the Act and our stack height regulations in showing attainment. Congress understood that emissions controls and dispersion through tall stacks were two different means to attainment of the NAAQS. Congress chose to restrict the use of dispersion techniques to meet the NAAQS and directed us to adopt regulations to carry out this restriction. In this case, one reason we cannot fully approve the Billings/Laurel SIP is that MSCC's emission limits are based on stack height credit that is inconsistent with our stack height regulations.

Another reason we cannot fully approve the SIP is that the State's submission lacks enforceable emission limitations on flares. Without enforceable limitations on these sources of SO2 emissions, the SIP fails to satisfy the requirement of section 110(a)(2)(A) of the Act that each plan include ''enforceable emission limitations . . . as may be necessary or appropriate to meet the applicable requirements of this chapter.'' MDEQ established a State-only limitation on flare emissions. Modeling demonstrates that the limitation is necessary to protect the NAAQS. Unless an equivalent limitation is included in the federally enforceable SIP, the implementation plan for the Billings/Laurel area will be deficient, because it does not fully meet the planning requirements of section 110 of the Act nor adequately protect air quality in the area. For this reason as well, we are disapproving the attainment demonstration.

We do not believe that our action to disapprove the attainment demonstration and MSCC's emission limits is inconsistent with the cases the commenter has cited. Once we have determined that a portion of a SIP is inadequate, section 110(k)(3) of the Act grants us the authority to partially approve parts of a SIP that are consistent with the Act's requirements, while disapproving parts that are inconsistent with the Act's requirements. That is what we are doing here—we are disapproving MSCC's emission limits because they are inconsistent with the requirements of the Act and our regulations. We are not obligated to uphold a State's balancing of emission limits among relevant sources where the State's emission limits for one of the sources do not meet the requirements of the Act. We have no authority to ''remand'' a SIP to a State, as the commenter suggests. Instead, we have approval and disapproval authorities provided by the Act, and once we disapprove all or part of a required SIP, we have an obligation to issue a FIP pursuant to section 110(c) of the Act.

It is only through a FIP that we would determine substitute emission limits for MSCC, as the 7th Circuit case cited by the commenter clearly states. Thus, as discussed further in section V.E.1.d, below, our disapproval of MSCC's emission limits does not render the SIP more stringent than the State intended.

We do not believe our partial disapproval triggers Tenth Amendment concerns. States are not coerced by the provisions of the Act directing them to adopt SIPs; the federal government may bear the regulatory burden in whole or in part, instead. *See, Commonwealth of Virginia* v. *Browner,* 80 F.3d 869, 882 (4th Cir. 1996). The State remains free to revise the SIP emission limits for MSCC and for other sources as well, but before we will approve such a revision, the revision must meet the requirements of the Act and our regulations, including stack height requirements. This issue is further discussed in section V.E.2, below.

(b) *Comment:* One commenter stated that the court in *Commonwealth of Virginia* v. *Environmental Protection Agency* (108 F.3d 1397 (D.C.Cir. 1997)) held that Section 110 of the Act did not confer upon EPA the authority to condition our approval of the plan of any state on the state's adoption of a specific control measure, and that we could not condition approval of the Billings/Laurel SO2 SIP on a particular emission limitation for MSCC's 100-meter stack. *See* Goetz letter, document #IV.A–18, exhibit D, comment #V, p. 63.

Response: We agree with the commenter that this is a correct statement of the holding in *Commonwealth of Virginia.* However, in this case we are not conditioning approval of the Billings/Laurel SO2 SIP on the State's adoption of a specific control measure. We are disapproving an emission limitation (*i.e.,* 100-meter stack emission limitation) because it violates the prohibition of section 123 of the Act on giving credit for stack heights in excess of good engineering practice.[18] The State nevertheless remains free to devise specific emission limitations for the sources, provided it can demonstrate that the selected limits will insure attainment of the NAAQS and the limits meet the requirements of section 110(a)(2) of the Act.

The commenter cited an earlier Supreme Court opinion (*Train* v. *Natural Resources Defense Council,* 421 U.S. 60 (1975)) to support his position that we lack authority to disapprove the emission limitation for MSCC's 100-foot stack. That opinion, quoted in *Commonwealth of Virginia,* held that EPA does not have authority to disapprove a State's choice of emission limitations if they are part of a plan which, as a whole, satisfies the requirements of section 110(a)(2) of the Act. According to the *Train* court, EPA may disapprove a State's plan and promulgate a FIP only if the State's plan does not protect the NAAQS. Otherwise, ''the State is at liberty to adopt whatever mix of emission limitations it deems best suited to its particular situation.'' *Commonwealth of Virginia,* 108 F.3d at 1407–1408, quoting *Train,* 421 U.S. at 79.

We do not agree that *Train* creates a bar to our disapproval of an emission limitation that does not comply with section 123 of the Act. That case was decided in 1975, before the 1977 amendments to the Clean Air Act added section 123 with its prohibition against allowing credit for excessive stack height. *Train* was also decided before the 1990 amendments added section 110(k), which contains specific criteria for EPA action on SIPs, including the condition that each SIP or SIP revision must ''meet all the applicable requirements'' of the Act. *Train,* therefore, does not preclude us from disapproving state emission limitations that conflict with specific provisions of the Act and EPA's implementing regulations. *See* also section 110(l) of the Act.

Commonwealth of Virginia, too, was not concerned with stack heights; that case concerned an EPA regulation imposing California's automobile emission standards on the states in the Northeast Ozone Transport Region. The court undertook a statutory analysis of complicated interactions among four different sections of the Act (sections 110, 177, 184, and 202) before concluding that section 110 did not give EPA the authority to prescribe specific

[18] We are also disapproving the escape clause in all the stipulations, MSCC auxiliary vent stack emission limit, the attainment demonstration (because of the stack height issue, flare issue and auxiliary vent stack issue), the provisions that allow sour water stripper emissions to be burned in the flare at Cenex and ExxonMobil, and the plan for failing to meet RACM/RACT.

SIP limitations in that case.[19] In *Commonwealth of Virginia,* we were not simply disapproving a state implementation plan; we were directing states to adopt particular emission limitations. In this case, we are disapproving particular limitations in Montana's plan; we are not prescribing a particular limitation. The State retains the authority to adopt any emission limitation or mix of limitations it chooses as part of the Billings/Laurel SO2 SIP, as long as the measures comply with all applicable provisions of the Act, including section 123, and EPA's regulations implementing the Act. We believe that neither *Train* nor *Commonwealth of Virginia* precludes our action here, which is authorized by section 123 and section 110(k) of the Act.

(c) *Comment:* One commenter stated that the whole SIP should be remanded to allow the State to re-evaluate the entire mix of limitations, so fairness can be preserved. *See* Goetz letter, document #IV.A–18, exhibit D, comment #V, p. 62.

Response: We informed the State as early as July 1996 (*see* document #II.C–5) that the stack height credit which MDEQ proposed to allow for MSCC's 100-meter stack did not comply with our stack height regulations. The State could have acted at any time before adopting and submitting the SIP revision in July 1998 to limit the stack height credit for MSCC and re-evaluate some or all of the SO2 emission limitations in light of the more limited credit. Since the State did not take that action, we are now disapproving the stack height credit and emission limitations for the 100-meter stack at MSCC. We plan to propose a FIP to fill in the gap with an appropriate emission limitation that both demonstrates attainment and complies with our stack height requirements. The promulgation of a FIP, however, will not relieve the State of its primary responsibility to adopt a fully satisfactory SIP; the State continues to have the authority and responsibility to re-evaluate the appropriateness of emission limitations for the Billings/Laurel area and to submit a SIP revision that will satisfy all statutory requirements, including the section 123 prohibition against credit for stack height in excess of good engineering practice.

(d) *Comment:* One commenter (Goetz letter, document #IV.A–18, exhibit D, comment #V., p. 63) stated that our partial disapproval makes the SIP more stringent than the State intended, an effect prohibited under the Act.

Response: The holdings in *Bethlehem Steel Corp.* v. *Gorsuch,* 742 F.2d 1028 (7th Cir. 1984), cannot be considered binding outside the Seventh Circuit. Assuming for purposes of responding to the comment that *Bethlehem Steel* governs our action on Montana's SIP, in this case, the SIP is not more stringent than the State intended. In contrast to the situation in *Bethlehem Steel,* we are not disapproving a part of a SIP regulation that contains an exemption from an emission limitation that we are approving in another part of the same regulation. In *Bethlehem Steel,* the court held that we could not use our partial approval/partial disapproval authority in this way to delete a limiting condition on a state requirement and make the portion of the requirement remaining in the federally approved SIP more stringent than the original regulation adopted by the state. *See* 742 F.2d at 1036. The court acknowledged that we have the authority to set more stringent limitations, as necessary to protect the NAAQS, but held that we must do so through adopting a Federal Implementation Plan (''FIP''); we cannot avoid the extra procedural process of adopting a FIP by simply disapproving the SIP in part. *See id.* at 1035.

Our disapproval of the stack height credit extended by the State to MSCC does not make the federally approved SIP more stringent than the State stipulation, and we are not attempting to avoid promulgating a FIP. Partial disapproval here does not give us the power to enforce an emission limitation from which the source would be exempt under state law. The same is true for our disapproval of the attainment demonstration for lack of flare emission limitations. The effect of our partial disapproval is just the opposite: the emission limitations established by the State for MSCC's 100-meter stack and for the flares are state-enforceable, but not federally enforceable. To establish a more stringent, federally enforceable limitation for MSCC or the flares, we must promulgate a FIP. This is exactly what we intend to do, to fill all the regulatory gaps created by our partial disapproval of the SIP. This is the remedy approved by the Seventh Circuit when a State's SIP is inadequate or otherwise fails to meet Act requirements.

(e) *Comment:* One commenter (MSCC letter, document #IV.A–19, p. 5 and comment #60) stated that EPA has not identified emission limits it proposes to impose on MSCC. According to the commenter, this silence makes it infeasible for MSCC or the State to determine the effects of EPA's proposals on MSCC. This commenter said that the correct approach before EPA takes final action is for EPA to identify and explain its alternative so all parties may intelligently comment on them.

Response: The purpose of our action here is not to establish emission limits for MSCC. The purpose is to determine whether the State's SIP submittal meets the requirements of the CAA and our regulations. We think we have adequately described why aspects of the SIP do not meet CAA requirements and why partial disapproval is warranted. As a legal matter, we cannot impose alternative emission limits through a SIP disapproval, but, instead, can impose such limits only through promulgating a FIP. Although we could have separately proposed a FIP simultaneously with our disapproval of the SIP, we chose not to and are not required to under the CAA. Our disapproval of the SIP has no immediate impacts on MSCC or any other source. If and when we promulgate a FIP for the area, we will first propose the FIP, including emission limits for sources subject to the FIP, provide an opportunity for the oral presentation of data, views, or arguments, and take written comment from the public.

(f) *Comment:* One commenter (MSCC letter, document #IV.A–19, #60) stated that EPA's FIP, which is yet to come, may be inconsistent with the law or may be impractical for the State to impose.

Response: We believe we have adequately explained, in our proposed disapproval, and in this final disapproval, our bases for rejecting portions of the SIP. We believe comments regarding a future FIP are irrelevant to this action; any such concerns may be raised if and when we propose a FIP. Moreover, if and when EPA adopts a FIP, EPA and not the State will ''impose'' its requirements.

2. Constitutional Question: Tenth Amendment

(a) *Comment:* Two commenters (Goetz letter, document #IV.A–18, exhibit D, comment #2, p. 9; MSCC letter, document #IV.A–19, comment #1, 3rd

[19] To the extent that *Commonwealth of Virginia* may be read as holding that section 110(k)(3) conditions EPA's approval of a SIP revision on meeting section 110(a)(2) criteria only and not on meeting other requirements of the Act (*see* 108 F.3d at 1409), such an interpretation is incorrect. Section 110(k)(3) states, ''[the Administrator shall approve such submittal as a whole if it meets all of the requirements of this chapter.'' The phase ''this chapter'' means the entire Act, which comprises Chapter 85 (''Air Pollution Prevention and Control'') of Title 42 of the U.S. Code (''Public Health and Welfare''). Section 110 of the Act is one section of Subchapter I (''Programs and Activities'') of Chapter 85. By the plain words of section 110(k)(3), EPA may approve a SIP or SIP revision only if it meets *all* the applicable requirements of Chapter 85 and thus all requirements of the Act. *See* also section 110(l) of the Act.

page) stated that through the SIP Call process and our proposed action on the SIP we exerted undue influence over Montana's SIP development process.

Response: We did not exert undue influence or coerce the State into taking action in response to the 1993 letter. Under the Clean Air Act, states have the basic choice of whether or not to participate in the federal regulatory scheme. *See Commonwealth of Virginia* v. *Browner,* 80 F.3d 869, 882 (4th Cir. 1996). States are sovereigns in their own right and independently make regulatory decisions affecting industry within their borders. Similarly, we independently exercise the authority provided by Congress to endorse or reject those decisions, for example by approving or disapproving a SIP. Although we may advise a state as to what we may or may not approve under the Act, states retain responsibility for their regulatory decisions. *See, e.g. Air California* v. *U.S. Dept of Transportation,* 654 F.2d 616 (9th Cir. 1981) (the danger of losing federal funding may have exerted strong pressure but did not relieve a state governmental entity of responsibility for its decision). In that case, the Ninth Circuit declared that ''concepts of coercion and duress are inappropriate in characterizing dealings between federal and state governments.'' 654 F.2d at 621. *See also Shell Oil Co.* v. *Train,* 585 F.2d 408, 414 (9th Cir. 1978) (federal advice to a state agency ''cannot be equated with any kind of coercion''). We do not believe that the SIP Call or our response to requests for assistance from MDEQ took the form of coercion, nor compelled MDEQ to make particular choices in developing a control strategy for the Billings/Laurel area.

(b) *Comment:* Two commenters (MSCC letter, document # IV.A–19, comment # 12 and Goetz letter, document # IV.A–18, exhibit D, comment # V, p. 63) stated that our partial disapproval violates the principle of primacy set forth in the Act and triggers serious Tenth Amendment concerns.

Response: We do not believe that our action on the Billings/Laurel SIP raises Tenth Amendment concerns. Federal governmental action can be viewed as coercing a particular state action in violation of the Tenth Amendment to the Constitution only when the State has no choice but to participate in the federal regulatory framework. *See, Printz* v. *United States*, 117 S.Ct. 2365 (1997); *New York* v. *United States*, 505 U.S. 144, 112 S. Ct. 2408 (1992). Our authority under the Act to disapprove parts of a SIP does not raise the same level of sovereignty concerns found in those cases: partial disapproval does not compel a state legislature to adopt a federal regulatory program, as in *New York*, or commandeer state officials to execute a federal law, as in *Printz.*

Under the Tenth Amendment, federal law may be designed to induce state action. *See Commonwealth of Virginia* v. *Browner*, 80 F.3d. 869, 881 (4th Cir. 1996) (citing *FERC* v. *Mississippi*, 456 U.S. 742, 766, 102 S.Ct. 2126, 2141 (1982)). Neither the Act nor EPA compels states to adopt SIPs or particular SIP provisions. But we can induce or persuade states to adopt SIPs and SIP revisions and to make these conform to federal requirements if states wish to obtain EPA approval of their SIPS. *See Commonwealth of Virginia*, 80 F.3d at 881, where, in the context of an operating permit program under Title V of the Act, the Fourth Circuit ruled that ''the CAA does not compel the states to modify their standing rules; it merely induces them to do so.'' That case flatly rejected the argument that the incentives contained in the Act to encourage approvable state participation amount to coercion. Since Montana remains free under the Act to choose to not participate in the CAA regulatory scheme, our final action on the SIP Call and the SIP cannot be viewed as compelling the State's action.

(c) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment #'s 1, 4th page, 2, and 3) stated that we used our sanctions and funding powers to coerce the State to take positions that conflicted with prior agreements with industry and otherwise infringed on MSCC's rights.

Response: By threatening to impose sanctions, we did not coerce or compel state action on the SIP Call; to the extent that the threat of sanctions had any effect on SIP development, it only helped to induce or persuade the State to respond. On some issues, we were unable to persuade the State of the correctness of our position, hence our partial disapproval. In *Commonwealth of Virginia*, the Fourth Circuit held that although the sanctions provisions of the Clean Air Act potentially burden the States, ''they amount to inducement rather than 'outright coercion.' '' 80 F.3d at 881. The court declared that the highway funding sanction is allowed by the Spending Clause (U.S. Const. art. I, § 8, cl. 1), allowing Congress to limit the award of federal funds to provide for the ''general welfare,'' which, as defined by the Commerce Clause (U.S. Const. art I, § 8, cl. 3), ''gives Congress the power to regulate 'activities causing air or water pollution or other environmental hazards that may have effects in more than one State.' '' *Id.* (quoting *Hodel* v. *Virginia Surface Mining & Reclamation Ass'n*. 452 U.S. 264, 282, 101 S.Ct. 2352, 2363 (1981)). The Fourth Circuit held that the highway sanction does not rise to the level of ''outright coercion,'' because it does not deny all highway funding in a state, only in non-attainment areas and only for projects that do not promote safety or reduce air pollution. *Id.* The highway sanction, therefore, ''is a valid exercise of the Spending Power. As a valid exercise of that power, it also comports with the requirements of the Tenth Amendment.'' 80 F.3d at 882.

The *Commonwealth of Virginia* court also held that the offset sanction, which limits new construction or modification of major stationary sources of air pollution in non-attainment areas, is constitutional because it regulates private pollution sources, not states as governmental entities. *Id.* The offset sanction, therefore, does not violate ''the principles of federalism embodied in the Tenth Amendment.'' *Id.*, citing *New York* v. *United States*, 505 U.S. at 174, 112 S.Ct. at 2427; and *Hodel*, 452 U.S. at 288, 101 S.Ct. at 2366.

The final sanction we can use to induce the State to develop an adequate SIP is to develop a FIP for the area, in lieu of all or part of the state plan. This sanction, too, does not raise Tenth Amendment concerns. Under the Commerce Clause, Congress may preempt state law completely, or it may take the less drastic step of allowing the states to avoid preemption by adopting and implementing their own state plans, as long as these are adequate to address congressional concerns. *Hodel*, 452 U.S. at 289, 101 S.Ct. at 2366; *Commonwealth of Virginia*, 80 F.3d at 883. Although section 110 of the Act provides that each State ''shall, after reasonable notice and public hearing, adopt and submit'' a SIP, this language does not impose a mandatory duty on the States, but ''merely gives the States the first opportunity to adopt and submit a plan.'' *Sierra Club* v. *Indiana-Kentucky Electric Corp.*, 716 F.2d 1145, 1148 (7th Cir. 1983). A State may not be compelled to develop or submit a SIP. *District of Columbia* v. *Train*, 521 F.2d 971, 984 (D.C. Cir. 1975) (*vacated on other grounds*, 431 U.S. 99, 97 S.Ct. 1635 (1977)). If an adequate plan is not submitted, however, EPA may establish a plan for the State. *Id.* Because the State is not commanded to regulate, Montana could choose not to develop a SIP and instead let us promulgate and enforce a FIP for the Billings/Laurel area. In that case, the full regulatory burden would be borne by the federal government, and the sanction is constitutional. *See Hodel*, 452 U.S. at

288, 101 S.Ct. at 2366; *Commonwealth of Virginia*, 80 F.3d at 882. Montana could also choose, and has chosen, not to address all the questions about the adequacy of the SIP that we raised in our proposed rulemaking action, and let us promulgate a FIP to fill the gaps caused by our partial disapproval. Neither partial disapproval nor promulgation of a FIP, both of which are authorized by the Act, violates the Tenth Amendment.

3. Constitutional Question: Delegation of Legislative Power

(a) *Comment:* One commenter (Goetz letter, document # IV.A–18, exhibit D, comment # VI, p. 64) stated that EPA's application of the stack height rule to MSCC constitutes an unconstitutional delegation of legislative power and cited a recent DC Circuit case, *American Trucking Ass'n, Inc.* v. *EPA*, 175 F.3d 1027 (D.C. Cir. 1999). In the commenter's opinion, EPA's stack height rule, as interpreted by EPA in this case, is so loose and poorly drafted as to give the agency virtually unfettered administrative discretion to make policy choices as it sees fit. The commenter asserted that MSCC is faced with a situation in which the State and EPA interpret the stack height regulations differently.

Response: First, the D.C. Circuit has already upheld the stack height regulations. They may not be challenged now based on the commenter's theory. Second, we do not believe the non-delegation doctrine is relevant to our interpretation or implementation of our own regulations, which have already been determined to be valid. Our application of our regulations is not a constitutional question. Instead, the question is whether our interpretation and application of our regulations in this case is consistent with the regulations or not. As we have explained elsewhere, we believe that our interpretation of the stack height regulations is reasonable.

We also note that the case relied on by the commenter has been reversed by the United States Supreme Court. *See Whitman* v. *American Trucking Associations, Inc., et al.*, 531 U.S. 457, 121 S.Ct. 903, 149 L.Ed 2d 1, February 27, 2001.

Regarding the claim of differing State and EPA interpretations, it is not unusual that we find it necessary, in the role Congress gave us vis-a-vis SIPs, to disapprove part or all of a SIP submitted by a state because we disagree with the state regarding the appropriate interpretation of the Clean Air Act or our regulations. This does not create a constitutional flaw in our action.

4. Constitutional Question: Taking of Private Property

(a) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment # 13) stated that our partial disapproval of the stack height credit for MSCC's 100-meter stack and our consequent disapproval of the emission limitations for that stack constitute a ''taking'' of private property for public purposes, presumably under the Fifth Amendment of the Constitution. The same commenter (MSCC letter, document # IV.A–19, comment #'s 52 and 53) stated that our action transfers emission rights from MSCC to other entities in future apportionment of the airshed, and that we should pay MSCC just and reasonable compensation for eroding the value of private property or creating ''involuntary servitude'' (*sic*).

Response: These comments are untimely. Our partial disapproval does not have the effect of disturbing the stack height credit given by the State or the state-enforceable emission limitation for this source. The effect of our partial disapproval is to decline to make the emission limitation for the 100-meter stack federally enforceable. Our disapproval creates a gap in the federally enforceable SIP, which we intend to fill by adopting a FIP. If we propose to adopt a FIP which, in MSCC's belief, effects a regulatory taking of MSCC's property for public purpose without just compensation, MSCC could raise the takings issue at that time. It is premature to raise the issue now.

Even if the issue were ready to be addressed at this time, regulation under the Act in general does not represent an unconstitutional ''taking'' of private property under the Fifth Amendment. *See Sierra Club* v. *Environmental Protection Agency*, 540 F.2d 1114, 1139–1140 (D.C. Cir. 1976) (''The use of private land certainly is limited, but the limitation is not so extreme as to represent an appropriation of the land''). *See also South Terminal Corp.* v. *Environmental Protection Agency*, 504 F.2d 646, 678 (1st Cir. 1974) (''The takings clause is ordinarily not offended by regulation of uses, even though the regulation may severely or even drastically affect the value of the land or real property''). In order to comply with the Act and our regulations, a future SIP or FIP might have to impose a lower emission limit on MSCC, but this would not amount to a taking, any more than the imposition of other emission limits on MSCC would amount to a taking.

(b) *Comment:* One commenter (Goetz letter, document # IV.A–18, exhibit D, comment # VII, pp. 65–66) stated that our disapproval of parts of the ExxonMobil and MSCC stipulations relating to incorporation of earlier stipulations and apportionment of the airshed is unauthorized and may constitute an unconstitutional taking of MSCC's property. The commenter further stated that the Act provides for property rights in airsheds through its provision for emission trading and that MSCC's tenure in the area creates rights in the airshed. These are valuable property rights which may not be taken without just compensation under the Fifth Amendment to the U.S. Constitution, the commenter claimed. Another commenter (MSCC letters, document # IV.A–19, comment #'s 50, 51, and 52; and document # IV.A–20, comment # 14) stated that our position on ''property right'' defies the Constitution. A scarce resource is being partitioned between competing users, as with water rights. If the government takes property, it must make MSCC whole through just compensation. Another commenter (ExxonMobil letter, document # IV.A–28) stated that references to the earlier stipulations should be deleted from the EPA-approved SIP. (The reader is referred to further discussion of the incorporation of earlier stipulations in section V.H., below.)

Response: The short answer is that our disapproval of the particular language in the State stipulations does not affect any rights enjoyed by MSCC, including any property rights in the atmosphere, if they exist. Our disapproval affects only the federal enforceability of provisions of the State stipulations. The provisions themselves remain in effect as to their state enforceability. There has been no taking of property that would raise Fifth Amendment concerns.

Even if our action were to affect MSCC's ''emission rights'' under the SIP, these are not ''private property'' protected under the Takings Clause of the Fifth Amendment. To the extent that MSCC has emission rights, they are created by the enforceable emission limitations of the SIP. It would be an exercise in circular reasoning to turn emission rights created under a federal regulatory program into property rights that cannot be altered by further regulation under the same program without triggering constitutional protections against a governmental taking. The emission rights created under the Act, whether part of a SIP emissions trading program or the acid rain program or new source review, are limited by and have value within the statutory program only. They do not exist outside of the Act. We can alter the

emission limitations of a SIP that give rise to such emission rights, thus changing their value, as long as our action has a proper regulatory purpose such as protection of the NAAQS. Since we have not yet proposed a FIP, a claim that we have improperly changed the value of MSCC's emission rights is premature.

The argument that MSCC has established rights to emit merely by having ''tenure'' in the Billings area is without foundation. Because MSCC was constructed before 1977, it is true that at that time the source was not subject to pre-construction permit requirements under the Act and was ''grandfathered'' or exempted from prevention of significant deterioration (''PSD'') requirements. However, since passage of the Act in 1970, MSCC has been subject to potential limitation of its emissions under the Act to protect the SO2 NAAQS. This potential became an actual limitation in 1977, under the original Billings/Laurel SIP, and again in 1996–98, under the SIP revisions that have been adopted by the State. MSCC and the other sources in the area do not enjoy any rights to emit pollutants that would cause or contribute to a violation of the NAAQS, and currently permitted allowable emissions levels do not constitute private property rights. *See, e.g.*, 40 CFR 70.6(a)(6)(iv): ''The permit does not convey any property rights of any sort, or any exclusive privilege.''

(c) *Comment:* One commenter (Goetz letter, document # IV.A–18, exhibit D, comment # VII, p. 65) cited a Supreme Court opinion, *Eastern Enterprises* v. *Apfel*, 524 U.S. 498, 118 S.Ct. 2131 (1998), to support his contention that disapproval of the phrase ''apportionment of the airshed'' in paragraph 1 of the MSCC stipulation effects a taking of MSCC property.

Response: As already stated, partial disapproval of the SIP does not affect any rights, including property rights, enjoyed by MSCC or the other Billings/Laurel sources. In addition, neither the emission rights existing under the SIP nor the State's apportionment of the ''airshed ''[20] have the effect of creating property rights. *See response* to the immediately preceding comment, *Comment 4(b)* above.

Even if MSCC did hold an interest in ''private property'' created by the ''apportionment of the airshed'' described in the stipulation, the *Eastern Enterprise* opinion does not support MSCC's position that such property has been taken. *Eastern Enterprise* concerns the effect of the Coal Industry Retiree Health Benefit Act of 1992 on a coal company that last operated in 1965. The legislation required the company to pay into a new retirement fund, to provide lifetime benefits for widows of employees who had worked for the company 30 to 50 years prior to the legislation's enactment. The case is extraordinary, in that there was no taking of specific property or assets of the company, but rather imposition of financial liability that would amount to many millions of dollars. The Supreme Court reached beyond previous case law to apply the Takings Clause to a statute that placed such a ''severe, disproportionate, and extremely retroactive'' burden as to upset ''fundamental notions of justice.'' 118 S.Ct. at 2152. The decision essentially involved application of the principles behind the *Ex Post Facto* Clause of Article 1, § 9, clause 3 of the U.S. Constitution, prohibiting retroactive criminal sanctions, to the retroactive imposition of liability in a non-criminal setting, by deeming such liability to be a ''taking.'' *See* 118 S.Ct. at 2151, citing *Calder* v. *Bull*, 3 Dall. 386 (1798).

The *Eastern Enterprise* decision is not relevant in this rulemaking. Nowhere in this rulemaking, including our disapproval of the phrase ''apportionment of the airshed,'' do we impose any financial liability on MSCC, let alone a liability so burdensome that it might be construed as a ''taking'' of MSCC's property. Nor is this rulemaking a form of retroactive governmental action based on activity engaged in before the effective date of the regulation, let alone one that ''improperly places a severe, disproportionate, and extremely retroactive burden'' on MSCC, in the words of *Eastern Enterprises,* 118 S.Ct. at 2153. Our action of partially approving the SIP has a prospective, rather than a retroactive, effect on the federal enforceability of the Billings/Laurel plan.

5. Constitutional Questions: Other

(a) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment # 13) raised various other constitutional challenges to our proposed action, including interference with private contract; seizure of private property or effects, infringement on equal protection under the law; subjection to unusual punishment, double jeopardy, ex post facto laws, or laws having the effect of bills of attainder; and involuntary servitude.

Response: We regard these arguments as inapplicable to the matter at hand. To the extent that we understand the arguments as raised in the comment, they are either untimely or unfounded. The commenter's argument that the Act may not authorize action by EPA that infringes on MSCC's right to be afforded equal protection under the law, for example, is untimely. Our partial disapproval only affects the federal enforceability of the emission limitation for MSCC's 100-meter stack. It is premature to claim that a federally enforceable emission limitation for MSCC would so unfairly burden MSCC in comparison with other sources in the area as to violate the guarantee of equal protection provided by the Fifth Amendment through incorporation of the Fourteenth Amendment to the U.S. Constitution. We have not yet proposed a federally enforceable limitation for MSCC.

(b) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment # 1, pp. 3 and 4; comment # 13) stated that our actions have interfered with MSCC's contract rights created in the 1977, 1996, and 1998 stipulations with the State. In particular, the commenter claims that we have impaired MSCC's rights to good engineering design credit for the 100-meter stack, protection from non-validated modeling, and a guaranteed level of SO2 emissions.

Response: One premise of the comment seems to be that MSCC has an entitlement or contract right to a 100-meter stack based on a 1977 State determination of GEP, and a State stipulation based on that determination. However, our 1985 stack height regulations specifically provided for varying degrees of ''grandfathering'' for stacks built before certain dates. For reasons unknown to us, MSCC did not actually start building its 100-meter stack until late 1993 (document # IV.A–17, exhibit #37), and, thus, under our 1985 stack height regulations, the stack does not qualify for any form of grandfathering. Various industrial sources challenged our 1985 stack height regulations on grounds similar to or the same as those raised by the commenter. The Court of Appeals for the D.C. Circuit rejected these challenges. *NRDC* v. *Thomas,* 838 F.2d

[20] Actually, what is referred to as the ''airshed'' is the difference between the ''background'' levels of SO2 without contribution from any of the industrial sources and the NAAQS for SO2; it is this difference which the State has apportioned among the industrial sources in the Billings/Laurel area in its effort to fairly burden each one. This difference in SO2 concentrations is not a tangible thing capable of being possessed. Note that the ''background'' was both modeled and monitored. Monitored regional background concentrations of SO2 were obtained from remote, rural monitoring sites. These yielded a fairly pristine background. In the modeled attainment demonstration, the background for any single source consists of the regional background plus the background contribution from any other sources upwind that are explicitly included as inputs to the model.

1224, 1249–1251 (D.C. Cir. 1988). Under section 307(b) of the Act, it is also too late for MSCC to attempt to resurrect these failed arguments. Thus, we do not believe MSCC has an entitlement or contract right to a 100 meter stack height credit.

Also, assuming for the sake of argument that the stipulations between MSCC and the State could be considered private contracts and not governmental regulatory actions, the assertion that we have unconstitutionally infringed on the rights created by such contracts is without foundation. The Contract Clause of the U.S. Constitution, Article 1, § 10, clause 1, prohibits states from passing any ''law impairing the obligation of contracts.'' It does not apply to Acts of Congress, nor does the due process clause of the Fifth Amendment make this prohibition applicable to a review of congressional legislation (or, by implication, an agency action). *See Washington Star Co.* v. *International Typographical Union Negotiated Pension Plan*, 729 F.2d 1502, 1507 (D.C. Cir. 1984). *See also Eastern Enterprises* v. *Apfel*, 118 S.Ct. 2131, 2148 (1998) (''[c]ontracts, however express, cannot fetter the constitutional authority of Congress,'' quoting *Connolly* v. *Pension Benefit Guaranty Corporation*, 475 U.S. 211, 223–224, 106 S.Ct. 1018, 1025 (1986)).

In addition, as stated above, our disapproval of MSCC's emissions limitations merely affects the federal enforceability of those limitations and does not alter or interfere with MSCC's obligations or rights under State law. So, the commenter's complaint is untimely in any event.

(c) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment # 13) stated that our action or the Act infringes on various other constitutional protections by effecting a seizure of private effects, double jeopardy, cruel and unusual punishment, or by having the effect of bills of attainer or ex post facto laws, or by creating involuntary servitude.

Response: These constitutional challenges are also unfounded. The protection against seizure of property or effects under the Fourth Amendment pertains to the prohibition against ''unreasonable search and seizure'' of evidence by law enforcement officers in a law enforcement proceeding. This rulemaking does not involve an enforcement proceeding, and no effects have been seized from any person. Similarly, the Fifth Amendment's prohibition against double jeopardy for the same offense, the Eighth Amendment's protection against cruel and unusual punishment, and the prohibitions in Article 1, § 9, clause 3, against bills of attainder (imposing liability without judicial process) and ex post facto laws (imposing criminal sanctions for acts engaged in prior to a law's effective date) only concern the constitutionality of imposing sanctions on individuals for unlawful acts. They are not applicable to this rulemaking.

Finally, no individual has been compelled to labor for another, or to engage involuntarily in any activity whatsoever, in violation of the Thirteenth Amendment's prohibition against involuntary servitude. If the commenter intended to refer to a servitude on the land, in the sense of a burden on one property for the benefit of another, this too is not relevant, because ''servitude on the land'' refers to the creation of easements under common law, which does not apply to this rulemaking.

(d) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment # 59) stated that the Act unconstitutionally deprives citizens and the regulated community of effective recourse to the courts with its broad prohibition of later challenges to rules.

Response: Reflecting Congress' interest in finality of agency action, section 307(b) of the CAA requires that appeals of agency action occur within sixty days of rule promulgation, or if grounds for appeal arise after promulgation, within sixty days after such grounds arise. The constitutionality of this limitation on challenges to agency action has been upheld. *See Lloyd A. Fry Roofing Co.* v. *EPA*, 554 F.2d 885, (8th Cir. 1977).

6. Statutory Challenge

(a) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment #'s 3, 5, 7, 10, 11 and 15) stated that our proposed partial approval of the Billings/Laurel SIP revisions is inappropriate because the enforceable emission limitations adopted by the State exceed those required by the Act; that we should approve only the provisions that are federally required and should disapprove or otherwise remand the rest of the SIP to the State.

Response: In general, section 116 of the Act provides that States may adopt emission standards stricter than national standards. The United States Supreme Court has interpreted this provision together with section 110 of the Act to mean that States may submit implementation plans more stringent than federal law requires and that EPA *must* approve such plans if they meet the minimum requirements of section 110(a). *See Union Electric Co.* v. *Environmental Protection Agency*, 427 U.S. 246, 266, 96 S.Ct. 2518, 2529 (1976). In other words, we do not have the option of disapproving more stringent state requirements, but must approve them as long as they meet Act criteria for SIPs.

It is difficult to say which, if any, SIP limitations are more stringent than the Act requires. The Act does not actually establish emission limitations for SIPs, but requires that the emission limitations adopted by a State must be sufficient to ''assure that national ambient air quality standards are achieved.'' *See* section 110(a)(2)(C) of the Act. The determination of sufficiency is made by a modeling demonstration. *See* section 110(a)(2)(K) of the Act; *see also* 40 CFR 51.112, which provides that ''[t]he adequacy of a control strategy shall be demonstrated by means of applicable air quality models, data bases, and other requirements specified in the appendix W of this part.'' The Act requires States both to attain and maintain the standards. *See* section 110(k)(5) of the Act. The control strategy must be demonstrated to protect the NAAQS in the present as well as in the future, providing an allowance for some level of emissions growth.

(b) *Comment:* One commenter (MSCC letter, document #IV.A–19, comment #1, 3rd page) stated that the levels of control imposed in the Billings/Laurel SIP plan exceed the authority directly available to the federal government in its regulation of interstate commerce.

Response: The federal government's authority to regulate air pollution under the Commerce Clause of the Constitution has long been established. *See, e.g., District of Columbia* v. *Train*, 521 F.2d 971, 988 (D.C. Cir. 1975); vacated and remanded on other grounds *sub nom. EPA* v. *Brown*, 431 U.S. 99, 97 S.Ct 1635 (1977); *Sierra Club* v. *Environmental Protection Agency*, 540 F.2d 1114, 1139 (D.C. Cir. 1976), *cert. den.*, 430 U.S. 959, 97 S.Ct. 1610 (1977). In *Hodel*, the Supreme Court indicated its agreement with these decisions. *See* 452 U.S. at 282, 101 S.Ct. at 2363. The comment implies that our authority to approve SIPs is limited to minimal protection of the NAAQS. The courts have not interpreted the Act in this way and have not limited our authority to approve SIPs to approval of only a minimum of protection. *See Union Electric Company* v. *Environmental Protection Agency, ibid. See also Sierra Club*, 540 F.2d at 1139 (''Regulation of air pollution clearly is within the power of the federal government under the commerce clause, and we can see no basis on which to distinguish

deterioration of air cleaner than national standards from pollution in other contexts''). If Montana had submitted emission limitations that could be shown by modeling to be more stringent than necessary to attain and maintain the SO2 NAAQS, we would have to approve those limitations as long as they satisfied other Act requirements.

7. Conditional Approval

(a) *Comment:* One commenter (Yellowstone Valley Citizens Council, document # IV.A–29) expressed concern that the MDEQ might disregard any timeframes proposed by us and feared that the State would drag its feet in fulfilling its commitment to make revisions to the SIP. The commenter suggested that we demand that the Racicot Administration ensure timely execution of necessary changes to the SIP with clear expectations and consequences for failure to implement these changes.

Response: On May 4, 2000 the Governor of Montana submitted a SIP revision to fulfill the commitments on which the proposed conditional approval was based. Since the Governor has fulfilled his commitment, we believe it is not appropriate to finalize the conditional approval. Instead, we will complete notice-and-comment rulemaking on those portions of the July 29, 1998 submittal we proposed to conditionally approve on July 28, 1999 and on all of the May 4, 2000 submittal.

F. Due Process for SIP Approval

On July 28, 1999 (64 FR 40791), we proposed action on the Billings/Laurel SO2 SIP through informal rulemaking, as authorized by section 110(k) of the Act and the Administrative Procedures Act (APA), 5 U.S.C. 553.

Summary of Comments and Response

One commenter submitted comments on our rulemaking process requesting more formal rulemaking procedures.

We have considered the comments received and still believe our informal rulemaking process authorized by section 110(k) of the Act and the Administrative Procedures Act (APA), 5 U.S.C. 553 is appropriate and sufficient.

The following is a summary of the comments received and our response to the comments.

(1) *Comment:* One commenter (Goetz letter, document #IV.A–18, exhibit D, comment #VIII., p. 66) requested that we afford MSCC the right to conduct discovery of our documents and cross-examine EPA witnesses in this rulemaking, to satisfy substantial due process procedural protections.

Response: Due process in the context of the SIP Call is discussed in section V.A.2, above. We are taking action on the SIP Call and on the Billings/Laurel SIP through informal rulemaking, as authorized by section 110(k) of the Act and the Administrative Procedure Act (APA), 5 U.S.C. 553. The requirements of due process for this rulemaking are met under those provisions by publication of a proposed rulemaking action with an opportunity for submission of written comments to be considered by the agency prior to taking final action.

Section 110 of the Act does not require hearings on the record, or even a hearing and oral presentation of comments prior to issuing a binding SIP Call or approval or disapproval of a SIP. *See* section 307(d) of the Act omitting SIP approvals from a long list of EPA actions, including the promulgation or revision of a FIP, which are subject to the requirement of section 307(d)(5) of an opportunity for the oral presentation of views in addition to the submission of written comments. Section 110 of the Act requires only the minimum procedural requirements of section 553 of the APA, including public notice and opportunity for submission of written comments. *See Indiana & Michigan Electric Co.* v. *Environmental Protection Agency*, 509 F.2d 839, 846 (7th Cir. 1975); *Buckeye Power, Inc.* v. *EPA*, 481 F.2d 162, 172 (6th Cir. 1973).

Even when an opportunity for hearing is required, as for promulgation of a FIP, we are not required by statute to give regulated entities the opportunity to cross-examine EPA witnesses in an adjudicatory hearing. *See Cleveland Electric Illuminating Co.* v. *E.P.A.*, 572 F.2d 1150, 1157 (6th Cir. 1978), where petitioners sought remand of our action on a FIP and a full evidentiary hearing, including cross-examination of EPA witnesses. The Sixth Circuit declined, stating:

> Administrative rulemaking which is to be preceded by extensive hearings where ''a party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts . . .'' (5 U.S.C. § 556(d) (1967) is required only when the last sentence of section 553(c) of the APA applies. This section provides:
>
> > ''When rules are required by statute to be made *on the record after opportunity for an agency hearing*, sections 556 and 557 of this title apply instead of this subsection.'' (Emphasis added). (5 U.S.C. § 553(c)(1967)).
>
> (Sections 556 and 557 of the APA outline the requirements for extensive, adjudicatory-type hearings.)

572 F.2d at 1157, citing *Buckeye Power*, 481 F.2d at 172. In other words, full-scale evidentiary hearings that allow for presentation of evidence and cross-examination of opposing witnesses are only required when section 553(c) of the APA applies, and that section applies when and only when ''rules are required by statute to be made on the record after opportunity for an agency hearing.'' 5 U.S.C. 553(c). This interpretation has been approved by the Supreme Court. *See United States* v. *Allegheny-Ludlum Steel Corp.* 406 U.S. 742, 92 S.Ct. 1941 (1972).

The Act does not require rulemaking ''on the record after opportunity for an agency hearing'' for a SIP Call or approval or disapproval of a SIP or SIP revision, or indeed for any other rulemaking. The requirement of section 307(d)(5) of an opportunity for hearing, which applies to FIPs but not SIPs, only requires ''an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions,'' as well as a record of the proceedings and an opportunity for submission of rebuttal and supplementary information. The formal adjudicatory procedures of sections 556 and 557 of the APA do not apply to this or any other EPA rulemaking under the Act.

(2) *Comment:* One commenter (Goetz letter, document # IV.A–18, exhibit D, comment # VIII, p. 66) stated that even if the SIP approval process does not normally require formal procedures, procedural requirements should not be treated rigidly and traditional procedures may not be automatically adequate to provide due process (citing *Walter Holm & Co.* v. *Hardin*, 449 F.2d 1009, 1015 (D.C. Cir 1971); *O'Donnell* v. *Shaffer*, 491 F.2d 59, 52 (D.C. Cir. 1974); *Seacoast Anti-Pollution League* v. *Costle*, 572 F.2d 872 (1st Cir. 1978) (ordering a remand of our permit decision under the Clean Water Act for the limited purpose of allowing the administrator to determine whether cross-examination would be useful).

Response: These cases concern the interpretation of statutory procedural requirements other than Clean Air Act requirements. Two other cases cited in the comment do concern the Clean Air Act but are not controlling: *Kennecott Copper Corp.* v. *Environmental Protection Agency*, 462 F.2d 846, 850 (D.C. Cir. 1972)(stating that ''there are contexts . . . in which the minimum requirements of the Administrative Procedure Act may not be sufficient'' and remanding the SO2 secondary standards to the Administrator for a statement explaining how he derived

the standard); *Bunker Hill Co.* v. *Environmental Protection Agency*, 572 F.2d 1286 (9th Cir. 1977)(remanding a SIP rulemaking for hearing with right of cross-examination, discussed below).

(3) *Comment:* One commenter (Goetz letter, document # IV.A–18, exhibit D, comment # VIII, p. 66) stated that MSCC is entitled to greater procedural protections in this rulemaking, because much of the focus is on one party (MSCC) in a matter involving factual disputes and requiring the resolution of highly complex and technical issues.

Response: Our partial disapproval of the SIP is not limited only to issues involving MSCC's 100-meter stack. We are also disapproving the SIP in part for failure to establish an enforceable limitation on flare emissions. This aspect of our partial disapproval involves three other sources in addition to MSCC. The stack height issue itself, where the focus is on MSCC, involves our interpretation of our stack height regulation, primarily a question of law. In any case, as the *Cleveland Electric Illuminating Co.* court noted, typically the decisions which Congress assigns to administrative agencies are of the type that would be called technical and complex; yet Congress and the Supreme Court have not given courts the responsibility to pick and choose agency hearing procedures based on the complexity of the questions presented. *See* 572 F.2d at 1160.

In a few cases, the courts have granted more extensive procedural protections than those required by statute. In *Bunker Hill Co.* v. *Environmental Protection Agency*, the Ninth Circuit required a formal evidentiary hearing with cross-examination of witnesses in a remand of our disapproval of a SIP control strategy for a lead smelter. 572 F.2d at 1305. The state plan imposed 72 percent control of SO2 emissions from a lead smelter; the court found that we were ''substituting standards that would guarantee 82 percent control.'' *Id.* at 1291. Apparently, we promulgated federal emission limitations for the source, although it is not clear from the opinion whether we promulgated a FIP. In *Bunker Hill*, the company objected that our emission limitations were technologically and economically infeasible. The court remanded the matter to us to further consider the technological feasibility of our proposed limitations and required us to allow the company to cross-examine our experts on the technological feasibility of the proposed control measures. *Id.* at 1305. The Ninth Circuit stated that cross-examination was not strictly required by the APA, since we were not conducting rulemaking ''on the record,'' but that cross-examination would ''help crystalize the varying contentions of the experts'' on complex technical issues and aid the court in reviewing final action. *Id.*

In contrast to the rulemaking in *Bunker Hill*, this rulemaking is simply an approval and disapproval action on a SIP. We are not promulgating or imposing already promulgated federal emission limitations. By our rulemaking, MSCC will not be subject to limitations more stringent than the requirements of the State SIP, and those requirements are not disturbed by this rulemaking. Nor is there any claim that MSCC is being subjected to requirements that are technologically infeasible. Thus, there is no apparent need to crystallize the contentions of experts on factual matters of a ''highly complex and technical nature'' in order to aid a court in reviewing our decision. The same due process concerns the Ninth Circuit found in *Bunker Hill* are not at play in this rulemaking. Just as the *Cleveland Electric Illuminating Co.* court observed, when it declined to follow the example of the *Bunker Hill* opinion, we do not find ''any legal requirement or practical need'' for a hearing, with or without cross-examination. *See* 572 F.2d at 1160.

The other case the commenter cited as requiring cross-examination in a rulemaking that was not ''on the record,'' *Marine Space Enclosures, Inc.* v. *Federal Maritime Comm'n.*, 420 F.2d 577 (D.C. Cir. 1969), concerns a decision by the Federal Maritime Commission, under the Shipping Act of 1916, to award a contract for constructing a maritime passenger terminal. The statute, as interpreted by the court, required a hearing prior to decision. The D.C. Circuit remanded for a public hearing, but did not require the commission to provide the opportunity for cross-examination, saying that the issues might be adequately developed more informally: ''we refrain at this juncture from specifying that our remand order requires an evidentiary hearing.'' 420 F.2d at 890. Even the decision in that case that a hearing was required does not appear pertinent to this rulemaking, where the Clean Air Act does not require one.

We decline to grant an opportunity for hearing in this rulemaking. The Clean Air Act and the APA do not require it. Nor do we believe that any unusual due process concerns would impel us to override the usual procedures mandated by statute and case law. The commenters who have submitted written comments on our proposed rulemaking have exercised the opportunity to present their views to us through that mechanism; a full record has been prepared on which our rulemaking will be made final, and the record provides an adequate basis for judicial review.

G. Escape Clause

We proposed to disapprove the escape clause (a provision in the SIP that allows each source to withdraw its consent to the stipulation and thus nullify the SIP as it pertains to that source) because, if sources invoke the escape clause, the MDEQ would no longer have a plan to implement.

Summary of Comments and Response

One commenter opposed and three commenters supported our proposed action.

We have considered the comments received and still believe it is appropriate to disapprove the escape clause as proposed.

The following is a summary of the comments received and our response to the comments:

(1) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment #'s 46 and 70) stated that disapproving the ''escape clause'' will render the SIP revision more stringent than the State intended and interfere with the State's agreement with industry to be even-handed in allocating the burdens of the SIP. That same commenter (MSCC letters, document # IV.A–19, comment # 47 and document # IV.A–20, comment # 12) stated that our disapproval of the escape clause should not have the effect of making provisions of the stipulations federally enforceable if they have been nullified by a source invoking the escape clause. Other commenters (Yellowstone Valley Citizens Council letter, document # IV.A–29, and Zaidlicz letter, document # IV.A–30) stated that the escape clauses in all the stipulations must be disapproved. One commenter (ExxonMobil letter, document # IV.A–28) stated that the escape clause does not need to be included in the final EPA-approved SIP, since the function of the escape clause was to allow all parties to negotiate the SIP in good faith and ensure consistent SO2 control strategies and is not needed now that the State has adopted the stipulations.

Response: The escape clause in each stipulation allows each source to withdraw its consent to the stipulation and thus nullify the SIP as it pertains to that source, if the initial control strategy adopted by the State (or EPA as a FIP) for any of the other affected sources in the Billings/Laurel area is not ''substantially similar in its common terms'' to the source in question's

stipulation and attached exhibit of emission limitations. The opportunity to invoke the clause exists up to 60 days after receiving written notice of the final adoption of the control strategy.

We have no authority under the Act to approve as part of a federally enforceable SIP a provision that could render the SIP or any part of it unenforceable or void. Section 110(k)(3) of the Act authorizes us to approve a SIP if it meets all the applicable requirements of the Act, including the requirement of enforceable emission limitations under section 110(a) of the Act. Other than disapproving the escape clause as part of a partial disapproval of the SIP, our only option in the face of it is to disapprove the entire SIP, a course of action we are confident the State would not prefer us to take. Instead, by disapproving the escape clause, we are meeting the requirements of the Act and ensuring the federal enforceability of the approvable portions of the SIP, without in any way changing the substantive SIP requirements or creating new requirements. There may be some question about the State's ability to enforce the SIP if the escape clause is invoked. In our proposed rulemaking action, we stated that if any source invoked the escape clause, we would issue a SIP Call or take other appropriate action under the Act to address the resulting inadequacy of the State's plan.

This aspect of our partial disapproval does not impermissibly make the SIP more stringent than the State intended. Readers are referred to the discussion of the effect of our partial approval/partial disapproval in section V.E., above. The State carried out its intended allocation of the burdens of the control strategy when it established emission limitations for each of the sources in their respective stipulations. Our disapproval of the escape clause does not disturb these state decisions. The state-enforceable stipulations and all their terms and conditions, including the escape clause, remain in effect at the state level.

(2) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment # 123) stated that disapproval of the escape clause appears to be a usurpation of a court function by changing a contract, based on the representations of one party to the contract (apparently, referring to the State).

Response: To the extent that we understand the commenter, it appears to invoke the same concern referred to earlier that our action interferes with a private right of contract in violation of the Constitution. The reader is referred to the discussion of constitutional challenges to our partial disapproval in section V.E., above. Alternatively, the commenter may object to our interpretation of the escape clause on the basis that the clause is a contractual right which only a court can interpret. In this rulemaking, we are interpreting the escape clause as a provision of the SIP which affects the adequacy of that plan, in light of the statutory criteria that govern our approval action. Courts have ruled that our interpretation of the provisions of SIPs is entitled to deference. *See, e.g., American Cyanamid Co.* v. *Environmental Protection Agency*, 810 F.2d 493, 498 (5th Cir. 1987); *American Lung Ass'n of N.J.* v. *Kean*, 670 F.Supp 1285, 1291 (D.N.J. 1987).

H. Language in ExxonMobil and MSCC Stipulations Related to Incorporation of Earlier Stipulation and Apportionment of the Airshed

We proposed to disapprove language in ExxonMobil and MSCC's stipulations related to incorporation of earlier stipulations and apportionment of the airshed.

Summary of Comments and Response

Two commenters opposed and one commenter supported our proposed action.

We have considered the comments received and still believe it is appropriate to disapprove the language in ExxonMobil and MSCC's stipulations related to incorporation of earlier stipulations and apportionment of the airshed.

The following is a summary of the comments received and our response to the comments:

(1) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment # 81) stated that our disapproval of the two provisions of the MSCC and ExxonMobil stipulations is inappropriate, because the State case and settlement agreement are legal facts; our disapproval overturns a state order by the MBER giving legal effect to the settlement and to MSCC's contract rights. Another commenter (ExxonMobil letter, document # IV.A–28) stated that they agreed that these references should be deleted from the EPA-approved SIP.

Response: Our disapproval of paragraphs 1 and 2 of the MSCC stipulation and paragraph 1 of the ExxonMobil stipulation does not overturn the order of the MBER and does not affect the State's agreement with ExxonMobil and MSCC. Excluding the reference to the board order from the EPA-approved SIP clarifies that the order is not federally enforceable, thereby avoiding any confusion that might have ensued if we had included the reference in our approval. Our action does not adversely affect MSCC's contract rights, because it does not alter the settlement agreement.

(2) *Comment:* One commenter (MSCC letter, document # IV.A–20, comment # 13) stated that our disapproval of the reference to the 1996 settlement between MSCC, ExxonMobil, and Montana is a selective attempt to change the record in that case. The stipulation that resulted from the settlement is not void or fully accomplished. The commenter stated that if we believe that the reference should be removed because it is not needed, then we should disapprove every other detailed requirement not required by the Act and remand them all to the state.

Response: By disapproving the provisions related to the settlement agreement, we do not attempt to revise the record. The public record of the administrative case between MSCC, ExxonMobil, and the State is found in the state-adopted SIP, where the provisions are included in the MSCC and ExxonMobil stipulations. Our disapproval of these provisions does not hinge on whether or not the February 1996 stipulation was accomplished or was necessary. Our disapproval stems from our concern that including these provisions in the EPA-approved SIP might imply that the settlement agreement itself is federally enforceable. That result would be inappropriate, because we are disapproving two SIP elements that directly resulted from the agreement, the stack height demonstration and SO2 control plan for MSCC with respect to the 100-meter stack. Approving the provisions that reference the State's agreement on these issues could create confusion about their possible federal enforceability and possibly conflict with our explicit disapprovals.

(3) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment #'s 14, 16, and 81) stated that our position that no federally cognizable right to emit exists is unreasonable; and that we have approved emission rights for some sources but not for MSCC. Another commenter (Goetz letter, document # IV.A–18, exhibit D, comment # VII, p. 65) stated that our proposal not to approve the part of ExxonMobil's and MSCC's stipulations related to apportionment of the airshed is improper. These commenters (MSCC letter, document # IV.A–19, comment #'s 43 and 51 and Goetz letter, document # IV.A–18, exhibit D, comment # VII, p. 65) stated that, contrary to our position that an implied

right to pollute conflicts with the Act, the Act itself provides for ''emission rights'' and property rights in airsheds through emission trading.

Response: In our proposed rulemaking action, we proposed to disapprove paragraph 1 of the ExxonMobil and MSCC stipulations for an additional reason, because the paragraph contained the statement that the companies were entering into the settlement agreement, in part, to preserve their respective ''rights to apportionment of the airshed.'' *See* 64 FR at 40800. We declared that this statement conflicts with the purpose and obligations of the Act because air pollution sources do not have an ownership interest in the ambient air or a right to pollute under the Act. *See id.*

Our proposed disapproval of the statement about apportionment may not have been artfully expressed. We did not mean to imply that we do not recognize emission rights created by statute. The commenters are correct that the Act authorizes various kinds of emission rights. Section 110(a)(2) of the Act, for example, provides that SIPs may use ''auctions of emissions rights'' and other forms of emissions trading as an enforceable emission control technique; Title IV of the Act authorizes trading in emission allowances under the acid rain program. Permanent and enforceable emission reductions may also be sold as offsets for purposes of allowing sources to construct or modify under new source review under part C (attainment areas) and part D (non-attainment areas) of title I of the Act.

Such statutory rights to emit pollutants are not permanent, but may be changed by regulatory action. In a future SIP revision, the State might choose to redistribute some of the burden of SO2 control in the Billings/Laurel area to achieve a different policy goal. Because the rights are created by and can be diminished by regulatory action, they are not the kind of private property protected under the Fifth Amendment to the Constitution. *See* the discussion of takings and emission rights in section V.E, above.

The phrase ''rights to apportionment of the airshed'' implies possessory rights to the ambient air, as if the State or the United States could allocate the atmosphere, like land or mineral rights, to competing claimants. We were concerned that the phrase might imply rights less conditional than those actually created under the Act and that, if we approved this language into the federally enforceable SIP, our approval might imply that ExxonMobil or MSCC have unconditional rights to emit at the levels established in the State stipulations, regardless of the effect of our partial disapproval of the SIP.

I. Default Approval of SIP

We proposed action on the Billings/Laurel SO2 SIP on July 28, 1999.

Summary of Comments and Response

One commenter submitted comments regarding default approval of the SIP.

We have considered the comments received and do not agree with the commenter.

The following is a summary of the comments received and our response to the comments.

(1) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment #'s 57 and 124) stated that more than one year has elapsed from the date of the Governor's submission of the SIP revisions for the Billings/Laurel area before we published the proposed rule to approve, disapprove, and conditionally approve the SIP. The commenter believes that our failure to take final action on the SIP may have resulted in automatic statutory approval of the submission. A proposed action is not a final action.

Response: The SIP revisions submitted by the State have not been approved by default. The requirements for our action on a SIP submission are found in section 110(k) of the Act. Section 110(k)(1) requires us to make a completeness finding within 60 days of receipt of a SIP or SIP revision, or the submission will be deemed complete six months after it is submitted. If the plan is complete, section 110(k)(2) requires us to take appropriate action within 12 months of the completeness finding or the date the submission is deemed complete. The Billings/Laurel SIP revisions were finally submitted on July 29, 1998. We did not make a completeness determination on this submission. The revision was deemed complete as a matter of law on January 29, 1999; the twelve-month deadline for action would be January 29, 2000. We proposed to approve the revisions in part, disapprove them in part, and conditionally approve other parts on July 28, 1999.

The commenter is correct that the deadline for action is met, not by publishing a proposed action, but by final rulemaking. The commenter is incorrect in suggesting that failure to meet the 12-month deadline means that the SIP submission is approved by default. The Act does not authorize default approval of a SIP; SIPs must be approved under sections 110(k)(3) and (4) of the Act. These provisions require our affirmative action to approve or disapprove through rulemaking, after public notice and opportunity for comment.

J. Department Discretion

We proposed to partially approve the SIP because the State had addressed our earlier concerns with director discretion provisions in the SIP. Our proposal was based on the July 1998 submittal of the SIP and our interpretation of the modification process.

Summary of Comments and Response

One commenter opposed and two commenters supported our proposed action.

We have considered the comments received and still believe it is appropriate to partially approve the SIP as submitted since the State had addressed our earlier concerns with director discretion provisions.

The following is a summary of the comments received and our response to the comments:

(1) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment # 69) stated that it is unnecessary under the Act to obtain our approval for exercises of state discretion allowed by the SIP. The commenter believes that Montana should be free to implement changes as ''necessary and expedient''; in the unlikely event Montana implemented a change which made the SIP inadequate, we could call for a SIP revision. The commenter objects to the ''dual approval provisions'' of the SIP as making the administrative change process unduly cumbersome. Two other commenters (Yellowstone Valley Citizens Council letter, document # IV.A–29, and Zaidlicz letter, document # IV.A–30) stated that we must review every SIP language change.

Response: Section 110(i) of the Act prohibits states and EPA, except in certain limited circumstances which do not apply to the Billings/Laurel SIP, from taking any action to modify a requirement of a SIP except by SIP revision. We do not agree that Montana or EPA should be free to make changes in SIPs whenever ''necessary or expedient.'' The Act requires that changes in SIP requirements must be made by the SIP revision process, because that process gives the public the opportunity to review and comment on the reasonableness and adequacy of the requirements that are to be imposed, and gives us an opportunity to review and approve all changes.

The Billings/Laurel SIP allows for an informal administrative process for making certain clerical changes and for approving alternative requirements in the SIP, primarily with respect to monitoring. The State and we consider

these changes and approvals so insignificant that they may be made with our approval but without public review, without contravening the intent of section 110(i) of the Act. The SIP describes the process by which the State will propose such changes and approvals for us to review and approve before they can be implemented. If the process is used in accordance with the clarifications we made in our proposed rulemaking action (*See* 64 FR at 40796), we believe that it satisfies the intent of section 110(i). Any change that does not qualify for the informal approval process must be processed as a SIP revision under section 110(a)(2). EPA's ''White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program'' by Lydia N. Wegman, Office of Air Quality Protection and Standards, dated March 5, 1996, allows for an alternative mechanism for making changes to SIPs through the Title V permit process (attachment to document # II.C–8).

We will review all changes to the language and implementation of the Billings/Laurel SIP to ensure that they are the kinds of minor administrative changes that are appropriate to make without a SIP revision. This up-front process of review and approval will be less cumbersome for the State and regulated industry than having us undertake an after-the-fact inquiry into the appropriateness of a particular change and then initiate a SIP Call, if we identify an inadequacy.

K. Quarterly Data Recovery Rate (QDRR)

We proposed to approve the provisions pertaining to the quarterly data recovery rate (QDRR) for the CEMS because the State had addressed our earlier concerns with QDRR provisions in the SIP. Our proposal was based on the July 1998 submittal of the SIP and our interpretation of the QDRR requirements.

Summary of Comments and Response

One commenter opposed and four commenters supported our proposed action.

We have considered the comments received and still believe it is appropriate to partially approve the SIP as submitted since the State had addressed our earlier concerns with QDRR provisions.

The following is a summary of the comments received and our response to the comments:

(1) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment # 71) objected to a statement by MDEQ that obtaining data 100 percent of the time is required under the SIP. This commenter believes that this statement is not what MSCC agreed to; data may not always be recoverable because of other requirements or events not under the reasonable control of the source. Two commenters (Yellowstone Valley Citizens Council letter, document # IV.A–29, and Zaidlicz letter, document # IV.A–30) stated that they support 100 percent CEMS availability, unless data loss is adequately justified. One commenter (ExxonMobil letter, document # IV.A–28) agreed with our assessment for QDRR. One commenter (McGarity letter, document # IV.B–1) stated that missing data must be heavily penalized and suggested that information on CEMS data availability should be instantaneously accessible to Yellowstone County residents so they can participate in the compliance assurance process. Finally, this commenter suggested that the regulated industry must be required to develop an approved Quality Assurance Control Plan (QAPP) for CEMS that addresses daily self zero and calibration auditing and annual RATA.

Response: We agree that CEMS should be in operation and their data retrievable at all times, unless failure to operate or other loss of data is adequately justified. QDRR is the percentage of the time in each quarter when CEMS are operating and generating valid hourly data about SO2 emissions. The stipulations entered into between the State and each source in the Billings/Laurel area originally set a QDRR of 90 percent and an allowance of up to 192 hours per quarter when CEMS data could be unavailable without the State taking enforcement action. Given the high reliability of CEMS when they are operated properly, we believe that the goal for CEMS data recovery should be 100 percent. Anything less than that should be excused only if the loss of data has been documented and justified.

In the final version of the SIP, the State deleted the allowance for 192 hours of missing CEMS data per quarter and explicitly required the sources to use ''best efforts'' to achieve the highest QDRR that would be technically feasible. The 90 percent QDRR remains in the stipulations as a trigger level for state action as an assumed level of technical feasibility. The State, EPA, and citizens can still take action to enforce the CEMS data requirement when a source has met the 90 percent QDRR but is missing ten percent or less of CEMS data for a quarter; *i.e.*, when its data recovery rate is greater than 90 but less than 100 percent. The source must show that the data loss was documented at the time it occurred and was justified, for example, because it was caused by a lightning strike, electrical power outage, or other circumstance beyond the operator's control.

With respect to the QAPP, auditing and annual RATA comment, the exhibit to the stipulations, and an attachment to the exhibit, for each source contain CEM performance specification requirements for the SO2 and H2S CEMS and flow meters. These requirements include daily testing and annual RATAs. In addition to the exhibit requirements for CEMS and flow meters, other documents addressing CEMS operations are to be developed. These documents include quality assurance plans and standard operating procedures. These other documents are not being included in the SIP. *See* discussion in section M below.

L. Effect of the Montana Voluntary Environmental Audit Act

We stated in our proposed rulemaking that Montana's audit privilege and penalty immunity law, the Voluntary Environmental Audit Act, Mont. Code Ann. §§ 75–1–101 *et seq.* (1999), (H.B. 293, effective October 1, 1997) can affect only state enforcement and cannot have any impact on federal enforcement authorities. We stated that our proposed action should not be construed as making any determination or expressing any position regarding the State's audit privilege and penalty immunity law.

Summary of Comments and Response

One commenter expressed an opinion of how the State should implement its audit privilege and penalty immunity law and EPA oversight of the SIP.

We have considered the comment received and believe our statements in our proposed rulemaking action on the State's audit privilege and penalty immunity law are still appropriate.

The following is a summary of the comments received and our response to the comments:

(1) *Comment:* One commenter (Yellowstone Valley Citizen's Council letter, document # IV.A–29) stated that the State should implement Montana's Environmental Voluntary Audit Act (''Audit Law'') in a manner that prevents violations of federal law, and that we should be vigilant in oversight of state enforcement of the SIP in cases where alleged polluters invoke the immunity provisions of the Audit Law.

Response: Our concerns about the effect of the Audit Law on the State's ability to enforce the SIP have been addressed by a formal agreement with the State. On December 13, 1999, EPA and the State entered into a Memorandum of Agreement (''MOA'')

(*see* document # IV.C–32) concerning the effects of the Audit Law on state implementation and enforcement of all federal environmental programs in Montana. EPA and the State agreed that, as long as the State's legal interpretation of the Audit Law (as memorialized in a November 25, 1998 letter from Governor Marc Racicot and Attorney General Joseph Mazurek to EPA Regional Administrator William P. Yellowtail) and the MOA are in effect, State programs have sufficient authority to maintain or obtain delegation of federal environmental programs. The MOA resolved any outstanding issues between the State and EPA concerning our delegation or approval of federal programs in the state of Montana, including SIP approvals. In our proposed rulemaking action, we declared that the Audit Law affected only state enforcement authorities and had no effect on the ability of EPA or citizens to enforce the SIP under relevant provisions of the Act. *See* 64 FR at 40804. This view continues to be true. We agree with the comment that we should exercise our oversight role with particular care when the Audit Law is invoked by an owner or operator of a source seeking immunity from civil or administrative penalties for violation of the Billings/Laurel SIP.

M. Effect of State-Only Provisions

We stated in our proposed rulemaking that we were not acting on State-only provisions that were not submitted as part of the SIP. However, if we were to determine that the State-only provisions, as implemented, appeared to constrain, or otherwise have a chilling effect on the State enforcement of the SIP, we would reconsider our approval or take other appropriate action under the Act.

Summary of Comments and Response

One commenter expressed a concern that the State-only provisions might create loopholes for industrial sources to avoid enforcement.

We have considered the comments received and believe our statements in our proposed rulemaking action on the State-only provisions are still appropriate.

The following is a summary of the comments received and our response to the comments:

(1) *Comment:* One commenter (Yellowstone Valley Citizen's Council letter, document # IV.A–29) stated that the placement of certain technical aspects of monitoring requirements and the flare provisions in a ''state-only'' section of the stipulations created potential loopholes for the industrial sources to avoid enforcement. The commenter expressed concern that other technical issues might be hiding in the state-only stipulations.

Response: The ''Additional State Requirements'' adopted by the MBER in June 1998 include documents that were not incorporated into the SIP submitted to us for approval in July 1998. These documents include quality assurance plans and standard operating procedures manuals for the CEMS for the Billings/Laurel sources, together with corrective actions plans and alternative monitoring plans. We believe that the exclusion of these documents from the federally enforceable SIP will not have an adverse effect on the implementation or enforcement of SIP requirements. We believe that the opposite could be true: inclusion of the documents in the federally enforceable SIP might have adversely impacted the ability of EPA and citizens to enforce the SIP, because the documents contain department discretion provisions which could potentially constrain enforcement efforts. For that reason, in our proposed rulemaking action we expressed our concern that the state-only provisions related to CEMS might limit or have a chilling effect on state enforcement of the SIP and our intention to take appropriate action under the Act, if we found that were true. *See* 64 FR at 40803—40804. We intend to address the exclusion of flare provisions from the SIP in a future FIP, as discussed in section V.C., above. We are unaware of any other technical issues or potential loopholes that might be contained in the state-only provisions.

N. Enforcement and MDEQ Staffing

In our Technical Support Document for our proposed Action on the Billings/Laurel SO2 SIP (document # III.B–1), we proposed to approve the Billings/Laurel SO2 SIP as meeting the ''enforcement program and stationary source regulations'' requirements.

Summary of Comments and Response

Three commenters expressed the concern that MDEQ lack sufficient resources to adequately implement and enforce the SIP.

We have considered the comments received and still believe it is appropriate to conclude that the Billings/Laurel SO2 SIP meets the ''enforcement program and stationary source regulations'' requirements.

(1) *Comment:* Three commenters expressed the concern that MDEQ lacks sufficient resources to adequately implement and enforce the SIP. Two commenters (Yellowstone Valley Citizen's Council letter, document # IV.A–29, and Zaidlicz, document # IV.A–30) stated that we must insure that the SIP is enforceable and that the State will have adequate resources allocated to effectively implement, monitor and police it. One of these commenters stated that two MDEQ staff members are responsible for the enforcement of air quality standards for eastern Montana, where 70 percent of the air pollution sources and most of the CEMS are located, and that the workload is too great for two people. This commenter also indicated they supported a bill in the last Montana legislative session to increase staff in eastern Montana, but MDEQ testified against the bill and it was defeated. Finally, this commenter stated that we should monitor SIP implementation carefully to safeguard the goal of improving air quality in the Billings/Laurel area. The other commenter expressed the concern that the MDEQ does not have adequate resources and staff to track compliance and maintenance of the Billings/Laurel SIP and other federally mandated air quality programs being delegated for state jurisdiction and that this puts human health and safety in jeopardy.

Another commenter (McGarity letter, document # IV.B–1) stated that turnover and low staff salaries have left MDEQ in a shambles; MDEQ staff is under-resourced and over-worked, and cannot be counted on to develop and enforce complicated compliance plans. This commenter urged us to keep it as simple as possible—no ''bells,'' no ''whistles,'' and no parametric monitoring with statistical averaging over ill-defined periods of time. This commenter also stated that we should seriously consider assuming SO2 program responsibility until the MDEQ is in a position to do an adequate job.

Response: Congress intended that states have primary responsibility for implementing and enforcing their SIPs. We have an oversight secondary role and may take enforcement action under section 113 of the Act for violation of a SIP when a state does not take action or when its action is considered ineffective. We intend to carry out our oversight responsibility with particular care in the Billings/Laurel area, where we have already identified potential concerns about the practical enforceability of certain provisions of the SIP.

We have regular meetings with MDEQ to discuss all compliance issues related to the Act. We review facilities with identified violations and discuss the State's proposed or on-going action to address these violations. There is no indication at this time that MDEQ is failing to meet its responsibility to

monitor compliance and take appropriate enforcement with respect to the federally enforceable SIP. These Billings/Laurel SIP revisions have not been subject to our oversight until now, when this final partial approval will make most of the provisions federally enforceable. We will oversee the State's efforts to monitor compliance with the new requirements after today's final rulemaking, with particular emphasis on the variable emission limitations and the effects of state-only provisions, which were identified in our proposed rulemaking. *See* 64 FR at 40794–40795 and 40803–40804. If we find that the State lacks adequate resources to pursue any violation of the Billings/Laurel SIP or if a state enforcement response is inadequate, we will take appropriate action.

O. Reasonably Available Control Measures (RACM) Including Reasonably Available Control Technology (RACT) and Reasonable Further Progress (RFP) at CENEX

We proposed to conclude that the RACM (including RACT) requirements have not been met in the Laurel SO2 nonattainment area.

Summary of Comments and Response

Two comment letters contained comments pertaining to our proposal on RACM (including RACT) and RFP. The two commenters stated we should not be disapproving the SIP as it pertains to these requirements.

We have considered the comments received and still believe it is appropriate to conclude that the RACM (including RACT) requirements have not been met in the Laurel SO2 nonattainment area.

The following is a summary of the comments received and our response to the comments:

(1) *Comment:* One commenter (Cenex letter, document # IV.A–26) stated that since our concern regarding flares is a non-issue the Laurel area has demonstrated compliance with the SO2 NAAQS and RACM/RACT and RFP have been met.

Response: We do not believe our concerns regarding flares are a non-issue. We still believe the attainment demonstration is not approvable without enforceable emission limitations on flares. *See* our response to flare-related comments in section V.C., above. As indicated in our TSD (document # III.B–1), for SO2 we interpret RACM (including RACT) as those control measures that are necessary for attainment of the NAAQS. Section 171(1) of the Act defines RFP as the ''annual incremental reductions in emissions * * * which are required for purpose of ensuring attainment of the applicable NAAQS by the applicable date.''

Since we believe that the State has not demonstrated attainment of the SO2 NAAQS in Laurel because the SIP lacks enforceable limitations for flares, we believe it is necessary to conclude that the RACM (including RACT) and RFP requirements have not been met.

(2) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment # 109) stated that proposing to disapprove the attainment demonstration is not related to determining that RACM/RACT have not been met.

Response: See response to comment (1) above

(3) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment # 110) stated that Laurel is in compliance with the NAAQS, that modeling shows attainment of the NAAQS in Laurel, and that our dissatisfaction with the Billings model should not impact our determination about RFP.

Response: See response to comment (1) above. Additionally, our disapproval of the attainment demonstration is not based entirely on the Billings stack height issue. Therefore, the Billings area modeling is not the sole reason why we believe it is necessary to conclude that the RFP requirements have not been met.

P. MSCC'S Auxiliary Vent Stacks

We proposed to disapprove the emission limitation on the auxiliary vent stacks because the SIP does not restrict the type of fuel burned in the boilers and heaters when they are exhausting out the auxiliary vent stacks.

Summary of Comments and Response

Three commenters submitted comments on our proposed action. One commenter believes that adjustments should be made to MSCC's exhibit and the other commenters believe we are being overly burdensome.

We have considered the comments received and still believe it is appropriate to disapprove the emission limitation on the auxiliary vent stacks because the SIP does not restrict the sulfur content of the fuel burned in the boilers and heaters when they are exhausting out the auxiliary vent stacks and does not contain a monitoring method that would make the emission limitation practically enforceable.[21]

The following is a summary of the comments received and our response to the comments:

(1) *Comment:* One commenter (Simonich letter, document # IV.A–23, comment # 4C) agrees that adjustments should be made to the SIP to address auxiliary vent stacks.

Response: We agree with the commenter.

(2) *Comment:* The other commenters (Goetz letter, document # IV.A–23, exhibit C; MSCC letter, document # IV.A–19, comment #'s 68, 80, 121; MSCC letter, document # IV.A–20, comment # 10B) stated that the auxiliary vent stack sources are trivial and even if the limitations were exceeded this would not harm the attainment of the NAAQS since these vents are not contributing to the controlling receptor. One of the commenters (MSCC letter, document # IV.A–19, comment #'s 80, 121; MSCC letter, document # IV.A–20, comment # 10A) stated that our concern regarding the potential for the auxiliary vent stacks to exceed their emission limitation if fuel high in H2S were burned is not unique to MSCC. The commenter stated we should strike the limitation rather than add more burdens to the source. Commenters (MSCC letter, document # IV.A–19, comment # 10C; Goetz letter, document # IV.A–23, exhibit C) stated that having an emission limitation invites the question of how are the emissions to be monitored and enforced, how is the gas to be determined to be low sulfur or sweetened. One commenter (MSCC letter, document # IV.A–19, comment #'s 10D, 10E) indicated that we never raised this issue in prior discussions and that other local vents in Yellowstone County are not covered by federally enforceable limitations.

Response: Although the commenter believes the auxiliary vent stack emissions are trivial, we assume that emission limitations on the auxiliary vent stacks, along with the other emission limitations in the SIP, were established to assure attainment of the NAAQS. Therefore, we also assume that if any of the limitations are exceeded, attainment of the NAAQS cannot be assured. Regardless of whether the

[21] In our proposed action on MSCC's auxiliary vent stacks we indicated that we believed it was appropriate to disapprove the emission limit on the auxiliary vent stacks because the SIP did not restrict the type of fuel burned in the boilers and heaters when exhausting out the auxiliary vent stacks. After reviewing the comments received on our proposed action of MSCC's 30-meter stack emission limit (*see* comments and responses in V.Q., below), we still believe the auxiliary vent stack emission limitation should be disapproved. However, in lieu of restricting the type of fuel burned, we believe the SIP should restrict the sulfur content of the fuel burned and provide a method for measuring the sulfur content of that fuel, *i.e.,* make the emission limit practically enforceable.

auxiliary vent stack emission limitations are needed for attainment, the State included the auxiliary vent stack emission limitations in the SIP as an enforceable control strategy. We are concerned whether the emission limitations are truly enforceable and want to assure that they are. There may be other local vent stacks in the Yellowstone County area that do not contain specific emissions limitations in the SIP. We believe the SIP does not need to contain emission limitations on other local vent stacks but does need to contain emission limitations on the MSCC auxiliary for two reasons. First, the MSCC auxiliary vent stacks are part of a major source that is already being controlled in the SIP. Second, we assume that the other local vent stacks are truly minor sources and all these other minor sources' (*e.g.,* local vent stacks) emissions have been included in the background concentration used in modeling. We typically include minor emission points (where the emission point is the entire source) in the background concentration.

The commenter stated that the potential to violate the auxiliary vent stack emission limitation if it burns fuel high in H2S is not unique to MSCC. We are assuming that the commenter means that other sources could burn fuel high in H2S and violate their limitations. Although this is true, other sources controlled by the SIP have CEMS or other methods to measure H2S or sulfur content in fuel burned and flow of the fuel to heaters and boilers. Therefore, for the other sources there is a better tool to assess whether emission limitations are being met.

We realize that the emissions from the auxiliary vent stacks at MSCC are not large. However, to assure that the emission limitation is being met, we believe the sulfur content of fuel burned in the heaters and boilers, when they are exhausting through the auxiliary vent stacks, should be restricted and that compliance with the emission limitation should be monitored by measuring the H2S concentration in the fuel. The MSCC exhibit submitted as part of the SIP already contains reporting provisions that require MSCC to submit quarterly reports which include estimates of the 3-hour and 24-hour SO2 emissions from the 30-meter stack and auxiliary vent stack (*see* document II.E–2, sections 7(C)(1)(k) and (l) of the MSCC exhibit). MSCC will need to know the H2S concentration of the fuel burned in the boilers and heaters to be able to estimate the 3-hour and 24-hour SO2 emissions from the auxiliary vent stacks. We do not envision that restricting the sulfur content of fuel burned in the boilers and heaters when they are venting out the auxiliary vent stacks and monitoring the H2S concentration of the fuel burned will impose unduly burdensome compliance or reporting requirements on MSCC.

Finally, we agree that we may not have raised this issue in prior comments we provided the State on the SIP. We try to identify all our concerns with SIPs when we review them in draft form. However, just because we have not identified a potential problem with a draft SIP does not preclude us from addressing that concern when the SIP is submitted in final form. We understand that the earlier MSCC exhibits (those submitted prior to the July 1998 submittal) adopted by the State did not contain provisions to address the auxiliary vent stacks. Thus, we did not have the chance to raise the issue until after the SIP was submitted.

Q. MSCC's 30-Meter Stack

We proposed to approve the SIP as it applies to MSCC's 30-meter stack emission limitation for SO2, even though the 30-meter stack does not have a CEMS or parametric monitoring system. Our proposed approval relied on the fact that the SIP restricts the units that can exhaust through the 30-meter stack to certain boilers and heaters, which may only burn low sulfur fuel gas or natural gas. We believed that the fuel limitation on the boilers and heaters would assure compliance with the emission limitation. The sulfur concentration in natural gas is generally low enough, we believe, to assure compliance with the SO2 limitation. However, as we stated in our proposal, we were concerned that the SIP does not provide a definition of the term ''low sulfur fuel gas.'' We proposed to interpret the term ''low sulfur fuel gas'' to mean ''properly sweetened fuel gas.'' The MDEQ indicated to us that MSCC supplies the same sweetened refinery fuel gas it burns in its boilers and heaters to the ExxonMobil refinery, and that concentrations of H2S in the refinery fuel gas at ExxonMobil measure less than 100 ppm under normal operating conditions. Our proposed approval thus relied on our interpretation of the term ''low sulfur fuel gas'' and some assurance about the levels of H2S in the fuel gas MSCC burns in its boilers. In our proposal, we stated that we might create a definition for the term ''low sulfur fuel gas'' when we promulgated a FIP to fill in the gaps for SIP provisions we were proposing to disapprove.

Summary of Comments and Response

We received two comments pertaining to our interpretation of ''low sulfur fuel gas.'' One commenter suggested that we approve a specific definition of the term, while the other commenter objected to our interpretation.

We have considered the comments received and, on further investigation, conclude that our interpretation of the term ''low sulfur fuel gas'' to mean properly sweetened fuel gas is not sufficient to assure compliance with the 30-meter stack limitation at MSCC. Because the 30-meter stack lacks a CEMS, parametric monitoring system, or other reliable compliance monitoring method, in this final action we are limitedly approving the emission limitation on the 30-meter stack for its strengthening effect on the SIP, but are limitedly disapproving the limitation for its lack of a compliance monitoring method.

The following is a summary of the comments received and our response to the comments:

(1) *Comment:* One commenter (Zaidlicz letter, document #IV.A–30) stated that the definition of ''low sulfur content'' should be no more than 30 ppm, rather than the proposed 100 ppm.

Response: In our proposed approval we did not assign a numerical value to the term ''low sulfur fuel gas.'' Instead, we relied on an interpretation of the term as meaning ''properly sweetened fuel gas'' that has been treated in an amine unit to remove H2S. In acting on a submitted SIP revision, we can only approve or disapprove the requirements the State has adopted in the SIP. We have no authority, as part of our approval or disapproval under section 110(k) of the Act, to create a definition for an undefined term in the SIP.

In response to the comment, we investigated further to determine what level of H2S concentrations would assure compliance with the 30-meter stack limitation in the ''worst case.'' The State provided calculations to show the H2S concentration in fuel gas that MSCC would need to achieve in order to meet the 30-meter stack emission limitation if all of the boilers and heaters allowed to vent to the 30-meter stack were venting at the same time (*see* document # IV.C–23). The State found that, to meet the emission limitation under these conditions the maximum H2S concentration could not exceed 280 ppm, assuming a nominal fuel gas value of 1,000 Btu's per standard cubic foot (Btu/scf). The calculations indicate, however, that the nominal fuel gas value at MSCC could be between 350 and 1500 Btu/scf. We re-ran the calculations,

assuming a worst-case nominal fuel gas value of 350 Btu/scf. We found that, in order to meet the 30-meter stack emission limitation when all five boilers and heaters are venting to the 30-meter stack at that nominal fuel gas value, the maximum H2S concentration could not exceed 100 ppm (*see* document # IV.C–24).[22] Thus it is not necessary to restrict the concentrations to 30 ppm or less. The problem remains, however, that ''low sulfur fuel gas'' is not defined in the SIP as meaning fuel gas with H2S concentrations of 100 ppm or less. In addition, MSCC does not have a monitoring system to measure H2S concentrations in its fuel gas.

(2) *Comment:* The other commenter (MSCC letter, document # IV.A–19, comment # 78; MSCC letter, document # IV.A–20, comment #11) objected to our interpretation regarding ''properly sweetened fuel gas.'' The commenter stated that our interpretation is unnecessary and leads to further confusions. According to this commenter, even if the gas were not properly sweetened, the stack could still meet its limit. The commenter believes that MSCC has agreed not to vent the prior high SO2 emissions from the 30-meter stack, and that should be sufficient for purposes of SIP approval. The commenter also believes that it is ''beyond reason'' to even limit the 30-meter stack and that we should disapprove the SIP for establishing a limitation on such a minor source. The commenter stated that the concept was to be gas meeting the terms of the Montana sulfur in fuel rule, as clarified by the stipulation.

Response: The commenter stated that it is unreasonable to even limit the emissions from the 30-meter stack, because they are so minor. We assume that the emission limitation on the 30-meter stack, along with the other emission limitations in the SIP, was established to assure attainment of the NAAQS. Therefore, we also assume that if any of the emission limitations are exceeded, attainment of the NAAQS cannot be assured. Regardless of whether the 30-meter stack emission limitation is needed for attainment, the State believed it was necessary to include the limitation in the SIP as an enforceable control strategy.

Generally, when emission limitations are established in SIPs, we require that the SIP contain methods to assure that the limitations are being met and are enforceable. For the 30-meter stack limitation, the SIP requires that MSCC report the date and time when emissions are exhausted from the stack, the particular units that are exhausting from the stack, and engineering estimates of emissions from the stack. More specifically, the SIP limits the units (the particular boilers and heaters) that can exhaust from the stack and the type of fuel (''low sulfur fuel gas'' or natural gas) the boilers and heaters can burn when they are exhausting out the 30-meter stack. We recognize that the emissions from the 30-meter stack are not large. Nonetheless, in order to assure that the emission limitation is being met at all times, we believe that the type of fuel burned in the boilers and heaters when they are exhausting through the 30-meter stack would need to be limited and better defined.

Our proposed approval of MSCC's 30-meter stack limitation relied on our interpretation of the term ''low sulfur fuel gas'' as meaning ''properly sweetened fuel gas'' which has been treated in an amine unit to remove hydrogen sulfide. Both comments called this interpretation into question. When we investigated further, we determined that compliance with the 30-meter stack limitation can be assured if the fuel gas burned in the boilers and heaters that exhaust to the stack is limited to H2S concentrations of 100 ppm or less (*see* document #'s IV.C–23 and IV.C–24).[23] Not only is an interpretation or definition of the term ''low sulfur fuel gas'' necessary to assure compliance with the 30-meter stack emission limitation, the interpretation or definition must also incorporate the notion that ''low sulfur'' fuel gas has H2S concentrations of 100 ppm or less. MSCC, however, lacks a monitoring system to measure H2S concentrations in the fuel gas burned in the boilers and heaters that vent to the 30-meter stack, and so lacks a method to assure that only ''low sulfur fuel gas'' is being burned.

We tried to determine if an alternative method of measuring H2S concentrations could be used. In its September 3, 1998 letter, the State indicated that MSCC burns the same sweetened refinery fuel gas in its boilers and heaters that it returns to ExxonMobil, implying that the H2S concentration of the refinery fuel gas burned in MSCC's heaters and boilers would be equivalent to the H2S concentration measured in ExxonMobil's refinery fuel gas (*see* document # II.E–9). According to the letter, available data from ExxonMobil's H2S monitors show that ExxonMobil's refinery fuel gas rarely exceeds 100 ppm H2S. However, we have since learned that, before ExxonMobil measures the H2S concentration, it may dilute the refinery fuel gas it receives from MSCC with natural gas (*see* document # IV.C–25). The H2S concentration measured in ExxonMobil's refinery fuel gas thus could be lower than the H2S concentration in the fuel gas burned in MSCC's heaters and boilers. As a consequence, the H2S concentration of ExxonMobil's refinery fuel gas cannot be used as an indicator of the H2S concentration of fuel gas burned in MSCC's heaters and boilers; the H2S monitoring system at ExxonMobil will not serve to assure compliance with the emission limitation on MSCC's 30-meter stack.

The commenter stated that the intention was that the gas would meet the terms of the Montana sulfur in fuel rule as clarified by the stipulation. Montana's sulfur in fuel rule, found in the Administrative Rules of Montana (ARM) 17.8.322, limits the sulfur content of liquid, solid or gaseous fuels burned. MSCC's stipulation, paragraph 14, modifies ARM 17.8.322 to ''mean that no person shall burn solid, liquid, or gaseous fuels such that the aggregate sulfur content of all fuels burned within a plant during any day exceeds one pound of sulfur per million BTU fired. The rule shall be interpreted to allow for a daily deviation of 0.1 pound of sulfur per million BTU fired. The rule shall be interpreted to allow the blending of all fuels burned in a plant during a given time period in determining the aggregate sulfur content for purposes of the rule, and it shall not be construed to require the blending or physical mixing of fuels at any given furnace or heater within the plant complex.'' Because MSCC's stipulation modifies how ARM 17.8.322 is interpreted, we do not understand how relying upon the ''modified'' rule would address our concern. Specifically, MSCC's stipulation interprets ARM 17.8.322 as applying on a ''plant-wide'' basis. Therefore, boilers and heaters not vented to the 30-meter stack would be considered in determining whether the sulfur in fuel meets the rule. Additionally, MSCC's stipulation indicates that the sulfur in fuel requirement is a ''daily'' requirement. MSCC could not assure compliance with a 3-hour emission limit based on a daily requirement. Finally, even if the sulfur in fuel rule is

[22] Our calculations were based on information received from the DEQ on April 21, 1998 (document # IV.C–23). However, based on MDEQ's Operating Permit Technical Review Document for MSCC's Title V permit, the fuel burning potential of boilers H–1, H1–A, H1–1, and H1–2, which may exhaust to the 30-meter stack, may be underestimated by 15 percent of more (document # IV.C–75). Therefore, the H2S concentration of the fuel gas may need to be less than the 1000 ppm we calculated for the 30-meter stack emission limit to be achieved.

[23] *See* footnote 22.

controlling, the sulfur content in the fuel would still need to be determined to assure compliance with the sulfur in fuel rule.

In response to the comments received and as a result of further investigation of the issue, we conclude that the emission limitation for MSCC's 30-meter stack is not practically enforceable. The limitation on fuel for the heaters and boilers that vent to the stack is not adequate to assure compliance with the emission limitation, because the fuel limitation does not specifically limit the level of H2S in the fuel and, in any case, MSCC lacks a method for measuring H2S concentrations in the fuel. We are limitedly approving the emission limitation for the 30-meter stack for its strengthening effect on the SIP, but are limitedly disapproving the limitation for the lack of a compliance monitoring method that would make the emission limitation practically enforceable. In a later action, we intend to develop and promulgate a compliance monitoring method for the emission limitation for MSCC's 30-meter stack, when we complete a FIP to fill in the gaps for the SIP provisions we are disapproving today.

R. ExxonMobil's and CENEX'S Refinery Fuel Gas Limitation

We proposed to conditionally approve the SIP as it applies to ExxonMobil's refinery fuel-gas combustion emission limitations and attendant compliance monitoring methods, in sections 3(A)(1), 3(B)(2), 4(B), and 6(B)(3) of ExxonMobil's exhibit, because the Governor committed to address our concerns with the method for monitoring compliance with the emission limitation. We also proposed to approve Cenex's method for determining H2S in the refinery fuel gas.

On May 4, 2000 the Governor of Montana submitted a SIP revision to fulfill the commitments on which the proposed conditional approval was based.

Summary of Comments and Response

Five comment letters contained comments on our proposed action. Three commenters believe we should place more requirements on sources. One commenter agreed with our proposed conditional approval and one commenter sought further clarification on several issues discussed in our TSD.

We have considered the comments received. However, since the Governor has fulfilled his commitment, we believe it is not appropriate to finalize the conditional approval. Instead, we will complete notice-and-comment rulemaking on parts of the July 29, 1998 submittal (*i.e.*, those parts we proposed to conditionally approve on July 28, 1999) and all of the May 4, 2000 submittal.

Even though we intend to complete separate rulemaking action on parts of the July 29, 1998 and all of the May 4, 2000 submittal, below we are responding to the comments received:

(1) *Comment:* Two commenters (YVCC letter, document # IV.A–29; Zaidlicz letter, document # IV.A–30) stated we should set an H2S limitation of 160 ppm (NSPS) on refinery fuel gas burned in heaters and boilers; sources can meet a lower level. These commenters also stated that methods for determining compliance with SO2 emission limitations (H2S concentration and flow meters) can be nebulous and may be subject to error particularly when the H2S concentrations exceed the level at which the H2S CEMS can monitor and manual methods are used to determine compliance. One commenter (McGarity letter, document # IV.B–1) stated industry should be required to accept either fuel firing limitations on process heaters and boilers or H2S concentration limitations (*e.g.,* 160 ppm H2S).

Response: Two commenters stated our proposed action should go further by setting H2S limitations on refinery fuel gas. As part of our proposed action on the SIP, we cannot establish limitations more stringent than the State submitted as part of its SIP. Under the SIP process, we evaluate the State submittal to see if it meets the requirements of the Act. We proposed to approve those provisions that meet the Act and proposed to disapprove or conditionally approve those provisions that do not measure up to the Act's requirements.

In the case of ExxonMobil's refinery fuel-gas combustion emission limitation, the State has modeled this limitation, along with other enforceable limitations in the SIP, and determined that the area will attain the NAAQS. Under this SIP, we cannot require the State to do more than adopt enforceable measures that will assure attainment of the NAAQS.

These commenters also stated that the methods to determine compliance with the fuel gas combustion emission limitations are nebulous particularly when the H2S CEMS are over-ranged. We assume that the commenters are referring to our proposed approval of Cenex's method to determine H2S in the refinery fuel gas. Cenex is to use CEMS to determine H2S concentrations. During times when the H2S concentration exceeds the range the H2S CEM can monitor, Cenex is to initiate fuel gas sampling analysis on a once per three hour period sampling frequency using the Tutwiler method in 40 CFR 60.648 (or another method approved by the MDEQ and EPA) to determine the H2S concentration.

We cannot require that CEMS always be used to monitor compliance with emission limitations; other methods, if proven acceptable, can be used. The CEMS and the Tutwiler method are methods that have been adopted by us. Additionally, when the Tutwiler method is used, Cenex's exhibit requires that it initiate fuel gas sampling analysis on a once every three-hour period sampling frequency. Therefore, every three hour period will be analyzed to monitor whether or not Cenex is in compliance with its fuel gas combustion emission limitation. We understand that the frequency at which the H2S CEMS frequency is over-ranged is very low. Therefore, we believe the CEMS and the Tutwiler method (used when the H2S concentration exceeds the level at which the H2S CEMS can monitor), with 3-hour sampling, are acceptable methods to monitor compliance with the emission limitations.

(2) *Comment:* One commenter (ExxonMobil letter, document # IV.A–28) stated it is appropriate to conditionally approve its fuel gas combustion emission limitation and attendant compliance monitoring method.

Response: As mentioned above, since the Governor has fulfilled his commitment, we are not finalizing the conditional approval. Instead, we will complete separate rulemaking action on parts of the July 29, 1998 submittal (*i.e.,* those parts we proposed to conditionally approve on July 28, 1999) and all of the State's May 4, 2000 submittal.

(3) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment #'s 73, 74) wanted clarification on what we meant when we indicated that 800 ppm is not controlling at ExxonMobil and its significance. The commenter stated that the State determined that the analyzer range is significant for its purposes. Secondly, the commenter wanted to know what we meant when we alleged that ExxonMobil exceeded its fuel gas limitation due to problems at MSCC.

Response: The commenter is correct that the State has determined that the analyzer range is sufficient. In the State's May 4, 2000 submittal, the State has not revised ExxonMobil's exhibit to address our concerns. We will address the May 4, 2000 submittal in a separate rulemaking action.

One commenter wanted clarification on what we meant when we indicated that 800 ppm is not controlling at ExxonMobil, and the significance of that. The SO2 SIP limits the SO2 emissions from combustion sources, *not* the concentration of H2S or other sulfur compounds in the fuel burned. In the case of fuel gas combustion sources, compliance with the limitation is monitored by knowing the concentration of H2S in the fuel and the flow of the fuel to the combustion sources (H2S concentration * flow rate * constant = lbs SO2/hour). We learned, however, that there could be situations when the H2S concentration in the fuel gas could exceed the level at which the H2S CEMS could monitor. Therefore, sources could be exceeding the fuel gas combustion limitation and the State and EPA wouldn't know because the H2S CEMS would not record the true H2S concentration. We generally believe section 110(a)(2)(A) of the Act requires that emissions limitations in SIPS be enforceable at all times.

For Cenex, the SIP contains an alternative method to determine H2S concentrations when H2S concentrations exceed the level the H2S CEMS can monitor. For Conoco, we were less concerned about the range of concentrations the H2S CEMS could monitor because all of Conoco's boilers and heaters are limited by either new source performance standards (NSPS) or a permit to a level equivalent to NSPS (*i.e.,* 160 ppm of H2S). Therefore, Conoco's H2S CEMS may only be spanned to read to 300 ppm and that is acceptable because any reading over 150 ppm would be considered a violation.

Although ExxonMobil has spanned its H2S CEM to read between 1200 to 1300 ppm, we understand that there still could be situations when the fuel gas could exceed the level at which ExxonMobil's H2S CEMS can monitor. Also, there are no regulations or permits that require ExxonMobil to limit the H2S ppm concentration in the refinery fuel gas combusted in ExxonMobil's heaters and boilers. At one point, the State believed its sulfur-in-fuel regulation would require ExxonMobil to meet an H2S concentration of 800 ppm in the refinery fuel gas. However, the Billings SIP modifies how the State's sulfur-in-fuel rule applies at the Billings/Laurel sources and ExxonMobil is not required to meet the H2S limitation of 800 ppm in its refinery fuel gas.

The commenter also wanted to know what we meant when we alleged that ExxonMobil exceeded its fuel gas limitation due to problems at MSCC. In our TSD (*see* document # III.B–1), we indicated that we were aware that on several occasions during the summer of 1998, ExxonMobil exceeded its fuel gas combustion limitation due to problems either at MSCC *or with ExxonMobil's amine unit.* We became aware of the emission limitation exceedance based on three letters ExxonMobil sent to the MDEQ, on September 14, October 1, and October 30, 1998 (*see* document #'s IV.C–19, 20 and 21, respectively). In those letters, ExxonMobil indicated that on two separate occasions (one in July and one in August, 1998) its fuel gas was not being properly treated. On one occasion, MSCC was performing maintenance and ExxonMobil was switching to its backup amine unit when ExxonMobil found that its fuel gas was not properly treated. On the other occasion, a thunderstorm caused a local power outage. MSCC was unable to treat ExxonMobil's refinery fuel gas for 74 minutes. Those were the situations we were referring to in our TSD.

S. Variable Emission Limitations

We proposed to approve the SIP as it applies to the variable emission limitations at Montana Power and ExxonMobil. We proposed to disapprove the SIP as it applies to the variable emission limitations at MSCC due to the stack height issue. Our proposed approval for Montana Power and ExxonMobil's variable limitation had several caveats. If we were to find that the variable emission limitations are not practically enforceable by the MDEQ or us, that the back-up monitoring systems are not sufficient to assure on a regular basis that data are available to determine the emission limitations, or that MDEQ is unable to adequately review and assure the quality of the monitoring data on which both limitations and compliance are based, we would reconsider our approval.

Summary of Comments and Response

Four commenters submitted comments on our variable emission proposal. One commenter questioned whether the State has the resources to implement the variable emission limitations. Several commenters took exception to our characterization of the variable emission limitation, commenting that we portrayed the variable limitations negatively and the commenters stated they should be portrayed in a positive manner. Finally, several commenters wondered how we were going to address MSCC's variable limitation when we adopt a FIP.

We have considered the comments received and still believe it is appropriate to approve the SIP as it applies to the variable emission limitations at Montana Power and ExxonMobil, with the caveats mentioned in our proposal, and to disapprove the SIP as it applies to the variable emission limitations at MSCC due to the stack height issue.

The following is a summary of the comments received and our response to the comments:

(1) *Comment:* One commenter (Zaidlicz letter, document # IV.A–30) stated that MDEQ does not have adequate resources to continually review monitoring data for compliance with the variable emission limitations at ExxonMobil, MSCC and Montana Power.

Response: Comments on MDEQ resources are being addressed separately. *See* section V.N., above.

(2) *Comment:* Several commenters (Goetz letter, document # IV.A–18, exhibit C; State letter, document # IV.A–23, comment # 4B) took exception to our characterization of the air quality effect of the variable emission limitations. The commenters stated our characterization does not address the benefits of variable emission limitations. For example, in the traditional approach to establishing emission limitations through dispersion modeling, the emission limitation is a function of an assumed buoyancy. Normally, a relatively buoyant plume is assumed. With variable emission limitations, the actual buoyancy of the plume is considered in establishing the emission limitation. At low buoyancy flux, emissions are limited much more than would occur in a normal SIP. One commenter stated that variable emission limitations are more protective of the NAAQS. The commenters stated variable emissions are a much superior approach to setting emission limitations. One commenter stated that our concerns about the variable limitation are inappropriate because of the practical nature of the instrumentation used to determine compliance (instruments are very reliable) and the modeling. The commenter stated the instruments used to determine the buoyancy flux are very reliable and that the same instruments used to determine compliance for a fixed limitation would also be used to determine compliance with a variable limitation.

Response: As indicated in our proposed rulemaking, we evaluate SIPs in relation to several provisions of the Act. In addition to looking at air quality impacts of SIPs, we also need to assure that SIPs are enforceable. Although we may agree with the commenters that the variable emission limitations will result in fewer emissions when the buoyancy

of the plume is lower, we also believe that variable limitations add a level of complexity when trying to enforce. One commenter points out that the same instruments would be used to determine compliance whether the emission limitation was fixed or variable and that a variable limitation should not make any difference. Although the same instruments may be used to determine compliance whether the limitation is fixed or variable, we believe that these instruments will be generating significantly more information for variable limitations than for fixed limitations. For example, in addition to confirming that the source is in compliance with the limitation, agencies will also need to confirm that the variable emission limitation was determined correctly. Therefore, we believe that variable emission limitations increase the workload and add a layer of complexity that is not found with fixed emission limitations. Because of this enforcement complexity, we do not agree with the commenters that variable emission limitations are a superior approach to setting emission limitations.

However, we still believe it is appropriate to approve the variable emission limitations in the SIP with a ''wait and see'' approach. As indicated in our proposal, if we find it is too difficult to enforce, we will reconsider our approval.

(3) *Comment:* Several commenters (State letter, document # IV.A–23, comment # 4D; Goetz letter, document # IV.A–23, exhibit C; MSCC letter, document # IV.A–19, comment # 44) stated that we should adopt variable emission limitations for MSCC if we adopt a FIP for MSCC. One commenter stated we should use the methodology laid out in the February 2, 1996 stipulation between ExxonMobil, MSCC and MDEQ, with more current CEM data from MSCC, to develop the FIP. One commenter stated that since we had not approved the variable limitation at MSCC, we had left a question as to whether we would approve a variable limitation for MSCC when we promulgated a FIP.

Response: We are only addressing the SIP, and not a FIP, at this time. Therefore, comments pertaining to a FIP should be resubmitted in response to a FIP proposal.

(4) *Comment:* Several commenters (State letter, document # IV.A–23, comment # 4D; Goetz letter, document # IV.A–23, exhibit D; MSCC letter, document # IV.A–19, comment #'s 45, 72, 122) stated we should make clear in our approval of the SIP what should happen to MSCC's redundant monitoring and data substitution requirements that are required in the State's existing SIP. Some commenters stated that these requirements were only needed for the variable limitation and that since we are not approving the variable limitation, approving the redundant monitoring and data substitution requirements would make the federally approved SIP more stringent than the State intended. Commenters stated that any FIP should also address the issues of redundant monitoring and data substitution requirements.

Response: We assume that the commenters are referring to section 6(B)(3) of MSCC's exhibit which requires MSCC to install certain monitoring equipment to support the use of variable emission limitations. Since we proposed to disapprove the variable limitation at MSCC, the commenters stated we should clarify our approval of these provisions.

Section 6(B)(3) states, ''[b]y January 1, 1999, or a date 6 months after EPA approval of the Buoyancy Flux monitoring contained in this document (whichever date is later)* * *'' MSCC is to install and maintain certain pieces of back-up monitoring equipment. Since we are disapproving MSCC's variable emission limitation, we believe it does not make sense to approve section 6(B)(3) of MSCC's exhibit because section 6(B)(3)'s existence is conditioned on something that is not happening. That is, we interpret section 6(B)(3) to apply only if we approve MSCC's variable emissions limitation. Therefore, we are not acting on section 6(B)(3) of MSCC's exhibit because we are disapproving the variable emission limitations.

Finally, future FIP monitoring requirements will be addressed at a later time.

(5) *Comment:* One commenter (Goetz letter, document # IV.A–23, exhibit D) stated that our tentative approval of the variable emission limitation is improper and amounts to unauthorized intrusion into the primacy of the State's authority to allocate the ultimate mix of emission controls in order to meet the NAAQS. The commenter also stated that the partial approval leaves MSCC in limbo with no enforceable emission limitation.

Response: We do not agree that we are tentatively approving the variable emission limitation. As proposed, we are approving the variable emission limitation at ExxonMobil and Montana Power and disapproving it at MSCC. We do not believe we would be intruding on the primacy of the State to select the strategies to attain the NAAQS by partially approving and partially disapproving the plan. As indicated earlier in the flare discussion (section V.C., above), the general air quality management philosophy of the Act is that we establish NAAQS, and States develop, and submit to us, control programs to attain and maintain these NAAQS. We either approve or disapprove these control programs and to the extent they are approved they are legally enforceable by us and citizens under the Act. *See* also our discussion in section V.E., above regarding comments on our partial approval of the SIP.

We indicated in our proposal that we had concerns with the variable emissions limitation, but that we were going forward with an approval. Regardless of whether or not we stated in our proposed rulemaking action our recourse for addressing any future concerns about the variable emission limitation, the Act provides us with the authority to require that the SIP be revised or to correct any action we later find to be in error. Section 110(k)(5) says ''[w]henever the Administrator finds that the applicable implementation plan for any area is substantially inadequate to attain or maintain the relevant national ambient air quality standard.* * * or to otherwise comply with any requirement of this Act, the Administrator shall require the State to revise the plan as necessary to correct such inadequacies* * *'' Section 110(k)(6) provides the authority to revise our action on a plan if we find our action to be in error. Therefore, we do not believe our approval of the variable emission limitation was tentative or improper. Our proposal provided the State, sources and public with notice of our concern about the variable limitations and our recourse should those concerns come to fruition. The Act gives us the authority to address any future problems with the variable emission limitation, or any other aspect of this SIP, regardless of whether or not we identify our concerns in our approval of the SIP.

Finally, the commenter stated that our partial approval leaves MSCC in limbo with no enforceable emission limitation. Since we are disapproving the emission limitations on the 100-meter stack, the commenter is correct in that there will be no federally enforceable emission limitations on the 100-meter stack. However, we intend to address this issue by adopting a FIP. In the meantime, the 100-meter stack is subject to State-enforceable limitations on the 100-meter stack.

T. Minor Sources

In our TSD to our proposed rulemaking action (page 44), pertaining to the discussion of MSCC's auxiliary vent stacks, we indicated that the prior stipulations (those submitted prior to the July 29, 1998 submittal) appeared to provide an exemption for minor sources, which the auxiliary vent stacks could be construed to be.

Summary of comments and responses

One commenter wanted further explanation of our comment. We are providing that explanation below.

(1) *Comment:* One commenter (MSCC, letter, document # IV.A–19, comment #79) requested that we explain what we meant on page 44 of our technical support document where we indicated that the prior stipulations (those submitted prior to the July 29, 1998 submittal) appeared to provide an exemption for minor sources that possibly included the auxiliary vent stacks. The commenter stated that there are other minor sources that are exempt from the SIP, the nation has millions of minor sources, and the prior SIPs as well as the existing SIP are adequate to control minor sources at MSCC.

Response: We initially raised concerns about the auxiliary vent stack emissions in our June 3, 1997 letter to Mark Simonich (*see* document # II.C–8). Our concern was that the exhibit to the stipulation (submitted by the Governor on August 27, 1996) appeared to only limit the named heaters and boilers if they were vented to the 100-meter or the 30-meter stack. If emissions from the named heaters and boilers were vented out the auxiliary vent stacks, the heater and boilers were only limited by the minor source provisions ;[24] there were no specific emission limitations on the heaters and boilers when vented out the auxiliary vent stacks. Since the State believed it was necessary to limit and model the 30-meter stack when the heaters and boilers were vented to it, we were concerned that if all the emissions from the heaters and boilers were vented to the auxiliary vent stacks, which have lower stack heights than the 30-meter stack, then attainment could not be assured.

In his January 30, 1998 letter (*see* document # II.C–9), Mark Simonich agreed that the SIP did not limit the emissions of the named heaters and boilers when they are vented through their respective auxiliary vent stacks. The letter indicated that MSCC and the Department intended to model these emissions and modify the stipulation as needed. The July 29, 1998 submittal contained the modeling demonstration and revisions to the stipulation to address the auxiliary vent stacks.

U. Compliance Determining Method—ExxonMobil's Coker CO-Boiler Stack and F–2 Crude/Vacuum Heater Stack

We proposed to conditionally approve the SIP as it applies to the coker CO-boiler stack emission limitation and F–2 crude/vacuum heater stack emission limitations and the attendant compliance monitoring method (sections 3(E)(4) and 4(E) (only as they apply to the F–2 crude/vacuum heater stack), 3(A)(2), 3(B)(1), 3(B)(3) and attachment 2 of ExxonMobil's exhibit), based on the Governor's commitments to adopt a compliance monitoring method for the coker CO-boiler stack emission limitation and to revise attachment 2 (of the exhibit).

On May 4, 2000, the Governor of Montana submitted a SIP revision to fulfill the commitment on which the proposed conditional approval was based.

Summary of Comments and Responses

We received three comment letters on our proposed conditional approval of ExxonMobil's coker CO-boiler stack emission limitation and F–2 crude/vacuum heater stack emission limitations and the attendant compliance monitoring method (sections 3(E)(4) and 4(E) (only as they apply to the F–2 crude/vacuum heater stack), 3(A)(2), 3(B)(1), 3(B)(3) and attachment 2.) Two commenters stated we should require CEMS on ExxonMobil's coker CO-boiler stack and one of the commenters stated we should have CEMS on the F–2 crude/vacuum heater stack. One commenter agreed with our proposal.

We have considered the comments received. However, since the Governor fulfilled his commitments, we believe it is not appropriate to finalize the conditional approval. Instead, we will complete notice-and-comment rulemaking on parts of the July 29, 1998 submittal (*i.e.,* those parts we proposed conditional approval on July 28, 1999) and all of the May 4, 2000 submittal.

Even though we intend to complete separate rulemaking action on parts of the July 29, 1998 submittal and all of the May 4, 2000 submittal, below we are responding to the comments received:

(1) *Comment:* Two commenters (Zaidlicz letter, document # IV.A–30 and McGarity letter, document # IV.B–1) stated ExxonMobil's coker CO-boiler emission limitation should be enforced through CEMS. One commenter (McGarity letter, document # IV.B–1) stated ExxonMobil's F–2 crude/vacuum heater stack should contain CEMS. The commenter stated SO2 compliance cannot be demonstrated with best engineering algorithms unless all the H_2S in the feed refinery fuel gas (including sour water stripper emissions and other streams that are plumbed upstream of the combustion unit) are regularly measured or there is an SO2 CEMS.

Response: We cannot require that every emission point be enforced through CEMS. Other methods, such as engineering calculation, are acceptable if the State can demonstrate that the calculations are representative of SO2 emissions. With the May 4, 2000 submittal, the State has developed a method to monitor compliance with ExxonMobil's coker CO-boiler emission limitation and is revising attachment 2 of ExxonMobil's exhibit. We will evaluate the methods the State developed in a separate rulemaking action.

(2) *Comment:* One commenter (ExxonMobil letter, document IV.A–28) agreed with our assessment that the coker CO-boiler stack emission limitation and F–2 crude/vacuum heater stack emission limitations and the attendant compliance monitoring method should be conditionally approved.

Response: As mentioned above, since the State has fulfilled its commitment, we are not finalizing the conditional approval. Instead, we will complete separate rulemaking action on parts of the July 29, 1998 submittal (*i.e.,* those parts we proposed to conditionally approve on July 28, 1999) and all of the State's May 4, 2000 submittal.

V. Effect of the 1990 Amendments to the Clean Air Act

(1) *Comment:* One commenter (MSCC letter, document # IV.A–20, comment # 3.P) expressed a belief that the Clean Air Act amendments of 1990 superseded requirements for attainment demonstrations for SIPs for three nonattainment areas in California under the prior Act and that we could not take action on this SIP until we clarified the effect of the 1990 amendments on other

[24] We were also concerned that the minor source provisions (in the exhibit submitted by the Governor on August 27, 1996) might not apply to the auxiliary vent stacks because the minor source provisions indicated that they applied to the ''control of emissions of sulfur bearing gases from minor sources such as ducts, stacks, valves, vessels, and flanges which are not otherwise subject to this Exhibit A.'' Since the named heaters and boilers were already subject to Exhibit A, we were concerned that the minor source provisions might not apply to the auxiliary vent stacks at the named heaters and boilers.

attainment demonstrations. The same commenter stated that EPA must determine whether Montana needs to submit a SIP that relies on a modeled attainment demonstration in light of the 1990 amendments. *See* MSCC letter, document # IV.A–20, comment # 4.G.

Response: Generally, the 1990 amendments to the Clean Air Act do not affect our pre-existing powers concerning the approval of plans or plan revisions. *Commonwealth of Pennsylvania Dept. of Environmental Review* v. *Environmental Protection Agency,* 932 F.2d 269, 272 (3rd Cir. 1991). We are uncertain what the commenter means when he states that the amendments superseded requirements for attainment demonstrations and that EPA must determine whether a modeled attainment demonstration is necessary under the current Act. The 1990 amendments did not revise the planning requirements for SO2. The 1990 amendments did revise the planning requirements for three criteria pollutants: ozone, carbon monoxide, and PM–10. *See* CAA title I, part D, subparts 2, 4, and 4 (sections 181 through 190 of the Act). We clarified the effect of these extensive revisions with respect to various aspects of SIP development in our published guidance titled ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (''General Preamble''). *See generally* 57 FR 13497 (April 16, 1992)—document # II.A–15.

The 1990 Act amendments that affected requirements for nonattainment areas for ozone, for example, (Act title I, part D, subpart 2, sections 181–185B) changed the attainment deadlines for these areas and may have had an effect on several pending actions against EPA related to our approval of SIPs for the Los Angeles area. The 1990 amendments had a more limited effect on the planning requirements for SO2. The amendments did not alter attainment deadlines or establish new requirements for attainment demonstrations for SO2 SIPs, but simply required States with SO2 nonattainment areas to submit a plan that complied with general planning requirements, including a part D permit program for major new and modified sources. *See* section 191 of the Act. *See also,* General Preamble, 57 FR at 13546, where we said that if a nonattainment SO2 plan had been approved for an area before the 1990 Amendments and we subsequently found the plan to be substantially inadequate, as we did for the Laurel nonattainment area, the plan must be revised to provide for attainment within five years from the finding of inadequacy. The State of Montana submitted the required plan revision for the Laurel SO2 nonattainment area as part of the SIP revisions for the Billings/Laurel area. Because of the direct relationship between receptors and emission sources, the use of models to demonstrate attainment of the SO2 NAAQS continues to be a necessary and appropriate planning tool in SO2 nonattainment and SIP Call areas.

W. Stack Height Issues

In our July 28, 1999 action (64 FR 40791) we proposed to disapprove MSCC's stack height credit and emissions limitations used in the attainment demonstration modeling for the Billings/Laurel area. We also proposed to disapprove MSCC'S emissions limitations because the State set the limitations based on an amount of stack height credit for MSCC (97.5 meters) that is not supportable under section 123 of the Act and EPA's stack height regulations. Generally speaking, a source allowed greater stack height credit will have less stringent emissions limitations in the SIP. Such a source is able to rely to a greater degree on dispersion, rather than emissions controls, to help ensure an area meets the NAAQS.

Summary of Comments and Response

We received numerous comments on our proposal. Most of the comments were from MSCC and its consultants. They objected to our proposed disapproval of the stack height credit and emissions limitations for MSCC. The State also submitted comments objecting to our proposal. Several other commenters also submitted comments on this issue, some objecting to our proposal and others favoring our proposal.

We have considered the comments received and still believe we should finalize our proposed disapproval of the MSCC's stack height credit and SRU 100-meter stack emissions limitations. None of the adverse comments has convinced us that our interpretation of the Act and our regulations is unreasonable or that we should change our proposed course of action.

To assist the reader, we have attempted to separate the comments and our responses into categories. Some comments and responses that relate to stack height questions are contained in other sections of this document—for example, comments that raise constitutional questions are grouped with other comments based on the Constitution. (*See* section V.E., above.)

The following is a summary of the comments received and our response to the comments.

1. Issues Related to NSPS

Although the State approved above-formula stack height credit for MSCC, and required MSCC to use an NSPS emission rate in the fluid modeling demonstration that the State approved, the State did not require MSCC to meet the NSPS emission rate in the SIP. As we described in our proposed disapproval and TSD, we read the language of our stack height regulations to require sources that wish to obtain above-formula stack height credit to have a SIP limit that is no higher than the NSPS limit used in fluid modeling. In the alternative, a source may justify use of an alternative limit in fluid modeling by showing that it cannot meet the NSPS limit. In this instance, a source would then have to have a SIP limit no higher than this alternative limit. Such an alternative limit would be determined through a Best Available Retrofit Technology (BART) analysis pursuant to EPA guidance. We typically refer to such an alternative limit as a ''BART limit.''

Because MSCC's emissions limitations in the SIP are not consistent with the NSPS limit used in MSCC's above-formula fluid modeling, we proposed to disapprove MSCC's 97.5 meter stack height credit and SRU 100-meter stack emissions limitations. We received numerous comments on this issue and have considered them. Nothing in the comments has caused us to change our position on this issue.

(a) *Comment:* One commenter (MSCC letter, document #IV.A–19, comment #'s 20, 21, 89; MSCC letter, document #IV.A–20, comment #1.J) stated that EPA should find that the State properly applied the explicit provision of the rules for use of NSPS or other feasible emission rates in the approved fluid modeling and that the State was not required to impose the NSPS or other feasible emission rate as an ongoing operating limit. The commenter claimed that the rule defines GEP without reference to actual emission limits; that instead, GEP is properly used to define emission limits under section 123 of the Act and EPA's regulations, and to establish an emission limit before establishing GEP is circular logic.

Response: We addressed these objections in the TSD to our proposal, and we stand by that discussion—*see* TSD pages 61–66. We continue to read the stack height regulations to require a source to at least meet the NSPS/BART limit as a condition of obtaining above-formula stack height credit. Establishing an upper bound for an emission limit

before establishing GEP stack height is not circular. It merely reflects EPA's conscious decision to limit situations in which sources would want or need above-formula stack height credit and to restrict such credit to sources that would be well-controlled as EPA decided to define that term. EPA's approach was entirely consistent with Congress' intent that above-formula stack height credit should be granted only in rare circumstances and with utmost caution. See *NRDC* v. *Thomas*, 838 F.2d 1224, 1242; *Sierra Club* v. *EPA,* 719 F.2d 436, 450.

In addition to the language we cited in our TSD, there is additional preamble language that is relevant to this issue. Under the heading, ''Summary of Modifications to EPA's Proposal Resulting from Public Comments'', we stated the following:

> ''Section 51.1(ii)(3) (should refer to (kk)(1)) has been revised as discussed elsewhere in this notice to specify that an emission rate equivalent to NSPS must be met *before* a source may conduct fluid modeling to justify stack height credit in excess of that permitted by the GEP formulae.''

50 FR 27905, July 8, 1985, emphasis added. Again, it is clear that the NSPS rate was not intended as a mere modeling assumption.

(b) *Comment:* One commenter (State letter, document #IV.A–23, pp. 17–19) stated that the rule and section 123 contain no requirement that a source must meet the NSPS limit on an ongoing basis. The commenter claimed that the rules and section 123 pertain to the determination of GEP stack height and do not impose the NSPS limit or any other emission limit. According to the commenter, the term ''allowable emission'' does not create the requirement EPA says it does, particularly given the context in which it is found.

Response: We disagree with the commenter regarding our rule and the use of the term ''allowable emission.'' *See* our response to the previous comment. We agree that section 123 does not impose an emission limit for granting above-formula stack height credit. The D.C. Circuit recognized this, but held that EPA had the discretion under 123 to apply control-first in the above-formula context. *NRDC* v. *Thomas*, 838 F.2d 1224, 1241 (D.C. Cir. 1988). This is what EPA did, by requiring that a source granted above-formula stack height credit meet the NSPS or BART alternative rate as an ongoing limit. The State's reading of the regulation would read the term ''allowable'' out of the regulation, but this language cannot be ignored. *See, e.g., Market Co.* v. *Hoffman,* 101 U.S. 112, 115—116 (1879); *Reiter* v. *Sonotone Corp.,* 442 U.S. 330, 339 (1979).

In addition, the context must be considered. Our interpretation is consistent with the form of the proposed regulation. In the proposal, we proposed the use of one of three emission rates in the fluid modeling demonstration. It is clear from the following language from the proposal that we used the terms ''emission rate'' and ''emission limitation'' interchangeably and that we viewed the emission rate used in fluid modeling demonstrations as an upper bound for subsequent emission limits:

> ''It was not necessary under the previous definition of ''excessive concentrations'' to establish a source emission limitation prior to conducting fluid modeling because the definition required only that sources show an increase in concentration due to downwash, wakes, or eddy effects. With the revised definition, it will be necessary to specify an emission rate in the fluid model, in order to determine whether a NAAQS or PSD increment is being exceeded. Consequently, the Agency will require in its technical support document that the emission limitation be established based on either: (1) The existing, approved emission limit; (2) any applicable technology-based emission limit, such as the new source performance standards (NSPS); or (3) the emission limit that would result from the use of GEP formula stack height, whichever is applicable to the source being modeled. Once the emission limitation is identified, fluid modeling may consider the actual downwash, wake, and eddy effects of nearby terrain features and structures on ground level concentrations. Sources will then be allowed to calculate stack height credit based on that height needed to eliminate excessive concentrations caused by such effects.''

49 FR 44878, 44882, November 9, 1984.

We viewed the emission rate to be used in fluid modeling as a limit on future emissions—in the Agency's view, the limit used in fluid modeling and above-formula GEP stack height credit were inexorably linked, and the above-formula stack height credit had no validity unless the emission limit established prior to conducting fluid modeling was honored. (As we discuss elsewhere, one way in which the emission limit is honored is if the SIP establishes a lower limit based on other factors or requirements that are more controlling than downwash.)

(c) *Comment:* Two commenters (State letter, document #IV.A–23, p. 19; Goetz letter, document #IV.A–18, exhibit D, p. 23) stated that it is inappropriate for EPA to rely on or resort to the preamble to the stack height regulations or legislative history when the plain language of the rules is clear. These commenters claimed that the preamble should not be used to create ambiguity where none exists or to alter the rule language. According to the commenters, the rules require use of the NSPS limit in the fluid modeling demonstration but do not address the emission limitation that will apply after the determination of GEP stack height. One of the commenters (State) asserted that the preamble language selected by EPA is unpersuasive and taken out of context, and that other preamble text clearly supports the commenters' position.

Response: As noted in our TSD (p. 61), the plain language of the rule refers to the ''allowable emission rate'' to be used in the fluid modeling demonstration, and the word ''allowable'' is used in our regulations to denote an enforceable emission limit. The word ''allowable'' would be extraneous if we were merely trying to indicate that the NSPS would be assumed for demonstration purposes. We believe our intent was clear—the emission rate used in the fluid modeling demonstration was not a mere assumption, but a cap on emissions that a source would have to meet as a condition of obtaining above-formula stack height credit. At the very least, the use of the term ''allowable emission rate,'' combined with the possibility that a source could justify an alternative emission rate in certain circumstances, renders the regulation ambiguous and subject to reasonable interpretation by EPA. *See, e.g., Martin* v. *Occupational Safety & Health Review Comm'n,* 499 U.S. 144, 150–151 (1991); *Udall* v. *Tallman,* 380 U.S. 1, 16 (1965); *Walker Stone Company, Inc.* v. *Secretary of Labor,* 156 F.3d 1076, 1080 (10th Cir. 1998). This also makes it reasonable for us to consult other documents implementing and interpreting the regulation. The preamble to the regulation is particularly important for interpreting the regulation because it was issued contemporaneously with the regulation and was essential to meet the requirements of the Administrative Procedure Act (providing EPA's basis for issuing the rule for purposes of judicial review.) The preamble clearly explains what we intended by the language ''allowable emission rate''—namely, that the NSPS would be an ultimate cap on emissions for sources seeking above-formula stack height credit. Our reading of the preamble language is reasonable; the commenters' reading is strained.

(d) *Comment:* One commenter (MSCC letter, document #IV.A–19, comment #82) claimed that EPA uses improper criteria for evaluating GEP stack height credit in the SIP, that EPA may only consider 40 CFR 51.100 and section 123 of the Act, that the preamble, guidance

documents, TSD for the stack height regulations, and memos are not appropriate to consider unless the rule itself is unclear. The commenter claimed the rule is clear. According to the commenter, EPA seeks to use these documents as regulations, or in place of the regulations, when such collateral writings are not subject to rulemaking, notice, comment or appeal. The commenter asserted that if the rule is so unclear, as alleged by EPA staff, to require so much collateral explanation, it is or may be unconstitutionally vague and void. Also, the commenter claimed that EPA's selection of interpretive documents is incomplete. According to the commenter, EPA has not included correspondence specific to this case, has omitted court decisions on the current rule, EPA's own brief in defending the rule to the court, or the collateral demonstrations provided by MSCC.

Response: We believe the heading in the TSD (document #III.B–1), ''Criteria for Evaluation,'' may be a bit misleading. We *are* evaluating the SIP against the statutory and regulatory requirements. We are not seeking to use other documents as regulations, but to help explain the regulations. Regarding the central issue, whether it is appropriate to consult documents other than the rule and statute, please see our response to the previous comment.

The list of documents under ''Criteria for Evaluation'' on page 51 of the TSD is not exhaustive. We have cited to and included in our record numerous other documents, and have considered the record as a whole in reaching our final decision.

We do not believe the regulation is unconstitutionally vague; in any event, this is a complaint about the regulation itself, which may not be raised in this action.

(e) *Comment:* Two commenters (State letter, document #IV.A–23, p. 21; Goetz letter, document #IV.A–18, exhibit D, pp. 24–26) stated that EPA's own Guideline for Determination of Good Engineering Practice Stack Height makes clear that the GEP stack height credit is first calculated and then this height is input into an air quality model to set SIP emission limitations. They also assert that the Guideline makes clear that the NSPS emission rate is used only for the fluid modeling demonstration. According to these commenters, nowhere does the Guideline even hint that the NSPS emission rate would constrain the ultimate emission limit for sources seeking above-formula stack height credit. The commenters argue that the State followed the process outlined in EPA's Guideline in setting MSCC's SIP emission limit.

Response: The commenters are correct that the Guideline contemplates a two-step process in which first, GEP stack height credit is determined and second, an emission limitation is set. However, the commenters gloss over a critical aspect of the Guideline. When the Guideline discusses the process for setting emission limitations in above-formula situations, the Guideline, at pages 58–59, cross-references item G of Table 3.1 of the Guideline: [25]

''Sources with a physical stack height greater than the GEP height based on Equation 1, that wish to establish the correct emission limit should input the GEP height (given by Equation 1, fluid model or field study) into an air quality model to set the emission limitations. Refer to Table 3.1, item G.''

Table 3.1, item G, at page 51 of the Guideline, describes the process for establishing GEP stack height for stacks above formula height and indicates that the resultant physical stack height should be used to set emission limits. However, a footnote to this statement reads as follows:

''Where some other meteorological condition is more controlling than downwash, adjust the emission rate to avoid a violation of a NAAQS or available PSD increment.''

Thus, under the Guideline it might be necessary to adjust the emission limit *downward* from the NSPS or BART rate used in the fluid modeling or field demonstration. By the same token, if some other more controlling meteorological condition is not present, it is clear the Guideline considers downwash to be controlling, and the emission limit must be consistent with the NSPS or BART value used in the fluid modeling or field demonstration.

Other language from the Guideline confirms this interpretation. At page 52, the Guideline states:

''In conducting a demonstration, a source should use the modeled stack height, input the applicable emission rate that is equivalent to NSPS for that source category [1], and add in the background air quality as determined by procedures contained in two EPA guidance documents (EPA, 1978, 1981).''

Footnote 1 to the above text reads as follows:

''However sources may on a case-by-case basis demonstrate that such an emission is not feasible for their situations and determine their *emission limitations* based on Best Available Retrofit Technology.'' (emphasis added)

It is apparent that we viewed the ''applicable emission rate'' used in the fluid modeling or field study as an emission limitation, that might have to be adjusted downward during dispersion modeling to address meteorological conditions more controlling than downwash, but that could not be adjusted upward. This reading is consistent with the language of the regulation, preamble, and numerous other EPA documents that we have cited in this rulemaking.

(f) *Comment:* Two commenters (Goetz letter, document #IV.A–18, exhibit D, pp. 19–21; MSCC letter, document #IV.A–20, comment # 1.D) stated that no one suggested that the NSPS would have to be the applicable emission limit because the rule is clear that the NSPS emission rate is for purposes of the demonstration only. The commenters asserted that EPA's failure to notify the State or MSCC during late 1995 and the first few months of 1996 that the NSPS would have to be used as an actual limit is evidence that the regulation does not require that the NSPS be applied as an ultimate emission limit.

Response: Our meteorologist did not suggest that the NSPS would have to be the applicable emission limit during the time period mentioned for two reasons. First, at that time, the focus of the various parties' efforts was not on final emission limits, but on the design of the wind tunnel study. Second, our meteorologist was initially not aware that the NSPS would have to be the applicable emission limit. However, as explained in response to other comments, we disagree with the commenter's assertion that the rule is clear that the NSPS emission rate is for purposes of the demonstration only. On the contrary, the rule requires that the NSPS be met as the applicable emission limit. We also disagree that our not having notified MSCC during late 1995 and the first few months of 1996 that the NSPS would have to be used as an actual limit is evidence that the regulation does not require that the NSPS be applied as an ultimate emission limit. Instead, it is merely evidence that we were not focusing on ultimate emission limits and had not yet addressed the requirement. Elsewhere in this document, we have explained in detail why we think the regulation requires that the NSPS apply as an ultimate cap on emission limits in above-formula situations.

(g) *Comment:* One commenter (State letter, document #IV.A–23, p. 20) stated that the fact that Congress intended

[25] We have discovered that there are two different versions of the Guideline. The version submitted by MSCC as Exhibit 131 cross-references item F of Table 3.1. We refer to the version we included in our docket as document #II.A–12, which cross-references item G of Table 3.1.

above-formula stack height credit be granted only in rare circumstances does not support EPA's position or offer insight into the question at issue. The commenter asserted that Congress' intent is too vague to define the boundaries of EPA discretion. According to the commenter, nothing in the CAA, the implementing regulations, or background to section 123 supports the proposition that Congress intended to override a state's authority to determine actual emission rates under section 110 of the CAA. The commenter argued that section 123 does not give EPA authority to actually set an emission limit.

Response: In concluding that control first was an appropriate regulatory approach in the above-formula context, the Court of Appeals for the D.C. Circuit noted Congress' intent that above-formula stack height credit be granted only in rare circumstances and with utmost caution. *NRDC* v. *Thomas,* 838 F.2d 1224, 1241–1242, (D.C. Cir. 1988). We believe that our interpretation of the stack height regulations is consistent with Congressional intent and that this is another reason our interpretation is entitled to deference. Our interpretation ensures that sources will only receive above-formula stack height credit when they are first willing to try to address downwash concerns by installing NSPS or BART-level controls. Contrary to the commenter's assertion, it is quite evident that section 123 restricts a state's authority to set SIP emission limits. By upholding our use of control first in the above-formula context, the D.C. Circuit further defined the parameters that apply to establishing SIP emission limits. States remain free to establish emission limits for sources, as long as they are consistent with the requirements of section 123 and the stack height regulations. In this case, the State would not have to cap MSCC's stack emissions at the NSPS level if the State relied on the 65 meter de minimis stack height credit, instead of above-formula credit, in setting MSCC's SIP limits.

(h) *Comment:* One commenter (MSCC letter, document #IV.A–20, comment #8) stated that MSCC's stack height credit was granted with utmost caution.

Response: The State may have granted the credit after considerable analysis, but for the reasons stated in this document, we do not believe the 97.5 meter stack height credit the State approved for MSCC's 100-meter stack is valid under section 123 of the Act and our stack height regulations.

(i) *Comment:* Two commenters (MSCC letter, document #IV.A–19, comment #24; MSCC letter, document #IV.A–20, comment #2.Q; State letter, document #IV.A–23, p. 20) disputed EPA's claim that the Court in *NRDC* v. *Thomas* upheld the requirement to meet the NSPS as a condition of above-formula stack height credit. The commenters claimed the issue was not before the Court and was not addressed by the Court. One of the commenters (MSCC) claimed that the court merely held that EPA had the discretion under section 123 to impose the NSPS as a presumption for above-formula stack height credit and never held that EPA was actually applying the NSPS as a precondition for obtaining GEP credit. Another commenter (State) cited an EPA Region 3 letter and an EPA Headquarters letter and claimed EPA has made inconsistent statements regarding the presence of a dispute regarding the NSPS requirement; in this commenter's view, EPA's position would mean the delegation of the court's decision making responsibilities to the parties and their briefs.

Response: We addressed this issue in detail in the TSD for our proposal, and we stand by that discussion. *See* TSD pages 64–66. The Court in *NRDC* v. *Thomas* upheld the stack height regulations, and in doing so, specifically held that EPA had the discretion to impose control-first in the above-formula context. *NRDC* v. *Thomas,* 838 F.2d 1224, 1241. Using the NSPS as a mere modeling assumption is not the same as ''control-first.'' Our preamble made clear that control-first meant the imposition of controls as a prerequisite to stack height credit. 50 FR 27896, July 8, 1985.

It is true that there was no dispute before the court regarding the *existence* of the NSPS requirement (all parties understood that the NSPS would have to be met as a prerequisite for above-formula stack height credit). However, the *propriety* of this requirement was most certainly argued before the court. *See* TSD pages 64–66. Despite the arguments of the industry petitioners, the court upheld our regulations.

Regarding our reference to the briefs in the *NRDC* v. *Thomas* case, it was the State in its opinion about the stack height regulations that first cited the briefs as evidence of EPA's intent in the stack height regulations. (*See* memorandum dated August 1, 1996 from Jim Madden to Mark Simonich, attachment to document #II.C–9.) This led us to examine some of those briefs in detail. We think the briefs reflect the nature of the dispute before the court and the understanding of the parties regarding the requirements of the stack height regulations at the time the regulations were promulgated.

Regarding Region 3's 1988 letter (October 6, 1988 letter from Marcia Mulkey to John Proctor, document #IV.C–65), the views expressed by Region 3 counsel in 1988 support our position in almost every respect. Ms. Mulkey completely rejected Mr. Proctor's assertion that the NSPS was a mere modeling assumption. Among other things, Ms. Mulkey concluded that Mr. Proctor's reading of the regulations would render the above-formula stack height analysis artificial and unrelated to the health and welfare criteria which the D.C. Circuit, in the *Sierra Club* v. *EPA* case, had held must be used to define excessive concentrations in the above-formula context.

Regarding the narrow portion of the letter that the commenter focuses on, Ms. Mulkey was indicating that no party to the *NRDC* v. *Thomas* case had raised the alternative interpretation that Mr. Proctor was asserting (that the NSPS was a mere modeling assumption) and that the Court's holding, approving EPA's stack height regulations, was in no way dependent on this alternative interpretation. Thus, in Ms. Mulkey's view, EPA remained free to interpret the stack height regulations to require that NSPS or BART be met as an emission limit. We agree with Ms. Mulkey's conclusion, as far as it goes. But, in addition, the *NRDC* v. *Thomas* court specifically upheld the application of control-first in the above-formula context, and, as we note above, control-first is not a mere modeling assumption.

The April 20, 1989 Headquarters letter from Gerald Emison to John Proctor (document #II.A–7) that the commenter cites indicated that Headquarters fully endorsed Region III's conclusions and supporting rationale in Ms. Mulkey's October 6, 1988 letter, but also cited from the *NRDC* v. *Thomas* opinion, and stated, ''We believe that the opinion indicates clearly that the court regarded the presumptive NSPS emission limit as a limit that must be complied with once the fluid modeling was completed * * *'' The Emison letter cited to language in the opinion dealing with industry concerns that the NSPS would not be attainable, language that indicated the court understood the NSPS would be a cap on ultimate emissions. (''* * * industry petitioners assert that in order to use the NSPS presumption, EPA must be able to point to substantial evidence that it is attainable by most of the affected sources. But as EPA allows any source to use a higher emissions rate when NSPS is infeasible, there is no need for any sort of generic demonstration that it is normally so.'' *NRDC* v. *Thomas*, at 1242.) We note that the court did not

respond to the industry concerns by saying the NSPS was a mere modeling assumption, and that a higher SIP limit might result from dispersion modeling.

Ultimately, the central question is whether we are reading the stack height regulations reasonably. Either we are reasonable in reading the regulations to require a source to meet the NSPS or BART as a prerequisite for above-formula stack height credit or we are not. If our longstanding interpretation is reasonable, we believe it is too late for anyone to challenge the requirement because the *NRDC* v. *Thomas* court already upheld the stack height regulations. And, all the arguments about lack of notice and inappropriateness of applying NSPS to sources not otherwise subject to the NSPS are irrelevant; they should have been advanced at the time EPA adopted the regulations and first asserted its interpretation, or not at all.

(j) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment # 23) stated that EPA relied on the availability of approvable feasibility studies as a justification for not having any evidence in the record regarding the validity of the NSPS presumption. The commenter asserted that since such studies are not possible, EPA's and the court's reliance on such studies to approve the NSPS presumption is flawed.

Response: This comment goes to the validity of the 1985 stack height regulations themselves and is not relevant to our action on the SIP before us. In any event, the commenter's conclusion that such studies are not possible is not supported. The fact that one State has not been able to gain EPA approval for an infeasibility analysis for one source does not mean that such studies are not possible. Studies may be ''doggedly pursued;'' that does not mean they reflect sound analysis.

(k) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment # 32; MSCC letter, document # IV.A–20, comment #'s 2.P and second 5.E) stated that it is unfair and unlawful to apply the NSPS to MSCC, because MSCC is not a new source, and because the law does not require meeting the NSPS as a precondition of obtaining above-formula stack height credit. Another commenter (CPP letter, document # IV.A–18, exhibit A, p. 5) also asserted that MSCC is not a new source and the NSPS should not apply.

Response: We addressed this issue in the TSD to our proposal, and we stand by that discussion. *See* TSD pages 58–60. Also, please see our responses to previous comments.

(l) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment # 33) stated that there is no source category clearly applicable to sulfur recovery plants built prior to 1976 and that there is no source category applicable to existing sulfur recovery plants built before 1976 and 1970 that are not located within the bounds of a petroleum refinery or under the control of a petroleum refinery.

Response: First, MSCC agreed to the use of the NSPS applicable to sulfur recovery plants for purposes of its fluid modeling demonstration. It is not convincing for the commenter to now complain that MSCC's sulfur recovery plant is not within the source category to which the NSPS applies. Second, the commenter misinterprets the NSPS. The regulation specifically provides that ''the Claus sulfur recovery plant need not be physically located within the boundaries of a petroleum refinery to be an affected facility provided it processes gases produced within a petroleum refinery.'' 40 CFR 60.100(a). Clearly, MSCC's sulfur recovery plant falls within this description. *See* also 41 FR 43866, October 4, 1976. In promulgating 40 CFR 51.100(kk)(1), we recognized that some sources would be grandfathered and not strictly subject to the NSPS; however, we believed it was appropriate to use the NSPS for the source category to which the source belonged, even if the individual source was not subject to the NSPS under part 60. Thus, we believe it is appropriate to use the 40 CFR part 60, subpart J standards when evaluating the emission limits for MSCC in an above-formula scenario.

(m) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment #'s 33, 58, 96) stated that no source reading EPA's proposed or final stack height regulations would have had notice that the agency would impose NSPS as an operating limit on it as a condition of receiving GEP stack height credit. The commenter objected to EPA's reasoning in the proposal that MSCC's problems with the stack height rule should have been appealed when the rule was published. The commenter claimed that a reasonable person reading the rule text could not have foreseen the meaning that EPA now assigns to the rule. The commenter asserted that EPA has modified many aspects of the stack height regulations by reference to and interpretation of internal guidance and memos, and court briefs and decisions.

Response: To the extent this is a claim that EPA provided inadequate notice of the NSPS and other requirements in the 1985 stack height regulations, we believe this claim could only be raised in a challenge to the stack height regulations themselves, and is not relevant to this rulemaking action. *See* TSD pages 60–61. In any event, we disagree with the commenter's assertion that no source would have had notice that the agency would impose NSPS as an operating limit in above-formula situations. Our final stack height rulemaking notice and materials in the rulemaking record made clear that the NSPS or alternative limit used in above-formula fluid modeling determinations would have to be met as a condition of obtaining above-formula credit. *See* 50 FR 27898, 27905, July 8, 1985; documents cited at page 54 of our TSD. As we pointed out in the TSD to our proposal, other persons reading the final rule understood this and registered their objections with EPA and the *NRDC* v. *Thomas* court. *See* TSD at pages 60–61, 64–65. See also memorandum dated June 19, 1985 from Eric Ginsburg to Files entitled, ''Conference Call With OMB to Discuss Concerns about the Stack Height Regulations,'' document # II.A–13; letter dated June 21, 1985 from R. E. Boyle, President, Ormet Corporation, to Lee Thomas, Administrator, EPA, regarding ''Section 123 Stack Height Regulations,'' document # IV.C–63; letter dated June 17, 1985 from W. S. White, Jr., Chairman of the Board, American Electric Power Company, Inc., to Lee Thomas, regarding ''EPA Stack Height Regulations—Ohio Power Company's Kammer Plant,'' document # IV.C–62; letter dated June 20, 1985 from Henry V. Nickel, Hunton & Williams, to Lee Thomas, regarding '''Red border'' draft stack height rules,'' document # IV.C–61; letter dated June 21, 1985 from Congressman Allan B. Mollohan to Lee Thomas, document # IV.C–60; letter dated June 20, 1985 from R. E. Disbrow, President, American Electric Power Company, Inc., to The Honorable Robert C. Byrd, regarding ''EPA Stack Height Regulations—Ohio Power Company's Kammer Plant Marshall County, West Virginia,'' document # IV.C–59; letter dated June 27, 1985 from Richard F. Celeste, Governor, Ohio, to Lee Thomas, regarding ''EPA Stack Height Regulations—Ohio Power Company's Kammer Plant,'' document # IV.C–58.

We also disagree with the commenter's assertion that we have modified the stack height regulations without rulemaking or somehow ignored the rule's plain language. As to the specific interpretation issues raised by the commenter, we discuss these in detail in responses to other comments. As a general proposition, we believe we

have appropriately consulted the statute, the preamble to the stack height regulations, relevant case law, and other documents to help interpret portions of the regulations that may be ambiguous or complex.

(n) *Comment:* Several commenters (MSCC letter, document # IV.A–19, comment # 88; State letter, document # IV.A–23, pp. 17, 18; Goetz letter, document # IV.A–18, exhibit D, pp. 19, 22) asserted that contrary to EPA's statements, EPA has not consistently read the language of the rule to require that a source meet the NSPS as a condition of obtaining above-formula stack height credit. According to these commenters, EPA did not alert the state or MSCC to such reading before MSCC performed fluid modeling or during the Montana contested case proceeding; this, in spite of the fact that the record is clear that DEQ modeler/meteorologist John Coefield was in continual contact with EPA's meteorologist on these issues. The commenters asserted that EPA's meteorologist was not aware of this interpretation until after the State approved MSCC's demonstration. The commenters claimed that in fact, EPA's input during the process indicated that the State was using the correct approach in determining GEP formula height and the resulting SIP emission limit.

Response: The commenters are correct that the Region's meteorologist was unaware of this requirement until after he spoke to staff from another Region. However, upon learning of this, we informed the State. This was in May of 1996, before the State adopted emission limits for MSCC. We had several discussions of this issue with the State after our initial call in May 1996. *See* Record of Adoption, transcript of August 8, 1996 Board Hearing, testimony of Mark Simonich, pp. 24–28, document # II.C–3. We faxed a letter to the State describing our position on this issue on July 18, 1996, before MSCC or Montana signed the MSCC stipulation. *See* document # II.C–5. MSCC signed the stipulation on July 22, 1996 and the MDEQ did not sign the stipulation until after that. *See* document # IV.A–17, MSCC Exhibit 132, letter from Mark Simonich to Mary Westwood dated August 2, 1996, with August 1, 1996 memorandum from Mark Simonich to Montana Board of Environmental Review attached.

Although our meteorologist consulted with the DEQ modeler/meteorologist regarding the conduct of the fluid modeling demonstration, it is an exaggeration to say he was in continual contact with the DEQ modeler/meteorologist. It is important to note that we were not a party to the contested case hearing, and that our meteorologist was providing input from home regarding the modeling at a time in late 1995 when EPA was shut down as a result of the budget standoff between President Clinton and Congress. Thus, in providing his input, our meteorologist often did not have access to the advice of legal counsel and EPA Headquarters personnel. Our meteorologist was providing his best advice to the DEQ modeler/meteorologist under difficult circumstances.

In addition, the focus of MSCC's contractor's efforts in late 1995 and early 1996 was the design of a wind tunnel study, not final SIP emission limits. Consequently, our meteorologist's focus, and the focus of his discussions with the DEQ modeler/meteorologist, was the design and execution of the wind tunnel study, not final SIP emission limits. *See* memorandum of Kevin Golden, document # IV.C–71. This is reflected in the January 31, 1996 and March 15, 1996 letters from Richard Long to Jeff Chaffee cited by one of the commenters (document #'s II.F–19 and 20). These letters focused on our concerns with the manner in which MSCC's contractor had performed fluid modeling, not on ultimate emission limits. It is also important to remember that MSCC did not start out seeking above-formula stack height credit, but only agreed to conduct above-formula modeling relatively late in the process. Even then, and despite our and the State's warnings that within-formula demonstrations would not be accepted, MSCC continued to pursue within-formula modeling demonstrations. This was an evolving process, and statements we may have made regarding relying on GEP stack height credit generally to set SIP limits—for example, based on de minimis or formula stack height credit—have no bearing on the matter before us.

Ultimately, whether we alerted MSCC or the State before MSCC's contractors began their wind tunnel study for above-formula stack height credit that NSPS or BART would have to be met in fact, is irrelevant to the real issue: what the statute and our regulations require. It also does not change the fact that EPA as a regulatory agency has since the inception of the stack height regulations read the regulations to require that the NSPS be met as an ongoing limit as a condition of obtaining above-formula stack height credit. The fact that we did not also reiterate our longstanding interpretation before the conduct of the wind tunnel study does not form a basis for us to ignore the requirements of our regulations in evaluating the SIP.

Furthermore, we believe the State has an independent obligation to evaluate applicable regulatory requirements. As the State admits, this was not the first time this issue had arisen in the State. (State comment, document # IV.A–23, page 18, footnote 18.) As noted in our TSD, we informed the State of our reading of the stack height regulations in 1991, while commenting on an earlier SIP effort for the East Helena area. We believe it would have been prudent and appropriate for the State to review information in its files relative to that stack height analysis, and to pass on relevant information to MSCC.

(o) *Comment:* One commenter (Goetz letter, document # IV.A–18, exhibit D, pp. 19, 20) stated that in written comments on the State's protocol for conducting the fluid modeling demonstration, EPA did not indicate that the NSPS would be the applicable emission limit; nor did EPA express incredulity that MSCC would spend money on such a study when the result would be a significantly lower emission limit than MSCC would be subject to without conducting a study.

Response: The commenter is correct that Mr. Long's January 31, 1996 letter to the State (document # II.F–19) did not speak to the issue of the NSPS as the applicable emission limit. As we note above, the scope of this letter was limited to the conduct of the fluid modeling demonstration, and thus, it is not surprising that it did not address ultimate SIP emission limits. At that point in time, EPA personnel were not focusing on ultimate emission limits and had not specifically considered or researched the rule's requirements regarding ultimate emission limits for sources seeking above-formula stack height credit. We have acknowledged that our meteorologist, whose expertise is modeling and meteorology, was not initially aware that the rule requires that the NSPS be met as an ultimate limit in above-formula circumstances. If he had been, he may have questioned MSCC's course of action. However, none of this changes the requirements of the regulations, and we believe we have a duty to disapprove the SIP because MSCC's limits are not consistent with the stack height regulations.

(p) *Comment:* One commenter (Goetz letter, document # IV.A–18, exhibit D, pp. 26–27) stated that EPA Region VIII plainly misled both DEQ and MSCC on the NSPS limit issue and they have scrambled, since the summer of 1996, to shore up their position by dredging up whatever documentation they can find to support a claimed ''long-standing'' interpretation of the rule. The commenter complained that as of July

1996, EPA had only provided two documents to the State on EPA's NSPS limit position. The commenter asserted that all the other documents now cited by EPA were not provided to the State or MSCC on a timely basis, and EPA's position was not made known at a time when it would have been useful in the SIP process.

Response: We certainly did not intend to mislead the State and MSCC in any way. It is clear from the record that we informed the State that it was mis-applying the stack height regulations before the State adopted SIP limits for MSCC. The State, with MSCC's concurrence, made a conscious decision to ignore our input.

We believe the commenter mis-portrays our communications with the State on this matter between May and July 1996. As noted in the July 16, 1996 letter from Jim Madden to James Goetz that commenter cites (document # IV.A–18, MSCC Exhibit 156), EPA had provided detailed citations to relevant preamble language. This is the same preamble language we rely on now. As to the number of documents we provided to the State as of July 1996, or subsequently, we think this is irrelevant to our action in this matter. The fundamental issue is whether the SIP meets the requirements of the CAA and our regulations. It is our judgment that MSCC's emission limits, based on stack height credit of 97.5 meters, do not meet these requirements for the reasons stated in our proposal and elsewhere throughout this document. The State has had plenty of time to correct the problems with the SIP since we first informed them of the problems with MSCC's stack height credit, but has chosen not to do so.

(q) *Comment:* One commenter (Goetz letter, document # IV.A–18, exhibit D, p. 26) stated that many of the documents in support of EPA's claimed long-standing interpretation of the NSPS emission rate issue are less than clear regarding the specific issue in question and the weight to be accorded these sources is questionable. The commenter noted that one of the documents is a letter to a particular law firm not involved in the present issue.

Response: We believe the documents cited are clear and indicate that we have held the NSPS emission limit position since the inception of the stack height regulations, and have continued to follow it subsequently. The letter to the law firm that the commenter demeans was an April 20, 1989 letter from Gerald A. Emison, an EPA Headquarters official at the time, to John Proctor, who represented Pennsylvania Electric Company (*see* document # II.A–7). That letter addressed the very same issue that we are dealing with in this matter—whether the NSPS must be met as an emission limit by sources seeking above-formula stack height credit.

(r) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment # 88) stated that EPA points to the use of the term ''allowable emission rate'' in the regulation, but notes that the regulation does not use the term ''enforceable emission rate'' or ''emission limitation,'' even though these are terms within EPA's ''lexicon.''

Response: The commenter is correct that we did not use these alternative terms in the regulation. We do not believe this changes the meaning of ''allowable emission rate.'' The Clean Air Act itself defines ''emission limitation'' to include ''a requirement established by the State or the Administrator which limits the [* * *] rate [* * *] of emissions of air pollutants on a continuous basis[.]'' (*See* section 302(k) of the Act.)

(s) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment # 88; MSCC letter, document # IV.A–20, comment # 2.P) stated that fluid modeling was available to ExxonMobil, without NSPS applying, and Conoco received GEP stack height credit above 65 meters without having to conduct fluid modeling. The commenter claimed that NSPS is not applied to any other source in this airshed by this SIP revision, but instead it is only applied to new sources as intended. The commenter stated that MSCC's treatment is inequitable, unreasonable, and inconsistent with the statute and rule.

Response: The NSPS did not apply to ExxonMobil's FCC CO-boiler stack because ExxonMobil performed fluid modeling to obtain credit for a within-formula stack height credit and not above-formula stack height credit. Likewise, the NSPS did not apply to Conoco because Conoco was not seeking above-formula stack height credit. Conoco received approval of their GEP formula height stack on June 7, 1989 (54 FR 24334). The actual stack height is 82.3 meters and the formula height is 75.7 meters. In the Billings/Laurel SO2 SIP, the MDEQ initially modeled Conoco's stack at the 82.3 meters. However, in a letter to the MDEQ dated December 15, 1994, we indicated that the State needed to justify using the higher stack height (*see* document # IV.C–17). On April 14, 1995, the State sent a letter to the Billings SO2 Parties indicating that there was a revision in the Dispersion Modeling Scenario (*see* document # IV.C–39). Among other things, the letter indicates that the new compliance demonstration will use the 75.7 meters stack height credit for Conoco. Subsequent modeling done by the State has used the 75.7 meters stack height credit at Conoco. MSCC may avoid application of the NSPS in this SIP by accepting GEP stack height credit of 65 meters. MSCC will only be subject to an NSPS limit if it insists on above-formula stack height credit. This result follows from our stack height regulations, and we do not believe it is inequitable.

(t) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment # 41) indicated that MSCC has been treated inequitably compared to ExxonMobil, that ExxonMobil was allowed to make a fluid modeling demonstration to demonstrate within formula GEP height, that formula height was calculated based on a rounded nearby structure that is taller than it is wide, but that GEP credit was really based on the Billings Generation Inc. (BGI) structure that creates downwash at MSCC.[26] According to the commenter, this BGI structure is further from ExxonMobil than it is from MSCC. The commenter asserted that because ExxonMobil was able to conduct a within formula determination, it is not being required to meet an NSPS limit like MSCC, and this is unfair. Another commenter (CPP letter, document # IV.A–18, exhibit A, p. 7 and Attachment I) made essentially the same comment.

Response: We do not believe MSCC has been treated inequitably or unfairly. ExxonMobil properly calculated a formula height of 76.7 meters and then demonstrated the validity of that formula height through a fluid modeling demonstration. For ExxonMobil, the formula height of 76.7 meters was calculated considering four solid components imbedded in a lattice framework. The four imbedded components are the elevator (3.2 m by 5 m by 49.2 m), the regenerator (7.6 m in diameter and 30 m high), the reactor (6.1 m in diameter and 53.4 m high) and the fractionator (3.2 m in diameter and 45.3 m high). The calculated stack height was based on the four structures, which are within 5L of the stack in question, and not the lattice framework, and was determined by using our Building Profile Input Program (BPIP) software. (*See* document # II.F–2.)

The formula used to determine the formula stack height is $Hg = H + 1.5\ L$, where Hg is the good engineering practice stack height measured from the ground elevation at the base of the stack, H is the height of nearby structure(s)

[26] BGI is now the Yellowstone Energy Limited Partnership (YELP).

measured from the ground-level elevation at the base of the stack, and L is the lesser dimension, height or projected width, of nearby structures. In the BPIP modeling for ExxonMobil, H was determined to be 45.29 m and L was determined to be 20.95 m. In other words, the structures together were taller than they were wide, but their projected width was significantly greater than MSCC's stack support structure and their height was significantly less. These structures were not a stack or TV or radio transmission tower, which our GEP Guideline states should not be considered in GEP stack height determinations. ''Guideline for Determination of Good Engineering Practice Stack Height (Technical Support Document for the Stack Height Regulations (Revised),'' June 1985, EPA–450/4–80–023R, at p. 7 (document # II.A–12). In addition, these structures were not part of the stack for which formula height was being determined. MSCC's situation is different—the stack support structure cannot be used to calculate formula height.

In ExxonMobil's case, we believe formula height was properly calculated, and because ExxonMobil was only seeking stack height credit equivalent to formula height, ExxonMobil was permitted to make a fluid modeling demonstration under 40 CFR 51.100(kk)(2) rather than subsection (kk)(1). Under subsection (kk)(2), a source is only required to use its SIP limit (or if there is none, its actual emissions rate) in fluid modeling, and is not required to meet an NSPS limit as is the case for sources seeking above-formula stack height credit under subsection (kk)(1). Because MSCC was seeking above-formula stack height credit, subsection (kk)(1) applied.

In addition, in a fluid modeling demonstration, our rules allow consideration of structures up to one-half mile from the stack, even if one-half mile is not nearby for purposes of calculating formula height. 40 CFR 51.100(jj)(2). Thus, it is irrelevant that the formula height calculation for ExxonMobil was not based on the BGI structure, but that the fluid modeling modeled the BGI structure.

In our view, any differences in treatment of ExxonMobil and MSCC result from the proper application of our stack height regulations. Under our regulations, there is no question that physical layout plays a role in formula and GEP determinations. The layout of the ExxonMobil facility allowed ExxonMobil to calculate formula height based on the four structures contained within the lattice; these structures were within 5L of the stack. At MSCC, there were no structures within 5L of the stack on which MSCC could calculate formula height greater than 65 meters. This difference, which seems inequitable to the commenters, is inherent in the rule. We understand that downwash effects present at 4.9L do not magically disappear at 5L, but this is the line EPA drew in the stack height regulations, and the regulations were upheld by United States Court of Appeals for the D.C. Circuit. To the extent the comment goes to the validity of the stack height regulations, we do not believe the comment is timely or relevant to this rulemaking.

(u) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment # 24) stated that two existing sources in Billings erecting stacks after 1977 were granted credit for stacks without a precondition that NSPS controls be installed. According to the commenter, both credits were based on tall thin structures, albeit not as tall and thin as MSCC's structure.

Response: The commenter has not provided sufficient information for us to completely respond to the comment. If the commenter is referring to ExxonMobil and Conoco, see our responses to the above comments. If the commenter is referring to Cenex, we note that Cenex was required to raise some stacks as a result of the 1977 Stipulation. However, none of Cenex's stacks are above 65 meters and the NSPS ''precondition'' would not apply. In fact, except for MSCC, the only other sources in the Billings/Laurel SIP where the stack height credit in the modeling is greater than 65 meters are Conoco's boiler stack at 75.7 meters (*see* discussion above), ExxonMobil's FCC CO-boiler stack at 76.7 meters (*see* discussion above), and Montana Power's stack at 106.7 meters. Montana Power's GEP stack height credit was approved on June 6, 1989 (54 FR 24334). The June 6, 1989 **Federal Register** notice indicates that Montana Power's stack height credit was grandfathered. None of these stacks are subject to the NSPS precondition requirement.

(v) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment # 89) asked why any existing source already automatically eligible for a more lenient-than-NSPS short term and annual limitation at 65 meters would accept an NSPS limit on its pre-NSPS facility as a pre-condition of receiving credit for GEP above 65 meters. In a similar vein, another commenter (Goetz letter, document # IV.A–18, exhibit D, p. 25) stated that it would not make sense for a source to expend the resources of a fluid modeling demonstration to justify above-formula stack height credit if the source must meet the NSPS as an operating limit. These commenters claimed that under EPA's reading, the rule has no utility. According to these commenters, although EPA argues that conditions other than downwash may be controlling in dispersion modeling to set emission limitations, EPA's argument is sophistry. The commenters asserted that EPA has pointed to no real-world example of where this rule has proved useful in such a situation. One of the commenters asked EPA to provide documentation of specific cases where the above-formula stack height rule has been used in a case that fits this category. In addition, the commenter claimed that documents EPA cited in its proposal and TSD do not support the proposition that conditions other than downwash may be more controlling in some cases.

Response: First, we would not expect an existing source with an emission limit more lenient than the NSPS at a 65 meter stack height credit to seek above-formula stack height credit. In fact, we explicitly recognized this in the preamble to the stack height regulations:

> In the event that a source believes that downwash will continue to result in excessive concentrations when the source emission rate is consistent with NSPS requirements, additional stack height credit may be justified through fluid modeling at that emission rate.
>
> A source, of course, always remains free to accept the emission rate that is associated with a formula height stack rather than relying on a demonstration under the conditions described here.'' 50 FR 27898, July 8, 1985.

By the same token, sources have no absolute entitlement to above-formula stack height credit. As stated before, the premise behind the above-formula provisions of the stack height regulations was that above-formula stack height credit would be granted rarely and with utmost caution. The D.C. Circuit recognized this as legitimate, and the NSPS requirement, as interpreted by EPA, effects this goal. The commenter believes MSCC has somehow been wronged because we have not interpreted our regulations to make it easier for MSCC to obtain above-formula stack height credit.

Second, we believe there are conditions under which a source would want to seek above-formula stack height credit even though it would have to meet the NSPS as an operating limit. As noted by the commenter, we mentioned one such possibility in our proposal—where conditions other than downwash may be controlling in dispersion modeling. Another example may be when a source would have to meet an

emission limit lower than the NSPS using within-formula stack height credit. Although we have not researched whether this situation has actually arisen ''in the real world,'' we think the commenter's concern on this point is irrelevant. The stack height regulations were not intended to encourage sources to seek above-formula stack height credit or to make it easy for them to obtain such credit. 50 FR 27898, July 8, 1985.

In addition, the commenter ignores the possibility that a source could demonstrate the infeasibility of meeting the NSPS limit and justify a higher, alternative limit. *See* 40 CFR 51.100(kk)(1). Again, a source might want to do this if it would have to reduce emissions below this alternative limit based on within-formula stack height credit.

Regarding the documents cited in our proposal for the proposition that conditions other than downwash may be more controlling, we have discovered that there are two different versions of the Guideline for Determination of Good Engineering Practice Stack Height. In the version we included in our rulemaking docket, the relevant item in Table 3.1 is Item G. In the version submitted by the commenter, the relevant item in Table 3.1 is Item F. In either case, Footnote 3 to the relevant Item states, ''Where some other meteorological condition is more controlling than downwash, adjust the emission rate to avoid a violation of a NAAQS or available PSD increment.'' We note that the commenter cites to Item F on the prior page of his comments.

Language from the discussion of above-formula stack height credit in the preamble to the stack height regulations also touches on the possibility that conditions other than downwash may be controlling:

> An additional theoretical complication is presented when an absolute concentration is used where meteorological conditions other than downwash result in the highest predicted ground-level concentrations in the ambient air. In such cases, a source that has established GEP at particular height, assuming a given emission rate, may predict a NAAQS violation at that stack height and emission rate under some other condition, *e.g.,* atmospheric stability Class ''A''.'' 50 FR 27899, col. 1.

(w) *Comment:* One commenter (Goetz letter, document # IV.A–18, exhibit D, p. 19) stated that it is obvious that MSCC would not have undergone the considerable expense of more wind tunnel modeling if it had known the NSPS would be imposed as an actual emission limit because the NSPS standard was a mere fraction of the emission limit already proposed by DEQ for a 65 meter de minimis stack.

Response: Although MSCC may well have chosen not to conduct additional wind tunnel modeling, it is also possible MSCC may have pursued additional wind tunnel modeling because, even if we had at that point informed MSCC that the NSPS would be the applicable emission limit, MSCC may have chosen to ignore, or, as MSCC has in fact chosen to do, contest our position. As we have noted elsewhere in this document, MSCC proceeded with other stack height theories even after MSCC was aware that we would reject those theories. In any event, this comment is not relevant to the central issue, which is whether the stack height regulations require that the NSPS or BART emission rate serve as a cap on SIP limits in above-formula situations.

(x) *Comment:* One commenter (MSCC letter, document # IV.A–19, p. 3; MSCC letter, document # IV.A–20, comment # 1.M) stated that MSCC could not feasibly install controls to achieve an NSPS level of control, and cites to an expert's opinion regarding the subject.

Response: We are not forcing MSCC to seek above-formula stack height credit. The requirement to at least meet the NSPS is a byproduct of MSCC's decision to seek above-formula stack height credit. If MSCC accepted the regulatory 65 meter credit, it could have emissions limits significantly less stringent than the NSPS.

In addition, our regulations provide an opportunity for the State/source to make a showing that the source cannot achieve an NSPS level of control. We offered the State and MSCC the opportunity to demonstrate infeasibility, but MSCC did not do so (*see* document #'s II.C–12 and IV.C–40). MSCC seemed unwilling to make the attempt without some assurance that the attempt would be successful (*see* document # IV.C–41 and document # IV.A–17, MSCC Exhibit 19). The State did not set an alternative BART limit based on an infeasibility showing by MSCC, and therefore, this issue is not properly before us in this action. The commenter's mere assertion of infeasibility does not provide a basis for us to disregard the requirements of the stack height regulations. We note that MSCC installed a SuperClaus unit in late 1998 despite its claims that it was not ''economically practical or feasible'' to do so (*see* document # IV.C–42 and document # IV.A–17, MSCC Exhibit 126, Direct Testimony of Larry Zink, ''In the Matter of the Application of the DEQ for Revision of the Montana State Air Quality Control of SO2 Emissions in the Billings/Laurel Area * * *'', December 5, 1995, pp. 27, 36.)

(y) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment # 98) stated that EPA uses the term ''alternative rate'' interchangeably with ''allowable emissions rate,'' and the commenter implied that this somehow undercuts EPA's reading of ''allowable emissions rate'' as meaning a rate that a source would have to meet and not just assume for purposes of a fluid modeling demonstration.

Response: The regulation says the allowable emissions rate shall be the NSPS unless a source demonstrates that the NSPS is infeasible, in which case an alternative emission rate shall be established. Both phrases, at root, use the term ''emission rate.'' We believe it is reasonable to read this to mean that such alternative emission rate would become the allowable emissions rate for purposes of the preceding sentence in the regulation.

(z) *Comment:* One commenter stated (MSCC letter, document # IV.A–19, comment # 100; MSCC letter, document # IV.A–20, 2nd comment #'s 5.A, B, C, D, F, and G) that MSCC is a well-controlled source, citing to the SO2 reductions MSCC has achieved for many years in the area.

Response: We are aware that MSCC removes sulfur compounds from ExxonMobil's effluent stream. However, to the extent the commenter is referring to ''well-controlled'' as a term of art in the preamble to our stack height regulation, this term refers to an NSPS limit or a BART alternative limit. To date, neither the State nor MSCC has been willing to adopt the NSPS as a limit for MSCC. If the commenter is using the term more generally, it is not relevant to our review of the SIP. Our obligation under the CAA is to ensure that the requirements of the CAA and our regulations are met. MSCC may or may not be ''well-controlled'' in the generic sense, but MSCC's main stack limits have not been set in accordance with our stack height regulations, and certain other aspects of the SIP, which pertain to MSCC and other sources, are deficient under the CAA and our regulations. It is entirely possible the State could fix the SIP problems without imposing additional emission reductions on MSCC. For purposes of a SIP, the State chooses how to allocate the emissions reduction burden among sources, not EPA. We review the State's choices to ensure that the SIP meets the requirements of the CAA.

(aa) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment # 94) stated that the stack height regulations impose less stringent

requirements for PSD sources attempting to justify above-formula stack height credit through fluid modeling than they impose on existing sources doing so. In the commenter's view, this seems odd since PSD sources are increasing emissions in an area. The commenter found it difficult to understand this apparent contradiction, particularly since EPA appears to believe reducing emissions is the principal and overriding purpose of section 123 of the CAA. The commenter appeared to suggest that the NSPS rate prescription in 40 CFR 51.100(kk)(1) only applies to PSD sources. The commenter thought it is unlikely that NSPS forms an upper bound for PSD sources, but instead is an acceptable rate for a fluid modeling demonstration, regardless of more stringent requirements applicable to the source. The commenter wondered whether MSCC is subject to the PSD program.

Response: First, the commenter mischaracterizes our interpretation of section 123 of the CAA. The principal purpose of section 123 is to prevent sources from using excessive stack height as a means to meet the NAAQS. In any given SIP, sources may be able to justify higher stack height credit and thereby increase emissions or keep emissions the same. This is highly situation-dependent. Clearly Congress did not want to allow use of stack height greater than GEP at the expense of emissions controls.

Second, although the commenter may find this distinction odd, it does not change the regulatory requirements that apply to non-PSD sources. The commenter's recourse if it wished to challenge the distinction between non-PSD and PSD sources was to seek review of the original regulations within 60 days of promulgation. It may not challenge the regulations now.

Third, PSD sources that are being considered in SIP development are likely to be existing sources that happen to be subject to a PSD permit, not necessarily a new or modified source adding emissions to an area. Also, stringent modeling requirements apply to new or modified PSD sources to ensure that they do not interfere with attainment or maintenance of the NAAQS.

The practical implications of the distinction between non-PSD and PSD sources are probably insignificant because PSD sources are necessarily meeting Best Available Control Technology (BACT) limits that, by definition, are at least as stringent as the NSPS. *See* 40 CFR 51.166(b)(12). Thus, although the fluid modeling requirements for PSD sources appear to be less stringent, the control requirements applicable to PSD sources are generally more stringent than those that apply to non-PSD sources, and such sources have already undergone stringent modeling requirements to receive their permits.

Regarding EPA's selection of the NSPS for above-formula demonstrations and the fact that this does not really comprise an upper bound for PSD sources, EPA selected a single level for all sources seeking above-formula stack height credit. PSD sources are already well-controlled; there was no need to establish some lesser cap on emissions.

To our knowledge, MSCC does not have a PSD permit, and thus, is not currently a PSD source. Additionally, our action on the SIP is not meant to imply any sort of applicability determination under the PSD program (Title I, part C of the Act) with respect to MSCC.

(bb) *Comment:* One commenter (Goetz letter, document # IV.A–18, exhibit D, p. 23) stated that MSCC adopts and incorporates as part of its comments the analysis contained in a memo by DEQ attorney Jim Madden to Mark Simonich dated August 1, 1999 (*sic,* should be 1996) (attachment to document # II.C–9).

Response: We have thoroughly analyzed and responded to the analysis contained in Mr. Madden's memo in our TSD, at pages 58–67, and in this document.

2. Issues Related to Best Available Retrofit Technology (BART)

We received a number of comments regarding an alternative BART limit for above-formula stack height demonstrations. Although we discussed with the State and MSCC the provision of our regulations that allows sources the opportunity to show that an NSPS limit is infeasible and then to develop an alternative BART limit, MSCC did not attempt to make the requisite showings. Consequently, the State did not approve an alternative BART limit for MSCC, and no alternative BART limit has been submitted to us for approval. Therefore, we believe the majority of comments regarding an alternative BART limit are irrelevant to our action. Nevertheless, we are responding to the comments regarding BART. Nothing in the comments has caused us to change our position regarding disapproval of MSCC's stack height credit.

(a) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment # 22, 99, 103; MSCC letter, document # IV.A–20, comment # 1.I) stated that EPA's arguments regarding BART and feasibility studies are spurious and hypocritical. The commenter suggested that EPA has inadequately defined BART and that therefore the opportunity to demonstrate the infeasibility of meeting the NSPS limit and establish an alternative BART limit amounts to impermissibly vague regulation. The commenter asserted that no successful BART or feasibility analysis has ever been done regarding implementation of stack height rules. The commenter alluded to a BART analysis for another source that EPA rejected. The commenter complained that the BART guidelines are guidance and not regulations and that they are not authorized under section 123 of the Act.

Response: Since the State did not adopt an alternative limit for MSCC, based on an infeasibility showing, the commenter's arguments regarding BART and our application of the regulations are irrelevant to our action on the SIP before us. In addition, to the extent the commenter is objecting to an alleged flaw in the stack height regulations, the objection could only be raised in a challenge to the stack height regulations and is irrelevant to our action. Nevertheless, we are responding to the comment.

We disagree with the commenter. We believe the BART guidelines adequately define criteria and a process for determining the feasibility of employing particular control technology or meeting particular emission limits. These guidelines are similar to guidelines for establishing BACT for a new source or source modification, guidelines that have been used successfully on many occasions to establish emission limits in the PSD program. Whether or not the BART guidelines have been used successfully in the stack height context does not mean the guidelines are inadequate or overly vague. It is true that the State and EPA retain discretion to review and approve a source demonstration regarding feasibility and BART, but this is true in the PSD context and other contexts as well. Certainly our discretion is limited by applicable standards under the Administrative Procedure Act.

Contrary to the commenter's assertion, we *did* provide information regarding BART and infeasibility showings (*see* document #'s II.C–12 and IV.C–40). It seems the commenter expected us to propose an alternative BART limit for MSCC. However, the regulations make clear that in the first instance the source must demonstrate that it cannot meet the NSPS limit. MSCC did not attempt to make such a showing.

(b) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment # 24; MSCC letter, document # IV.A–20, comment # 1.I) stated that SIP time frames, and threatened sanctions, preclude the use of alternative limits for above-formula sources. The commenter stated that because of this, the *NRDC* v. *Thomas* court should review its decision.

Response: We believe that a source and state could develop an alternative emission limit in the time frame for SIP development. In any event, we believe this comment goes to the validity of the stack height regulations themselves, and is neither timely nor relevant to our action on the SIP before us. We note that MSCC and the State had more than ample time to conduct an infeasibility analysis in this case. We informed the State of our position regarding the NSPS and the stack height regulations in May of 1996, and subsequently invited MSCC and the State to make an infeasibility showing. MSCC had over three years in which to make such a showing before we finally proposed our action on the SIP in July of 1999.

(c) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment #'s 24, 25) stated that section 123 requires EPA to promulgate regulations defining GEP and that EPA cannot define the parameters for a feasibility analysis through guidance or staff pronouncements. The commenter went on to say that if section 123 of the Act grants power to EPA employees to define GEP or feasibility analyses outside of regulations, it is so broad a delegation of power as to deny reasonable due process.

Response: The commenter is asserting a harm to MSCC that is purely speculative. MSCC did not attempt to perform an infeasibility analysis, the State did not adopt an alternative (to NSPS) limit for MSCC, and the State did not submit such a limit to us for approval as part of the SIP. The commenter assumes there was insufficient time to make the necessary showing and analysis and assumes that we would have acted arbitrarily and capriciously if the State had submitted an alternative limit for MSCC. The commenter is raising an issue that is unripe for review and has no relevance to our action on the SIP before us. Also, the commenter ignores the fact that in the preamble to our stack height regulations, we stated that we would rely on our BART guidelines in reviewing any rebuttals to the NSPS and alternative limits (*see* 50 FR 27898), and that NRDC challenged our intent to rely on the BART guidelines. The D.C. Circuit held that the BART guidelines did not represent final agency action subject to review and dismissed NRDC's challenge (*NRDC* v. *Thomas,* 838 F.2d 1224, 1241, fn. 14 (D.C. Cir. 1988)), but the Court upheld our regulations.

(d) *Comment:* One commenter (MSCC letter, document # IV.A–19, p. 2) asserted that it is MSCCs ''situation, not merely its position'' that application of additional control technology is infeasible to achieve short term limits more restrictive than the current plan provides. The commenter stated that MSCC lacks the land and resources to further control SO2. The commenter stated that it has invested substantial resources in reliance on the State's plan and findings.

Response: We are not permitted to consider economic or feasibility questions in evaluating the adequacy of a SIP. *Union Electric* v. *EPA,* 427 U.S. 246, 265—266 (1976). To the extent the commenter is suggesting MSCC should be allowed to use an alternative limit under our stack height regulations, MSCC has not demonstrated, and the State has not found, that MSCC cannot meet an NSPS limit. These are prerequisites before an alternative limit may be established. *See* 40 CFR 51.100(kk)(1). In fact, despite being offered the opportunity (*see* document # II.C–12), MSCC did not attempt to make an infeasibility showing.

We also note that when MSCC contested the State-proposed emission limit based on 65-meter stack height credit, MSCC claimed it was not ''economically practical or feasible'' to install an additional Claus unit; yet, MSCC has since installed an additional Claus unit. Document # IV.A–17, MSCC Exhibit 126, Direct Testimony of Larry Zink, ''In the Matter of the Application of the DEQ for Revision of the Montana State Air Quality Control of SO2 Emissions in the Billings/Laurel Area * * *'', December 5, 1995, pp. 27, 36.

(e) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment # 101) asked a number of questions about the Asarco stack height situation in Montana and the outcome of any BART analysis for Asarco, and asked EPA to define the terms ''well-controlled'' and ''infeasibility.''

Response: The comment is more in the nature of a set of interrogatories than a comment. We are responding to comments but are not obligated to respond to interrogatories in conducting this rulemaking action. In any event, we believe the questions posed are not relevant to this rulemaking action, particularly since MSCC chose not to try to make an infeasibility showing and establish an alternative emission limit for the MSCC stack. However, Asarco did not perform a BART analysis but instead assumed a de minimis stack height credit of 65 meters for the blast furnace stack in the attainment demonstration. We approved the 65 meter stack height credit for the blast furnace stack on January 27, 1995 (60 FR 5313).

3. Issues Related to the Montana Ambient Air Quality Standard (MAAQS)

Montana approved a stack height credit of 97.5 meters for MSCC's 100-meter stack based on a fluid modeling demonstration that MSCC's contractor (CPP) performed. Assuming an NSPS rate of emissions from the 100-meter stack, and adding in background concentrations, the particular demonstration the State approved showed an exceedance of the annual Montana Ambient Air Quality Standard (MAAQS) for SO2 (52 micrograms per cubic meter), but not of the annual NAAQS for SO2 (80 micrograms per cubic meter). As we explained in our proposed disapproval and TSD, our regulations require a fluid modeling demonstration under 40 CFR 51.100(kk)(1) to show an exceedance of the NAAQS. An exceedance of the MAAQS is not sufficient. We received numerous comments on this issue and have considered them. Nothing in the comments has caused us to change our position on this issue.

(a) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment # 95) stated that the use of the MAAQS is not logically inconsistent for the fluid modeling determination. The commenter argued that the State applied more stringent modeling requirements than were warranted.

Response: We continue to believe our interpretation, that the benchmark for fluid modeling must be the NAAQS, is reasonable and should be maintained. In the alternative, if a benchmark like the MAAQS is going to be used to justify higher stack height credit in a federally enforceable SIP, then the State must consistently apply the MAAQS in that SIP. This is not the case with the Billings/Laurel SO2 SIP; the SIP is not intended or designed to achieve the MAAQS. The State cannot selectively choose to apply the MAAQS for inflating stack height credit, thereby increasing atmospheric loading and dispersion downwind, but not apply the more stringent ambient standard in setting SIP emission limits. Either the MAAQS are a health-based standard for SIP purposes or they are not.

We are not sure what the commenter is referring to when he claims that the State imposed more stringent modeling

requirements than it had to, but we believe that this claim does not resolve the issue related to the MAAQS or undermine our interpretation.

(b) *Comment:* Several commenters (MSCC letter, document # IV.A–19, comment # 95; State letter, document # IV.A–23, p. 15; Goetz letter, document # IV.A–18, exhibit D, p. 27; CPP letter, document # IV.A–18, exhibit A, p. 6) stated that EPA's rules define excess concentrations in terms of an impact on ''an ambient air quality standard,'' not a ''national standard'' or ''national ambient air quality standard.'' According to the commenters, the term ambient air quality standard clearly includes the MAAQS. The commenters asserted that because the rule is clear, it is not necessary to resort to the preamble to interpret it. The commenters claimed that even if one examines the preamble, the preamble supports the interpretation that ''ambient air quality standard'' includes the MAAQS. Furthermore, the commenters stated that if EPA had wanted to limit a fluid modeling demonstration to the NAAQS, it knew how to do so. One of the commenters (MSCC) asserted that neither the statute nor EPA regulations specify the NAAQS. Finally, the commenters argue that EPA recognized in a 1990 memorandum that the express language of the rules is not limited to the NAAQS, and that, on a case-by-case basis a more stringent state standard could be used.

Response: Given that ''ambient air quality standard'' is not a defined term in the regulations, we think it is entirely appropriate to consult the preamble and other documents. The preamble to the regulations clearly indicates that ''ambient air quality standard'', as used in 40 CFR 51.100(kk)(1), was intended to mean a NAAQS. For example, we stated the following in the preamble to the final regulations:

> For these reasons, we are requiring sources seeking credit for stacks above formula height and credit for any stack height justified by terrain effects to show by field studies or fluid modeling that this height is needed to avoid a 40-percent increase in concentrations due to downwash and that such an increase would result in exceedance of air quality standards or applicable PSD increments. This will restrict stack height credit in this context to cases where the downwash avoided is specified by regulation or *by act of Congress* as possessing health or welfare significance. (50 FR 27898, July 8, 1985, emphasis added.)

When we promulgated the regulation, we were not contemplating state air quality standards. In fact, the preamble specifically mentions the NAAQS in many places without any reference to possible alternative state ambient standards. The following quotes are informative:

> The EPA's reliance on exceedances, rather than violations of the NAAQS and PSD increments, is deliberate. (50 FR 27898.)
>
> Since a source can only get stack height credit to the extent that it is needed to avoid a PSD increment or NAAQS exceedance, * * * (50 FR 27898)
>
> [T]he second way to justify raising a stack is to demonstrate by fluid modeling or field study an increase in concentrations due to downwash that is at least 40-percent in excess of concentrations in the absence of such downwash and in excess of the applicable NAAQS or PSD increments. (50 FR 27899)

Likewise, our response to comments document for the stack height regulation states that it would not be appropriate to use a concentration below the NAAQS ''as a precaution to avoid health and welfare effects,'' because doing so would not be responsive to the health and welfare concerns articulated by the *Sierra Club* court (*Sierra Club* v. *EPA,* 719 F.2d 436 (D.C. Cir. 1983). Response to Comments on the November 9, 1984, Proposed Stack Height Rules, prepared July 1985 by EPA's Office of Air Quality Planning and Standards, at 36 (document # II.A–8).

The preamble to our proposed stack height regulation is also on point. The term ''ambient air quality standard'' was used in the proposed regulations exactly as it is used in the final regulations. The preamble to the proposal describes the requirements as follows:

> The proposed regulation requires that the downwash, wakes, or eddy effects induced by nearby structures or terrain features results in an increase in ground-level pollutant concentrations that: (a) Causes or contributes to an exceedance of a NAAQS or applicable PSD increment; * * *
>
> Because the NAAQS represent pollutant concentrations which the Agency has previously determined to result in adverse health and welfare effects, the inclusion of the exceedance of a NAAQS in the definition of ''excessive concentrations'' provides a straightforward response to the court's directive. (49 FR 44881, November 9, 1984)

It is clear that we interpreted ambient air quality standard to mean NAAQS. This is how the United States Court of Appeals for the D.C. Circuit understood the regulations (*see NRDC* v. *Thomas,* 838 F.2d 1224, 1240 (D.C. Cir. 1988)) and this interpretation is supported by other documents as well. The 1990 memo (document # II.F–13) referenced by one commenter (State) states that EPA interprets ''ambient air quality standard'' to mean national ambient air quality standard. To the extent the memo allowed for consideration of some other benchmark on a case-by-case basis, we believe that the State has not made an adequate showing that use of the MAAQS in this case is justified or would result in more stringent requirements than our regulations impose. In fact, just the opposite would be the case.

We also note that the March 4, 1991 letter to which we attached the 1990 memo stated our conclusion that Asarco's field studies had not demonstrated that stack height above GEP formula height was justified. Among the reasons we gave for reaching this conclusion was that the studies had not shown an exceedance of the 3-hour *national ambient air quality standards for SO2.* (March 4, 1991 letter from Irwin L. Dickstein to Jeffrey T. Chaffee (document # II.F–14), emphasis added.) Also, in our September 16, 1994 letter from Douglas Skie to Jeffrey Chaffee regarding ExxonMobil's GEP stack height credit (document # IV.A–17, MSCC Exhibit 123) we stated that the definition of ''excessive concentrations'' required an exceedance of the applicable NAAQS.

We also find it striking that more than one of the commenters, in objecting to other aspects of our stack height analysis, rely on EPA documents that clearly contemplate use of the NAAQS in fluid modeling demonstrations. For example, one commenter (Goetz, document # IV.A–18, exhibit D, pp. 24—26) cites extensively from our Guideline for Determination of Good Engineering Practice Stack Height (Technical Support Document for the Stack Height Regulations), which, in Table 3.1, item F, clearly indicates that excessive concentration is to be judged against the NAAQS. The State (document # IV.A–23, p. 20, footnote 19) refers to an October 6, 1988 letter from Marcia Mulkey, EPA Region III, to John Proctor, attorney for Pennsylvania Electric Company (document # IV.C–65), which indicates our stack height regulations require an analysis of whether downwash causes an exceedance of an applicable NAAQS. These commenters never mention these references to the need to use the NAAQS.

It is true that the statute does not specify the NAAQS in referring to excessive concentrations. However, this is irrelevant because Congress did not define excessive concentrations at all and instead left it to EPA to promulgate regulations to address issues related to stack height demonstrations.

The State and other commenters have merely assumed that the phrase ''ambient air quality standard'' encompasses a state-adopted ambient air quality standard. However, they offer

no compelling reason that their interpretation of our regulation is reasonable. On the other hand, we have a compelling reason that our longstanding interpretation of the phrase *is* reasonable—namely, that our interpretation will effectuate Congressional purpose, as interpreted by the courts and by EPA. Our interpretation is entitled to deference.

(c) *Comment:* More than one commenter (MSCC letter, document # IV.A–19, #'s 18, 95; MSCC letter, document # IV.A–20, # 1.B; State letter, document # IV.A–23, p. 15) stated that EPA has already approved into the SIP Montana's stack height regulations, which are essentially equivalent to those of the federal government, and which allow the MAAQS to be used in fluid modeling demonstrations. The commenters claimed that if EPA had intended that the NAAQS must be used in place of the MAAQS in a fluid modeling demonstration, EPA would have disapproved the part of Montana's rules that cross-reference the MAAQS. Furthermore, the commenters asserted that EPA has delegated the authority for such determinations to the state of Montana.

Response: First, we do not believe we are bound by the terms of the Montana stack height regulations in reviewing the Billings/Laurel SIP. Instead, we believe we have an independent obligation to ensure that the Billings/Laurel SIP meets the requirements of section 123 of the Act and our stack height regulations, regardless of the terms of the stack height regulations in the State SIP. The Court of Appeals for the D.C. Circuit said as much in *Sierra Club* v. *EPA,* 719 F.2d 436, 469 (D.C. Cir. 1983):

> Moreover, we see no place for such state regulations in EPA's own final regulations. The regulations are detailed and precise and do not mention alternative means of compliance from which the states may pick and choose.

As we noted in our proposal, we believe our regulations intended ''ambient air quality standard'' to refer to the NAAQS. The preamble makes this evident. Also, the application of the MAAQS in a fluid modeling demonstration makes it easier for a source to demonstrate excessive concentrations, as defined in our stack height regulations, and thus justify an above-formula stack height credit. Clearly, we did not intend such a result, particularly where, as in this case, the SIP revision has not even been designed to attain the substitute ambient standard (the MAAQS).

No commenter has pointed to any limits or plan that is designed to achieve the MAAQS, and in reading the State's regulations, we have found no requirement for a plan. Instead, it is not clear how the MAAQS are enforced by the State.

Assuming for the sake of argument that we *are* bound by the Montana SIP stack height regulations, we do not think those regulations stand for the proposition argued by the commenters. Following our promulgation of our July 8, 1985 stack height regulations, we approved Montana's stack height regulations (16.8.1204 through 16.8.1206, ARM, effective June 13, 1986) as part of the SIP on June 7, 1989 (*see* 40 CFR 52.1370(c)(18), 54 FR 24334). That version of the Montana regulations cross-references ''an ambient air quality standard as provided in subchapter 8.'' *See* document # IV.C–45. Subchapter 8 was not submitted as part of the SIP. When we approved Montana's stack height regulations in 1989, subchapter 8 exempted the Billings/Laurel area from the MAAQS. *See* document # IV.C–70.[27] This is because in 1987, the Montana legislature enacted the ''Hannah Bill,'' which directed the Montana Board of Health and Environmental Sciences to amend subchapter 8 to exempt Billings/Laurel sources from the SO2 MAAQS. *See* document # IV.C–67. Following this directive, the Board of Health and Environmental Sciences revised subchapter 8 of the air quality regulations, effective August 28, 1987. *See* document # IV.C–70. Thus, when we approved the Montana stack height regulations, only the SO2 *NAAQS* applied in the Billings/Laurel area.

Given that the NAAQS applied in the Billings/Laurel area as a matter of State law at the time we approved the Montana stack height regulations, we believe it is reasonable to interpret the federally-approved Montana stack height regulations as requiring the use of the NAAQS in fluid modeling demonstrations. At the very least, the applicable ambient air quality standard has been a moving target under Montana law. As recently as 1997, the State air quality regulations continued to exempt the Billings/Laurel area from the MAAQS. *See* document # IV.C–77. This exemption was in effect when MSCC conducted fluid modeling in 1995 and 1996, and when the State adopted SIP limits for MSCC in the summer of 1996. The State did not remove the Hannah exemption from its regulations until September 1997. *See* document # IV.C–77.

According to the State, subchapter 2 is the present successor to subchapter 8. *See* State letter, document # IV.A–23, p. 15. As the State notes in its comments, subchapter 2 not only contains the MAAQS, but also incorporates the NAAQS by reference. State letter, document # IV.A–23, p. 16, footnote 16. The NAAQS are clearly within the definition of an ''ambient air quality standard'' as used in the State's current stack height regulation. *See* document # IV.C–64, section 17.8.201(2). Even if this version of the State regulation could be considered to govern this situation, under its own regulation, the State has a choice of ambient standards to apply. The State, in its comments, offers no basis to choose the MAAQS over the NAAQS for purposes of making a fluid modeling demonstration. We believe it is rational and necessary to choose the NAAQS when establishing stack height credit for purposes of setting a limit to achieve the NAAQS. The State has offered no rational basis for selecting the MAAQS for this purpose, and under our reading of the relevant laws, and the purposes behind section 123 of the CAA, it was inappropriate for the State to select the MAAQS. This merely made it easier for MSCC to demonstrate an ''excessive concentration'' and higher stack height credit.

In response to the comment claiming delegation, we have not ''delegated'' to Montana sole discretion to determine GEP stack height. We are required to independently determine whether this SIP revision meets the requirements of section 123 of the CAA, independent of any determination made by the State. *See* sections 110(k)(3) and 123 of the Act.

(d) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment # 48; MSCC letter, document # IV.A–20, comment # 1.C) stated that EPA's objections to use of the MAAQS in MSCC's fluid modeling demonstration are spurious. The commenter asserted that lack of federal enforceability does not make the MAAQS irrelevant in a fluid modeling demonstration, any more so than a nuisance demonstration by a state need be based on a federally enforceable ''nuisance'' concentration as provided in another part of the rule.

Response: Taken to its logical conclusion, the commenter's argument would mean it would be acceptable for a state to establish an ambient standard of zero for purposes of fluid modeling demonstrations, that would be unenforceable through the SIP. Such a

[27] Subchapter 8 described this exemption in a rather oblique fashion, by indicating that persons causing or contributing to exceedances of the MAAQS during 1985 would only need to meet the NAAQS for SO2, not the MAAQS. *See* document # IV.C–70. This language was specifically designed for the Billings/Laurel area, which exceeded the MAAQS for SO2 in 1985. *See* Montana 1986 Network Review, document # IV.C–68.

zero standard would make the ambient air quality standard portion of the rule meaningless, leaving only the 40% standard for fluid modeling demonstrations. This is clearly not acceptable, as the *Sierra Club* court held in requiring that EPA revise the rule using a health-based requirement for fluid modeling demonstrations. See *Sierra Club* v. *EPA,* 719 F.2d 436, 446–450 (D.C. Cir. 1983). We believe our interpretation of the rule is reasonable—at the very least, the ambient air quality standard must be cognizable under the SIP. Otherwise, states will be able to circumvent the purposes of the rule—to prevent states from achieving local compliance with the NAAQS at the expense of downwind states and to prohibit inappropriate use of dispersion instead of emissions control.

The commenter's attempt to analogize a nuisance showing under 40 CFR 51.100(kk)(2) fails because (kk)(2) applies to within formula demonstrations, for which EPA consciously selected a less rigorous standard. In order to preserve Congressional and EPA intent regarding the granting of above-formula stack height credit, the ambient air quality standard referred to in 40 CFR 51.100(kk)(1) must at least be federally cognizable through the SIP.

(e) *Comment:* Several commenters (MSCC letter, document # IV.A–19, comment #s 48, 93; Goetz letter, document # IV.A–18, exhibit D, pp. 21, 27, 28) stated that EPA's modeler advised the State that use of the MAAQS would be acceptable in the fluid modeling demonstration. According to one of the commenters (Goetz), in a telephone conversation with Dr. Petersen in the Spring of 1996, EPA's modeler indicated that EPA was going to agree with the State's recommendation that a MAAQS exceedance demonstration is sufficient and that the regulation ''clearly says an exceedance of an ambient standard which MAAQS is.'' Another commenter (CPP letter, document # IV.A–18, exhibit A, p. 6) made essentially the same claim. Mr. Goetz asserted that EPA's objection to use of the MAAQS is trivial, something EPA's modeler recognized.

Response: Although EPA's modeler [28] may have at one time indicated that the use of the MAAQS would probably be acceptable, the official EPA position is that use of the MAAQS is not consistent with the stack height regulations. Our other responses in this document explain why the use of the MAAQS is not appropriate. We note that we had raised the issue of using the MAAQS in a March 15, 1996 letter (document # II.F–20) to the State that Mr. Goetz cites for other purposes. Our modeler did not indicate that the issue was trivial, and we do not believe our objection to the use of the MAAQS is trivial.

(f) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment #'s 93, 95) argued that the MAAQS are cognizable under federal law and that EPA's position regarding the MAAQS makes no sense given that fluid modeling demonstrations can justify above-formula credit based on an exceedance of the PSD increment which is much smaller than the NAAQS or MAAQS. According to the commenter, the rules do not contain the restrictions EPA asserted, and section 123 of the Act makes no mention of ambient standard.

Response: For the reasons discussed elsewhere in this document, we do not agree that the MAAQS are ''cognizable'' under federal law. We have no mechanism to ensure the MAAQS will be met. Regarding the use of the PSD increment in fluid modeling, this is only available to sources that are subject to PSD (*see* 40 CFR 51.100(kk)(1); Response to Comments on the November 9, 1984 Proposed Stack Height Rules, July 1985, at pp. 32, 38, document # II.A–8), and, thus, that have already installed BACT. Thus, these sources have already been controlled to at least NSPS levels, and usually well beyond. *See* 40 CFR 51.166(b)(12). In addition, unlike the MAAQS, PSD increments are federally enforceable standards that are addressed in SIPs. It is irrelevant that section 123 does not mention ''ambient standard;'' our regulations *do* use the term.

(g) *Comment:* One commenter (State letter, document # IV.A–23, p. 16) stated that EPA did not adopt rules that required use of the NAAQS in the fluid modeling demonstration, or disapprove a provision in the Montana SIP that allowed use of the MAAQS, because to do so would be contrary to section 116 of the CAA, which expressly recognizes that states may adopt and enforce standards, such as the MAAQS, that are more stringent than federal standards.

Response: First, as explained in response to a prior comment, we did adopt a rule that requires the use of the NAAQS in a fluid modeling demonstration. Second, there is nothing in section 116 that would prevent EPA from doing so or that would prevent EPA from disapproving a provision in a SIP that allows use of a lower air quality standard in a fluid modeling demonstration. Section 116 reserves to states the right to generally adopt requirements more stringent than federally required, except in certain pre-empted areas. *See Union Electric Co.* v. *EPA*, 427 U.S. 246, 263—264 (1976). The State's use of the MAAQS to artificially inflate GEP stack height credit without concomitantly regulating for the MAAQS in the SIP renders the Billings/Laurel SIP *less* stringent than federally required.

Our establishment of the NAAQS as the fluid modeling benchmark has no effect on the ability of a State to establish a lower State ambient air quality standard to provide a greater margin of protection to its citizens. Our establishment of the NAAQS as the benchmark for fluid modeling, may have the effect, in certain instances, of restricting the degree to which dispersion using stack height can be counted for purposes of showing compliance with the *national* ambient air quality standards. Thus, the issue here is the extent to which dispersion may be relied on to show compliance with national standards, not whether Montana can impose more stringent requirements on its sources to meet a more stringent Montana standard. There is nothing in section 116 that says Montana or any other state is entitled to rely on greater dispersion to meet the NAAQS, and Montana's use of the MAAQS in this case to justify greater use of dispersion renders the SIP less stringent, not more. Montana's use of the MAAQS would allow MSCC to have a higher SIP limit, not a lower one. If the NAAQS were used, MSCC would have a lower stack height credit. Section 116 does not support the commenters' argument.

(h) *Comment:* One commenter (State letter, document # IV.A–23, p. 17) stated that EPA's criticism of the State's use of the MAAQS in the fluid modeling demonstration arises from EPA's lack of understanding of the MAAQS. The commenter asserted that the State has responsibility to protect both the NAAQS and the MAAQS; the NAAQS are enforced through an implementation plan, but the MAAQS are enforced directly, based on ambient monitoring. According to the commenter, if EPA's argument were followed to its logical conclusion, Montana would be forced to either abandon its MAAQS or impose two GEP determinations upon a source seeking above formula credit, separately based on the NAAQS and the MAAQS.

Response: The comment makes clear that stack height credit has no relevance to the MAAQS whatsoever. As the comment notes, the MAAQS are enforced directly, based on ambient monitoring. Of necessity, the full

[28] Elsewhere we and some of the commenters also refer to EPA's or the Region's meteorologist. Our modeler and meteorologist are the same person.

dispersive effect of a stack's height is taken into account with ambient monitoring. A monitor does not adjust the concentrations it reads based on too much stack height credit. Stack height credit only has relevance to developing limits in an implementation plan, and, as Montana admits in its comment, no implementation plan is developed for the MAAQS. Thus, our position would not force Montana to abandon the MAAQS and would not force Montana to perform two GEP determinations.

If Montana were to develop a state-only plan for the MAAQS, it is conceivable that Montana would have to perform two GEP determinations—one for the federally enforceable SIP for the NAAQS, one for the state-only plan for the MAAQS. We do not believe this would impose a significant hardship on the State or sources. Many states have state-only requirements for sources that they choose not to include in the federally enforceable SIP. Certainly, our position would not force Montana to abandon the MAAQS.

(i) *Comment:* One commenter (MSCC letter, document # IV.A–20, comment # 1.D) believed that EPA's objections regarding the use of the MAAQS in the fluid modeling demonstration and with respect to other aspects of the State's GEP stack height determination are too late.

Response: We have both the legal authority and obligation to determine whether the SIP meets the requirements of the Act and our regulations. At the time we propose action on a SIP submission, it is clearly not ''too late'' to raise objections regarding the SIP, even if we did not raise these objections at an earlier date. We are not ''estopped'' from taking action consistent with the Act and regulations.

4. Issues Related to the Support Structure

We received many comments, primarily from MSCC and its consultants, related to MSCC's stack support structure. There are two fundamental issues related to the support structure—first, whether we must approve GEP stack height credit for MSCC's SRU 100-meter stack based on the application of the formula to the stack support structure, either by accepting the formula calculation outright or by accepting a within-formula fluid modeling demonstration to verify formula height based on the support structure, and second, whether we are justified in disapproving MSCC's SRU 100-meter stack emission limits because MSCC modeled downwash from the stack support structure in conducting its wind tunnel study.

We think the first issue is irrelevant to our action. This is because the State rejected the application of the formula to the stack support structure. Thus, the State did not submit a SIP limit for MSCC based on a formula height determination, or a within-formula fluid modeling demonstration. Our obligation under the Act is to evaluate the SIP the State has submitted to us, not GEP theories an individual source has proposed but the State has rejected. Nonetheless, we respond to the comments on the first issue and explain why we believe the stack support structure may not be used to calculate formula height.

The second issue is relevant to our action because the fluid modeling demonstration that the State ultimately approved modeled downwash from the stack support structure. We respond to comments on this issue and explain why we think it was inappropriate to model such downwash under section 123 of the Act and our regulations. This error forms one basis for our disapproval of MSCC's limits.

(a) *Comment:* Several commenters (MSCC letter, document # IV.A–19, comment #'s 27, 30, 38; MSCC letter, document # IV.A–20, comment #'s 1.D, 1.E, 2.B, 2.C, and 2.U; Goetz letter, document # IV.A–18, exhibit D, pp. 33—34; CPP letter, document # IV.A–18, exhibit A, p. 5 and Attachment I) stated that EPA has wrongly concluded that the MSCC stack support structure should not be treated as a nearby structure for purposes of determining formula height. The commenters claimed that nothing in the stack height regulations supports the State's and EPA's argument that the support structure is not within the definition of ''nearby,'' and that in reaching such conclusion, EPA ignored the plain language of the regulations. The commenters also asserted that the stack height regulations do not exclude any types of structures for determining formula height. One of the commenters (MSCC) noted that EPA eliminated nearby terrain from consideration and could have done the same for specific structures if it had wanted to. The commenter contended that even if the support structure were a stack, it would still be a structure, and should still be considered in formula determinations and fluid modeling demonstrations. The commenter claimed that the rule does not draw a distinction between structures that are stacks and other structures, and that if it had drawn such a distinction, it would reasonably have been challenged as contrary to the explicit language in section 123, which requires that nearby structures, terrain and the source itself be considered in determining GEP. The commenter claimed that EPA cannot now put forward an interpretation that is not embodied in the rule. One of the commenters (MSCC) argued that section 123 contemplates consideration of downwash caused by the source itself. The commenter claimed it would be absurd to conclude that this would exclude the stack at a source but no other structures.

Response: We do not dispute that the support structure is within the distance that 40 CFR 51.100(jj) defines as ''nearby'' with respect to separate structures. However, we cannot allow the support structure to be used to calculate formula height because it is not separate from the stack; it is part of the stack. Sources are not free under section 123 to justify greater stack height credit by relying on the height of an existing stack or building a taller stack. Congress recognized the distinction between a source and its stack when it provided in section 123 of the Act that formula height could not exceed two and a half times the height of the source. It is self-evident that Congress did not mean to include the stack as part of the source for applying the ''2.5H'' formula. The D.C. Circuit acknowledged this in *Sierra Club* v. *EPA*:

> While the statute generally left the determination of GEP stack height to regulations to be promulgated by the EPA Administrator, it set an upper limit of two-and-one-half times the height of the stack's source.''

719 F.2d 436, 442 (D.C. Cir. 1983).

If the commenters' logic were applied, a source could continually justify a higher and higher stack height credit, up to the moon if it wished, by simply building a taller stack. This result would completely undercut section 123 of the Act, which uses the formula to establish a presumptive limit on stack height credit.

In addition, the very use of the term ''nearby'' in the regulations indicates a structure separate from the stack. Furthermore, the stack height regulations do not define the term ''structure'' and there is no statement in the regulations that says any and every manmade feature must be considered in calculating formula height. For example, we believe it would be inappropriate to calculate formula height based on a flagpole, even though it might be separate from the stack and some would argue it is a structure. As we discuss more fully below, we specifically indicated in the Technical Support Document for the stack height

regulations that stacks and radio or TV transmission towers should not be considered in GEP stack height determinations. (*See* ''Guideline for Determination of Good Engineering Practice Stack Height (Technical Support Document For the Stack Height Regulations)'' (document # II.A–12) at p. 7). Absent a specific regulatory definition of the term ''structure,'' we believe we have the discretion and the obligation to interpret our regulations so as to effectuate the language of the statute and the intent of Congress. We believe our interpretation is entitled to deference, and believe the commenters' interpretation would do severe damage to the statutory framework.

(b) *Comment:* One commenter (CPP letter, document # IV.A–18, exhibit A, Attachment I) asserted that the State and EPA incorrectly concluded that the stack support structure could not be used to calculate GEP formula height. The commenter stated that mathematically, there is no reason the stack support structure cannot be used for calculating GEP formula height, since it has both height and width, and a formula can be calculated for any structure with height and width.

Response: We are well aware that structures, like the MSCC stack, have height and width dimensions and that the variables in the GEP formula are height and width. We understand that it is possible to plug the height and width of the stack support structure into the GEP formula to reach a mathematical result. But, based on our *legal* interpretation of section 123 of the Act and our regulations, we do not believe this mathematical result is supportable; as explained in response to the previous comment, stack dimensions may not be used to calculate GEP formula height. The support structure is merely part of the MSCC stack.

(c) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment #'s 29, 30; MSCC letter, document # IV.A–20, comment # 2.E) stated that the stack support structure is part of the source, not the stack. The commenter asserted that EPA's suggestion that the structure is a stack or part of a stack is both incorrect and spurious. The commenter also asserted that by definition under 40 CFR 51.100, the support structure is not a stack, ''which is a vent or conduit for emissions.'' The commenter claimed that the support structure simply supports several items of equipment that are themselves, like the structure, part of the source. Another commenter (Goetz letter, document # IV.A–18, exhibit D, p. 35) also claimed that the definition of stack does not support the argument of EPA and the State that the cylindrical support structure is a stack itself.

Response: We disagree with the commenter's characterization of the support structure; we believe it must be considered part of the stack. As one commenter notes, the State and EPA are in agreement on this point. We believe that the agencies' view that the support structure is part of the stack is well-supported by evidence in the record, in particular, MSCC's own photographs of the stack (document # IV.A–17, MSCC Exhibit 119). These photographs show that the support structure and flue are nearly the same diameter and rise together for most of the height of the stack. In fact, they rise together for some 310 feet—more than a football field—before the flue emerges for a final 18 feet. *See* June 27, 1994 EPA letter, document # II.F–15; Goetz letter, document # IV.A–18, exhibit D, pp. 33–34. Therefore, the support structure cannot be considered a nearby structure for formula purposes or fluid modeling purposes. By analogy, a power plant with a stack consisting of an inner stack lining constructed of brick and an outer stack chimney constructed of concrete would not be allowed to calculate formula stack height based on the outer chimney, nor would the power plant be allowed to model downwash from the outer chimney in a fluid modeling demonstration. There is no reason MSCC's outer metal support structure should be treated any differently than the outer concrete chimney at a power plant. Both structures are part of the stack, even though both may support other equipment.

For the purposes of accuracy, we'd like to point out that 40 CFR 51.100 does not define stack as ''a vent or conduit for emissions.'' Instead 40 CFR 51.100(ff) defines stack as ''any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.'' We believe this definition encompasses the entire MSCC stack structure, which includes the support structure.

The commenter's assertion that ''the structure simply supports several items of equipment that are themselves, like the structure, part of the source,'' seems a bit misleading. The commenter fails to mention that MSCC itself calls the structure the ''support structure'' or the ''stack support'', and that the main structure the support structure supports is the flue. *See, e.g.,* ''Rebuttal Testimony of Larry Zink, Vice President of Montana Sulphur & Chemical Company,'' document # IV.A–17, MSCC Exhibit 127, at p. 24.

(d) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment # 38; MSCC letter, document # IV.A–20, p. 5, footnote 6) objected to the fact that EPA rejects the use of the support structure as a basis for calculating formula height on the basis that this would allow the stack to justify itself. The commenter stated that this concept or phrase is not found in the rules, statute, or legislative history. The commenter suggested that EPA's ''speculations'' regarding a stack justifying itself appear irrelevant to the concept of GEP and the goals of the CAA as a whole and section 123 in particular. According to the commenter, the use in the preamble of the phrase ''stack justifying itself'' only relates to the emission rate to be used in fluid modeling demonstrations, and even there, EPA's arguments are specious. The commenter also suggested that EPA's response to its concern about circularity in the stack height regulations was an improper adoption at the last minute of the NSPS emission rate, and that EPA could have avoided the possibility of a new stack justifying itself by adopting an emission rate based on existing stack height or the de minimis stack height.

In asserting that the stack is part of the source, not separate from the source, the commenter included various statements regarding Congress' intent and suggested that EPA included many terms and requirements in its stack height regulation that are not included in the statute.

Response: Much of this comment appears to be saying that EPA went beyond the statute when it promulgated the 1985 stack height regulations and made questionable decisions. We believe such comments are not timely and are not directly relevant to this action. As we have explained elsewhere, the validity of the stack height regulations may not be challenged in this action.

As to the remainder of the comment, we agree that neither section 123 of the Act nor the stack height regulations state, ''a stack may not be used to justify itself in formula calculations,'' but the validity of our position on this matter is evident from the language of section 123 itself and the language and structure of our regulations. As we have explained in response to a prior comment, section 123 treats the stack as distinct from the source for purposes of calculating GEP height. Under section 123, GEP height may not exceed two and a half times the height of the source. For obvious reasons, Congress did not say GEP stack height may not exceed two and half times the height of the stack, because this would render the formula meaningless. Yet, this is essentially

what the commenter is advocating. Also, the very use of the term ''nearby'' in the regulations indicates a structure separate from the stack. In this instance, we believe the regulations must be interpreted in a way to effectuate the overarching purpose of section 123, which is to restrict the unnecessary use of dispersion through tall stacks in lieu of emission controls; we believe our interpretation is reasonable and entitled to deference.

Contrary to the commenter's assertion, we are not ''speculating'' about a stack justifying itself. MSCC is asserting in this action that part of the stack should be plugged into the formula or should be modeled in the fluid modeling demonstration.

Also, we are not relying on preamble language related to a stack justifying itself or circularity to reach our conclusion; we are relying on section 123 itself and the language and structure of the regulations. The circularity we are concerned about here is not related to emission rates used in a fluid modeling demonstration; we are concerned with the circularity that arises from MSCC's attempt to justify GEP stack height credit for a new 100-meter stack based on a component of that very stack.

(e) *Comment:* One commenter (Goetz letter, document # IV.A–18, exhibit D, pp. 36–37) stated that it is disingenuous for EPA to argue that MSCC's logic is circular since the CAA and its implementing regulations are circular and the *NRDC* v. *Thomas* court approved of some circularity in the stack height regulations.

Response: We do not believe the court's holding on the differing requirements for within-formula and above-formula stack height demonstrations is particularly relevant to this issue. If it is relevant, then, for the reasons we have already given, using the support structure to calculate formula height is most certainly an impermissible form of circularity.

(f) *Comment:* One commenter (Goetz letter, document # IV.A–18, exhibit D, pp. 36–40) stated that the preamble to the 1981 stack height regulations dispels EPA's ''intent'' argument (that MSCC's use of the stack support structure to calculate formula height would violate Congress' intent in passing section 123 of the Act), because it indicated a lack of concern about sources manipulating structure size or placement solely for the purpose of increasing their stack height credits, and retained the definition of ''nearby.'' In addition, the commenter claimed that in indicating Congress intended to favor emission reductions over tall stacks, EPA mischaracterizes Congress' intent; Congress endorsed the historic practice of using stacks to protect health from downwash-induced pollution. Another commenter (MSCC letter, document # IV.A–20, comment # 2.U; MSCC letter, document # IV.A–19, comment # 92) stated that EPA's position regarding the support structure is illogical because of the numerous other scenarios that could occur whereby a source could increase formula height through its own construction or have it increased through others' construction of nearby sources. The commenter pointed out that construction of a new source and its stack could occur simultaneously and that this would not disqualify the source from being used to determine formula height. Thus, in the commenter's view, EPA's complaint that MSCC's new stack was not necessary as a result of some preexisting structure has no merit.

Response: We agree that in the 1981 preamble and relevant EPA guidance we have taken the position that formula height may be recalculated based on the siting of new nearby structures. We do not believe the preamble or guidance language addresses or contemplates the situation involved here. This situation is distinct because the support structure is merely a component of the stack structure.

We agree that some types of manipulation could occur, involving location of structures that could impact formula calculations. Normally we would not look behind the motivation for locating structures. As we explained in the 1981 preamble language cited by one of the commenters (Goetz at pp. 37–38; 46 FR 49819, October 7, 1981), we believed at that time that sources would not normally manipulate source construction parameters because it would be prohibitively costly to do so. We also agree that the simultaneous construction of a source and its stack would not invalidate a formula height calculation for the stack based on the source dimensions. However, as we noted in the same 1981 preamble language cited by the commenter, new source construction would normally be subject to stringent technology-based limits under NSPS or new source review permitting, and thus, a source owner would have little motivation to manipulate structure sizes and locations. The same logic does not apply to MSCC's stack; MSCC was not building a new source with its stack, MSCC was merely building a new stack.

We are not saying that MSCC manipulated the design of the stack with the goal of increasing stack height credit; we are not familiar with the specific design considerations that went into designing and building the stack. However, because of the circumstances, this really is not relevant. What is relevant is that there was no existing or new nearby structure *distinct* from the stack at the time MSCC constructed the stack that justified increasing the formula height of MSCC's stack. We believe we have a valid statutory and regulatory basis to distinguish between structures that are distinct from a stack and those that are part of the stack; otherwise, section 123 of the Act and our regulations would be rendered meaningless. As we have described in response to other comments, our position is not just based on our interpretation of Congress' intent, but on the language and structure of section 123 and our regulations.

In any event, we do not believe we have mischaracterized Congress' intent. Congress intended to strike a balance between the use of stacks to disperse emissions and the use of control technology to limit emissions. The use of the support structure to calculate formula height would clearly disrupt the balance Congress was trying to achieve because any source could justify greater stack height credit by merely building a new stack.

(g) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment # 37) stated that EPA's arguments regarding MSCC's stack appear to suggest that MSCC built or designed the structure to create downwash. The commenter asserted that MSCC did not build or design the structure to create downwash or circumvent the stack height regulations and described many reasons why MSCC built the stack in the manner and at the time it did.

Response: As a preliminary matter, we do not believe this comment goes to the validity of our action. However, we offer the following response. In our proposal, we did not intend to suggest that MSCC built or designed the stack to create downwash. As noted above, we are not familiar with the specific design considerations that went into designing and building the stack. However, we are concerned that allowing one source to model downwash from a stack support structure might encourage other sources to design support structures that increase downwash. Most importantly, we do not accept the proposition that the stack support structure is a nearby structure under the Act and our regulations.

(h) *Comment:* One commenter (MSCC letter, document # IV.A–20, comment # 2.V) stated that the notion that the support structure is part of the stack itself is not a meaningful distinction. According to the commenter, there is nothing in the rule that would allow a

reader to determine at what point structures become part of the stack itself as opposed to not part of the stack. The commenter claimed that if this position were valid, the rule would be void for lack of clarity as well as for lack of notice. The commenter asserted that these merely functional issues are not relevant to determining downwash or excessive concentrations; if a structure exists and it is nearby its contribution to downwash is as real as any other structure regardless of function. The commenter argued that the only purpose of this interpretation is to deny MSCC credit above 65 meters, not serve the Act.

Response: As we explain in response to prior comments, we believe it is necessary to distinguish between the stack and the source in order to effectuate section 123 of the Act and our stack height regulations. Otherwise, there is no meaningful limit on GEP stack height credit. We do not believe it is particularly difficult in most cases to distinguish the stack from the source. In MSCC's case, we have already indicated why we believe it is evident that the support structure and the flue form an integrated stack structure. We note that it is necessary to determine the location and extent of the stack for purposes of determining whether a structure is nearby under 40 CFR 51.100(jj), and under that section we would be unwilling to accept the proposition that there is no distinction between the source and the stack.

We do not believe the stack height regulations are void for lack of clarity or notice. We do not believe any reasonable person reading the stack height regulations would have understood them to allow a source to increase formula height merely by building a new stack. In any event, we do not believe the clarity of the stack height regulations or validity of the notice for those regulations may be challenged in this action.

The fact that the stack may create downwash is not a reason to conclude that the stack dimensions should be used to calculate formula height. We believe it is reasonably clear from the regulations that nearby structures means structures other than the stack.

We believe very strongly that our interpretations serve the purposes of the Act. We are not going to this effort merely to deny MSCC stack height credit greater than 65 meters.

(i) *Comment:* Several commenters (MSCC letter, document # IV.A–19, comment #'s 27, 38; MSCC letter, document # IV.A–20, comment # 2.I; Goetz letter, document # IV.A–18, exhibit D, p. 34–35; CPP letter, document # IV.A–18, exhibit A, p. 5 and Attachment I) contended their arguments, that the support structure may be used to justify GEP stack height credit through application of the formula or fluid modeling, are supported by EPA's Guideline for Determination of Good Engineering Practice Stack Height (Technical Support Document for the Stack Height Regulations). The commenters claimed that EPA's guidance indicates that tall thin structures may be used to calculate formula height and EPA's approvals here and elsewhere have involved calculating formula height from structures that are taller than they are wide.

Response: Contrary to the commenters' assertion, our ''Guideline for Determination of Good Engineering Practice Stack Height (Technical Support Document For the Stack Height Regulations)'' (document # II.A–12) does not support the commenters' position. The Guideline specifically states that ''structures such as stacks and radio or TV transmission towers should not be considered in GEP stack height determinations.'' (*See* Guideline at p. 7.) Later references to oddly shaped structures and the need to use fluid modeling demonstrations do not include stacks or radio and transmission towers. Thus, it is not just that the support structure is part of the stack; it is also the fact that it is very tall and thin that precludes its use in determining formula height. Although commenters claim that the rule does not exclude any nearby structures from consideration in determining formula height, it is clear from the technical support document for the stack height regulations that we intended to exclude some structures.

We agree that, as a rule, formula height may be calculated based on structures that are taller than they are wide. (However, as already indicated, our interpretation is that this does not extend to structures like stacks and radio or TV transmission towers.) We also agree that formula height may be calculated based on enclosed structures within a lattice. This does not change our opinion that the formula may not be applied to the MSCC stack support structure.

(j) *Comment:* One commenter (Goetz letter, document # IV.A–18, exhibit D, p. 35) stated that *NRDC* v. *Thomas,* 838 F.2d 1224, 1239 (D.C. Cir. 1988), supported his contention that the support structure is a nearby structure and is subject to modeling under EPA's stack height regulations.

Response: The commenter cites language from the opinion that merely notes that the stack height regulations provide for fluid modeling demonstrations for sources with porous structures or buildings whose shapes are aerodynamically smoother than the simple structures on which the formulae were based. The language cited, and the provisions of 40 CFR 51.100(kk)(3), are not relevant to this issue. As we have already discussed, the support structure may not be used to calculate formula height for two reasons—the support structure is part of the stack to which the formula may not be applied, and the support structure is a very tall thin structure to which the formula may not be applied. Thus, it does not matter that the support structure is a cylinder; the support structure does not fit within the umbrella of 40 CFR 51.100(kk)(3).

(k) *Comment:* Several commenters (MSCC letter, document # IV.A–19, comment # 38; MSCC letter, document # IV.A–20, comment #'s 2.B, 2.C, 2.R, 2.U; Goetz letter, document # IV.A–18, exhibit D, p. 36; CPP letter, document # IV.A–18, exhibit A, p. 5 and Attachment I) stated that EPA's remedy to address structures that might not lead to accurate formula height determinations, was to allow for or require fluid modeling demonstrations. One commenter (MSCC) stated that even if a source built a stack with the intent of creating excessive formula height, the source would have no assurance that a fluid modeling demonstration would justify the height as GEP. The same commenter stated that, having established fluid modeling as the test where the formula is questioned, EPA cannot argue that the rules or the Act require it to disapprove formula height actually demonstrated by fluid modeling.

Response: We have already explained why the stack support structure may not be used to calculate the formula. The potential safeguard that an agency might insist on fluid modeling to challenge the formula height credit does not render the initial proposition acceptable. Neither Congress nor EPA intended a stack or part of the stack to be eligible for consideration in determining formula height. In addition, we note that a fluid modeling demonstration to justify formula height is not a cure for applying the formula to a stack or a structure that is not nearby. This is because the criteria for fluid modeling for within-formula stack height credit are not as stringent as the criteria for above-formula stacks. *See* 40 CFR 51.100(kk)(2) and (kk)(3) versus subsection (kk)(1). Put another way, the commenters' approach would turn every fluid modeling demonstration into a within-formula demonstration, which is

clearly not what we intended. We also note that these comments ignore the statement in the Technical Support Document for our stack height regulations that structures like stacks and radio or TV transmission towers should not be considered in GEP stack height determinations.

(l) *Comment:* One commenter (MSCC letter, document # IV.A–20, comment # 2.R) stated that because EPA has argued the Act does not require it to impose control-first, EPA should conclude that it need not disapprove the use of tall thin structures or even stacks in calculating formula heights because the rules and the Act do not require it do so.

Response: We do not understand the logic of this comment. We believe our interpretation of the Act and the regulations is reasonable and best effectuates the purpose behind section 123. Among other things, we do not believe section 123 allows formula calculations to be based on the stack; as explained above, section 123 clearly differentiates between the source and the source's stack. We believe the commenter's interpretation is unreasonable and would undermine section 123 and our regulations. We do not believe we have the discretion to interpret the Act and our regulations in the manner that the commenter suggests; to the extent we have the discretion to interpret the Act differently—and to revise our stack heights regulations accordingly—we have not done so to date.

(m) *Comment:* Several commenters (MSCC letter, document # IV.A–19, comment #'s 27, 29, and 90; MSCC letter, document # IV.A–20, comment #'s 1.E, 2.H; Goetz letter, document # IV.A–18, exhibit D, pp. 12, 33–34, 36; CPP letter, document # IV.A–18, exhibit A, p. 5) stated that EPA changed its position on the validity of considering the support structure in determining formula height and the need to evaluate the effect of the support structure for purposes of fluid modeling. One commenter (MSCC) claims that EPA misguided the State and MSCC in the design of the protocol for the modeling and that the State and MSCC should not suffer for EPA's change of heart which has no technically sound basis. This commenter stated that EPA admits that it did not inform DEQ that the support structure should not be removed in model runs measuring downwash before the modeling was conducted. The commenter claimed EPA said it was acceptable to remove the support structure while the protocol was being written in the fall of 1995. One commenter (Goetz) stated that EPA's initial response to MSCC's formula height calculation was reasonable. According to the commenter, EPA called for verification of the formula height calculation based on the stack support structure, and EPA has discretion to require such a verification. This commenter also claimed that, in a letter to the State, EPA indicated that the support structure could be considered a nearby structure.

Response: The commenters mis-represent EPA's position regarding the stack support structure. In our June 27, 1994 letter from Marshall Payne and Douglas Skie to Jeffrey Chaffee (document # II.F–15), we unequivocally stated that the formula could not be applied to the MSCC stack. Although this letter appeared to indicate that fluid modeling of the support structure could be used to determine GEP credit, at least three later letters to the State superseded the June 27, 1994 letter on this point. *See* our TSD at p. 56; letters dated January 31, 1996, March 15, 1996, and July 18, 1996, document #'s II.F–19, II.F–20, and II.C–5.)

We agree that we did not inform the State in the fall of 1995 that the support structure could not be modeled. However, MSCC and DEQ had ample time to re-run the modeling based on our position and chose not to do so.

We do not agree that our initial response to MSCC's formula height calculation (contained in our June 27, 1994 letter, document # II.F–15) was reasonable. It is contrary to section 123 of the Act and our stack height regulations to consider part of the stack in calculating formula height and in performing a wind tunnel study.

(n) *Comment:* One commenter (CPP letter, document # IV.A–18, exhibit A, p. 5) asserted that EPA has questioned the use of the formula for the support structure and required that wind tunnel modeling be conducted to validate the use of the formula above 65 meters in this case. Therefore, according to the commenter, wind tunnel tests must be conducted with and without the support structure present. The commenter refered to his chronology of events to support his assertion that EPA required wind tunnel modeling to validate formula height. The commenter cited EPA guidance and regulations as support for his assertion.

Response: The commenter references a July 27, 1994 letter from Douglas Skie to Jeffrey Chaffee, but we believe the commenter meant the June 27, 1994 letter from Marshall Payne and Douglas Skie to Jeffrey Chaffee (document # II.F–15). The commenter indicates that this letter said it was acceptable to calculate GEP formula stack height based on application of the formula to the stack support structure. This is inaccurate; *see* our response to the previous comment. Also, as noted in response to the previous comment, although the June 27, 1994 letter appeared to indicate that fluid modeling of the support structure could be used to determine GEP credit, later letters to the State said otherwise. Despite our admonitions on this matter, the commenter and MSCC have continued to assert that their within-formula wind tunnel demonstrations are valid. The commenter also does not mention the fact that the State did not approve these within-formula stack height demonstrations. As we have indicated, we believe this fact renders these demonstrations irrelevant.

The EPA document references cited by the commenter do not support CPP's approach. The commenter's entire argument rests on the premise that formula height may be calculated based on the stack support structure, and that the commenter merely performed wind tunnel tests to validate formula height. Elsewhere in this document we have described in detail why the stack support structure may not be used to calculate formula height. If, as we interpret section 123 of the Act and our stack height regulations, the stack support structure may not be relied on to calculate formula height of 98.15 meters, then the commenter has no valid basis to ''verify'' a formula height of 98.15 meters. As we have stated, 40 CFR 51.100(kk)(3) is not applicable to MSCC's stack height determination.

(o) *Comment:* One commenter (CPP letter, document # IV.A–18, exhibit A, Attachment I) stated that EPA's objection to the modeling of the effect of the stack support structure is contrary to all prior practice. The commenter indicated that CPP has conducted well over 20 GEP stack height evaluations using fluid modeling, most of which have been approved by EPA, and in every case, CPP has considered the effect of all nearby structures on downwash. According to the commenter, ''requiring the exclusion of any particular real structure that the source believes may be contributing to downwash is improper since it may affect the final result and lead to an improperly low GEP credit.'' The commenter suggested that it is particularly improper when guidance and the agency indicated downwash from the support structure should be modeled. The commenter also stated that no purpose would be served by re-running the test with the structure ''in'' in both cases because agency guidance indicates the effects of such a tall thin structure are very small.

Response: We agree with the commenter that downwash from all nearby structures should be modeled in a fluid modeling demonstration. However, as discussed elsewhere, we do not think a component of the stack—in this case, the stack support structure—may be considered a nearby structure under the Act or our regulations. The commenter has not suggested that his past practice has included conducting fluid model runs with the stack ''in'' and ''out''—*i.e.,* that he has modeled downwash created by the stack itself. Nor has he cited to any particular experience that involved modeling a stack support structure. We disagree with the commenter that the criterion for determining whether a particular structure should be excluded from fluid modeling is whether the source believes the structure may be contributing to downwash. *For example,* it would be inappropriate to model downwash from a structure that is more than half a mile from the stack. *See* 40 CFR 51.100(jj)(2). As we have noted with respect to other comments, this commenter on the one hand seems to be suggesting that not considering downwash from the support structure might lead to improperly low GEP credit, but on the other hand that any downwash from the support structure is very, very small and that EPA is being unreasonable in saying the wind tunnel tests should have been re-run. Any other issues raised in this comment are addressed in our responses to other comments.

(p) *Comment:* One commenter (Goetz letter, document # IV.A–18, exhibit D, p. 12) stated that MSCC's contractor properly ran EPA's own Building Profile Input Program, and carefully followed the statute's and rule's stack height formula, to determine a formula height of 98.15 meters for MSCC's stack. According to the commenter, this formula height was based on the dimensions of the stack support structure.

Response: A computer program is merely a computer program; someone using it could input any structure dimensions they want and the program would spit out a result. *For example,* one could input the dimensions of a structure more than 5L from the stack, which is not permitted by our regulations. Use of a computer program does not guarantee a valid formula height calculation or compliance with the statute and the regulations.

(q) *Comment:* One commenter (MSCC letter, document # IV.A–20, comment # 2.J) stated that EPA's own computer program used for estimating downwash parameters for inclusion in dispersion models excludes no large structure based on its height to width ratio or shape. The commenter asserted that two stacks adjacent to each other may be used as downwash influences on each other.

Response: We have interpreted the statute and regulations that apply to GEP stack height determinations, and believe they prohibit the use of the stack or part of the stack to calculate GEP stack height credit, either through application of the formula or through fluid modeling. Our rules and guidance for dispersion modeling may be different, but we do not think this has relevance to our interpretation of section 123 of the Act and the stack height regulations. Presumably, dispersion modeling would not exclude a structure more distant than a half mile either, as long as the structure is within the modeling domain, but this does not mean that such structure should be considered nearby for purposes of determining GEP stack height credit.

(r) *Comment:* One commenter (Goetz letter, document # IV.A–18, exhibit D, pp. 20—21, 28) quoted from a phone summary prepared by Dr. Petersen, MSCC's consultant for the fluid modeling study, in which Dr. Petersen reported on a conversation he had with John Coefield, the State's modeler, on March 28, 1996. According to Dr. Petersen, Mr. Coefield indicated that although EPA had raised concerns regarding the treatment of the stack support structure in the fluid modeling, EPA did not feel this was a major concern because they felt the structure has a minor effect anyhow. In addition, the commenter asserted that EPA's objection to use of the support structure is trivial, and that not one expert, including EPA's meteorologist, believed that the support structure in or out will make any difference. Therefore, the commenter argued that EPA should not use this as a justification to disapprove the SIP. The commenter quoted from another phone summary prepared by MSCC's consultant as support for this notion. Another commenter (MSCC letter, document # IV.A–19, comment # 90) characterized our concern as a minor technical objection.

Response: Our official communications with the State on this subject make clear that the treatment of the stack support structure was not a minor concern. We took the trouble to mention our concern in three different letters, something we would not have done if this was merely a minor concern. (*See* letters dated January 31, 1996, March 15, 1996, and July 18, 1996, document #'s II.F–19, II.F–20, and II.C–5.) Even Dr. Petersen's notes reflect our meteorologist's belief that additional testing would be necessary. (*See* document # IV.A–18, MSCC Exhibit 144.)

Whether the effect of the support structure on downwash is trivial or not can be shown through a properly conducted fluid modeling demonstration. We believe it is reasonable to insist that the demonstration be properly performed, and this means not modeling downwash from the support structure that is part of the stack.

We note that one of the commenters (Goetz, document # IV.A–18, exhibit D, pp. 28, 34–35) argues that the effect of the support structure is trivial in the fluid model demonstration, but should be considered in calculating formula height. The commenter asserts that our Guideline recognizes that even a lattice structure may cause downwash and suggests that the support structure is more likely to be a source of downwash because it is an ''enclosed'' structure. It appears that the commenter's positions regarding potential downwash from the support structure are inconsistent—the commenter argues that the downwash impact of the support structure is trivial when commenting on our objection to the use of the support structure in the wind tunnel study, but then argues the same downwash impact is important when arguing that the support structure should be used to calculate formula height. We do not know the extent of the downwash impact of the support structure, but our position is consistent—the support structure should not be used to calculate formula height, and its downwash impacts should not be considered in a wind tunnel study. The basis for our position is the same in both cases—the stack cannot be used to justify itself.

We also note that MSCC has been insistent that it has a right to model downwash from the support structure, and Larry Zink of MSCC offered the following testimony in the State hearing:

> Yes, we did contract to have the structure built. It's there. It's real. It causes downwash.

and

> When the YELP buildings more fully line up with MSCC's stack and the wind, this effect becomes larger as it synergizes with the effects of the support structure, etc.

See ''Rebuttal Testimony of Larry Zink, Vice President of Montana Sulphur & Chemical Company,'' document # IV.A–17, MSCC Exhibit 127, at pp. 16, 24. In addition, Larry Zink of MSCC wrote the following in an August 10, 1994 letter to Jeffrey Chaffee of the State:

''Common sense'' also certainly does not support the idea that a thin structure, even an ''aerodynamic'' one, does not generate substantial and lasting ''downwash,'' ''eddies'' or ''wakes.'' To the contrary, we know that long and ''thin'' structures, such as slow-moving aircraft wings, can generate sufficient downwash turbulence and vortices to slam a distant * * *, following, powered aircraft to the ground from hundreds of meters in the air. ''Common sense'' tells us, therefore, that it is probable that a far larger, less aerodynamic, ground-mounted structure will also produce significant and lasting downwash, wakes, vortices, and eddies capable of entraining drifting gases and bringing them prematurely to ground.

See cited letter, at pp. 12, 13, part of document # II.B–10. It is difficult to understand how MSCC and its consultants can now characterize our concern that MSCC improperly modeled downwash from the support structure as a minor technical objection or trivial. The only way to properly resolve this issue is to re-do fluid modeling including the support structure in all model runs—that is, not model downwash created by the stack support structure. Again, this is because the stack support structure is part of the stack.

(s) *Comment:* One commenter (State letter, document # IV.A–23, p. 11, footnote 10, p. 15, footnote 15) agreed with EPA that the stack support structure should not be considered a ''nearby structure'' for purposes of the fluid modeling demonstration. However, the commenter asserted that the impact of evaluating the support structure as a nearby structure is small. Specifically, the commenter stated, ''the State's analysis indicated that the FMD (fluid modeling demonstration) results would not be significantly affected by MSCC's approach, and the State concluded that requiring MSCC to conduct another demonstration was not justified.''

Response: It is significant that the commenter is the State, which is admitting that the fluid modeling demonstration was not conducted entirely properly. It appears that the State is advancing a de minimis theory of error, but despite its claims that the impact of the error is insignificant, the State provides no support for its assertion that the fluid modeling demonstration would not have changed if MSCC had properly treated the support structure in the fluid modeling demonstration.

(t) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment # 29) stated that either the support structure is a nearby structure, in which case it should be used to calculate formula height, or it is not, in which case its inclusion or removal from the fluid model is obviously irrelevant.

Response: We have already explained our position that the support structure is not a nearby structure. The commenter's suggestion that if the support structure is not a nearby structure, it is irrelevant whether it is included or removed from the fluid model, defies logic. MSCC has attempted to use the support structure to justify greater GEP stack height credit, despite the fact that it is not a structure that may be used for this purpose.

(u) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment # 31) stated that EPA's treatment of the support structure as part of the stack somehow violates the provision that the Administrator cannot prohibit the construction or operation of a stack of any height by a source.

Response: MSCC remains free to keep its 100-meter stack or build a taller stack if it wishes. Nothing we are doing in this rulemaking restricts the actual stack height at MSCC.

5. Issues Related to Other Demonstrations

MSCC and its consultants performed various analyses and asserted various theories in an attempt to justify 100 meter, or near-100 meter, stack height credit for MSCC's SRU 100-meter stack. The State only approved one of MSCC's stack height demonstrations, for 97.5 meters of credit based on above-formula fluid modeling. We have already described our basis for concluding that the State-approved stack height credit of 97.5 meters is not valid under the Act and our regulations. Regarding MSCC's other bases for claiming 100 meter or near-100 meter stack height credit, we took the position that because the State had not adopted any of these other bases in determining stack height credit for the SRU 100-meter stack, these other bases were not before us as part of this SIP action, and were not relevant to our proposal. Some of these other bases rely on formula credit for the stack support structure, which we address in greater detail in the previous section.

We received numerous comments regarding our position regarding these other bases, mostly from MSCC and its consultants arguing that these other bases are valid and that we should consider them. Although we believe these comments are irrelevant to our action, we respond to them here. Nothing in the comments has caused us to change our position regarding our disapproval of MSCC's stack height credit.

(a) *Comment:* One commenter (MSCC letter, document # IV.A–19, #'s 17, 19, 38, 115; MSCC letter, document # IV.A–20, # 1.A) stated that EPA's proposed disapproval of stack height credit for MSCC violates the definition of GEP provided in EPA's own rules, which allegedly do not permit EPA to overrule a State's GEP determination unless the result would be a higher GEP height. The commenter asserted that EPA delegated to the states unilateral decisionmaking authority regarding GEP determinations, but also asserted that EPA may approve a fluid modeling based GEP determination if the state does not. In any event, in the commenter's view a state may not disapprove an EPA determination and EPA may not disapprove a state determination; the exception is in the event that one regulatory body approves a higher GEP stack height credit, in which case this higher credit would prevail. The commenter suggested that new formal federal rule making or new federal legislation would be needed to change this scheme.

Response: We do not read our regulations to provide carte blanche to states to make GEP determinations that are inconsistent with the requirements of Clean Air Act section 123 and our stack height regulations. We are not bound to accept the greatest of several GEP heights where that greatest value is not valid under our regulations. The commenter's position would lead to absurd results: a state could ignore our regulations in establishing stack height credit, and EPA and the public would have no recourse. We believe Congress empowered us to make sure SIP limits are set consistently with the Act's requirements. Section 110(k)(3) of the Act indicates we can approve the plan if it meets all of the applicable requirements of the Act and disapprove parts of the plan if it does not. Also, section 110(l) of the Act indicates we shall not approve a revision of a plan if the revision will interfere with any provisions of the Act. Also, there is nothing in the regulations that suggests our review is a one-way ratchet as the commenter suggests—that we may only disapprove a state's GEP stack height credit determination if doing so would result in a higher GEP stack height.

(b) *Comment:* One commenter (MSCC letter, document # IV.A–19, p. 2, and comment #s 28, 35, and 116; MSCC letter, document # IV.A–20, comment #s 1.F, 1.K, and 2) stated that, in addition to the fluid modeling approved by the State, MSCC also submitted fluid modeling demonstrations based on formula height and performed in accordance with our own rules and guidance. The commenter urged EPA to consider these demonstrations or

justifications that allegedly support GEP stack height above 65 meters for MSCC's main stack. The commenter said that these demonstrations confirm that GEP is greater than the height credited by the State. The commenter said that EPA's sole basis for ignoring these other demonstrations is that the State did not consider them. The commenter claimed that this is not true, that the State received these demonstrations and that they should be part of the record. The commenter seemed to acknowledge that the State did not base its SIP decisions on these alternative demonstrations, and claimed that the State misapplied the stack height rules in rejecting these alternative demonstrations. The commenter claimed that EPA is guilty of circumventing its own rules in not applying or accepting these alternative stack height demonstrations that the State rejected. The commenter asserted that EPA has the discretion to approve these alternative demonstrations. The commenter argued that if EPA does not have the authority to approve higher GEP based on alternative demonstrations, then EPA lacks the authority to overturn the State's approved determination. The commenter suggested that EPA is only interested in ''unreasonably preventing one small source in Montana from obtaining the GEP credit'' to which it is clearly entitled.

Response: We take the SIP as it is submitted to us. The State rejected MSCC's alternative demonstrations. *See* our TSD at p. 53. Therefore, we do not believe those alternative demonstrations are before us for consideration as part of the submitted SIP, and we do not believe the CAA requires us to consider alleged justifications for SIP limits that the State has not adopted or put forward. Also, we do not believe the presence or absence of authority to consider alternative demonstrations the State did not endorse has any bearing on our authority to disapprove emission limits for MSCC that rely on an improper GEP demonstration. We have clear authority to implement section 123 of the Act and our stack height regulations and to disapprove SIP submittals that do not meet the requirements of section 123 of the Act and our stack height regulations.

Even if it would be appropriate for us to substitute an alternative justification for one put forward by the State, we could not adopt the position taken by the commenter because that position is inconsistent with our regulations. We have no vendetta against MSCC as the commenter suggests. We would very much like to resolve this dispute regarding stack height credit, but are not willing to do so in a way that is inconsistent with section 123 of the Act and our stack height regulations. We have a responsibility to properly apply the stack height regulations. We believe that the State properly concluded that the buildings MSCC asserted were nearby for purposes of determining formula height were in fact not within the distance defined as nearby by our regulations. Because MSCC could not rely on these buildings or the stack support structure to determine formula height, MSCC's only way to justify stack height credit greater than 65 meters was to perform above-formula fluid modeling pursuant to 40 CFR 51.100(kk)(1).

(c) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment # 87) stated that the State did not reject other GEP stack height theories asserted by MSCC, but instead rendered them moot by entering into a settlement with MSCC over GEP stack height credit based on a fluid modeling demonstration. According to the commenter, MSCC reserved all arguments regarding its other demonstrations, as well as regarding the prior determination of GEP being 100 meters. The commenter asserted that EPA must consider these other arguments and the prior determination, and must substitute its judgment for the State's if EPA finds any of the alternative theories acceptable.

Response: State staff rejected other GEP stack height theories asserted by MSCC, and the MBER did not adopt any of MSCC's other theories. Thus, the State did not forward other stack height determinations to us for consideration, and, as discussed above, we do not believe it is necessary or appropriate for us to consider or adopt an interpretation that MSCC did not persuade the State to submit to EPA. States submit SIPs for EPA approval, not sources. Our duty under the CAA is to consider the SIP the State has submitted, not an alternative SIP that one company or individual proposes, but that has no legitimacy under State law.

Assuming for the moment we have some duty to evaluate alternative demonstrations that the State has not adopted, we find MSCC's alternative demonstrations unconvincing. The bases for our findings are described herein and in the letters cited in our TSD, at page 53. These letters are contained in the docket for this action.

(d) *Comment:* One commenter (MSCC letter, document # IV.A–20, comment # 2.T) stated that EPA has inadequately explained the legal and technical basis for its refusal to consider or approve the alternative demonstrations, when they clearly demonstrate that GEP is at least 97.5 meters.

Response: We believe our proposal and this notice adequately explain the basis for our refusal to consider or approve the alternative demonstrations. We note that the commenter and the attorney for MSCC make inconsistent arguments: on the one hand they argue that we may not interfere with the primacy of the State in establishing emission limits for the seven sources in the Billings/Laurel area and on the other hand argue that we should consider ''alternative demonstrations'' that the State did not approve or use to establish MSCC's emission limits. We are acting on the SIP the State submitted to us, since only the State has the authority to submit a SIP. In any event, we explain in detail why we would reject MSCC's alternative demonstrations if they were before us.

(e) *Comment:* Another commenter (CPP letter, document # IV.A–18, exhibit A, p. 7) asserted that EPA should approve at least one of the five demonstrations CPP performed on behalf of MSCC, and that a single demonstration is sufficient. This commenter appeared to believe it is important that all five methods showed similar results to the GEP stack height credit approved by the State.

Response: For the reasons already stated, we do not believe alternative demonstrations are before us for consideration. In any event, as explained in response to other comments, we do not believe the other demonstrations performed by CPP on MSCC's behalf are valid. We believe it is irrelevant that all five methods showed similar results to the GEP stack height credit approved by the State. CPP may have run the wind tunnel tests consistently; this does not mean the demonstrations are legally valid.

(f) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment # 40; MSCC letter, document # IV.A–20, comment # 2.K) stated that EPA should consider a fluid modeling demonstration to demonstrate the validity of formula height for MSCC. The commenter appeared to be arguing that EPA could either consider the BGI building and ExxonMobil tank farm to be nearby for purposes of calculating formula height, or could consider the support structure to be a nearby structure for purposes of calculating formula height. In either case, according to the commenter, MSCC has performed fluid modeling that has verified the validity of formula height. The commenter referred to EPA's definition of ''nearby'' for purposes of formula determinations as a ''rule of thumb.''

Similar comments are contained in CPP's comments (CPP letter, document # IV.A–18, exhibit A, Attachment I).

Response: MSCC believes it should be able to avail itself of the provisions of 40 CFR 51.100(kk)(2) for verifying formula stack height credit. Unlike 40 CFR 51.100(kk)(1), subsection (kk)(2) does not require that a source meet an NSPS or alternative limit, but instead allows the source to use the emission rate specified by the applicable SIP. In MSCC's case, the applicable SIP emission rate is higher and makes it easier to justify a higher stack height credit. In addition, MSCC would not be bound to meet an NSPS limit on an ongoing basis.

As a preliminary matter, we note that the State did not adopt this approach in determining GEP stack height for MSCC. Thus, as noted previously, we do not believe this basis is before us for consideration.

Furthermore, to qualify to use the provisions of subsection (kk)(2), MSCC must be seeking a within formula increase. It is not, and therefore, cannot avail itself of subsection (kk)(2). First, our definition of ''nearby'' is not a ''rule of thumb.'' We are not free to consider sources ''nearby'' that fall outside the 5L distance defined as nearby by the regulations. Therefore, the BGI building and ExxonMobil tank farm dimensions cannot be plugged into the formula to determine formula height. Second, as already discussed at length, we do not consider the stack support structure to be a nearby structure. Thus, it cannot be plugged into the formula to determine formula height.

The further suggestion by CPP that, ''by definition,'' the formula does not adequately represent the downwash created by the BGI structure, and therefore, it is appropriate to ''verify'' the formula with a wind tunnel test under subsection (kk)(3), represents a complete mis-reading of the stack height regulations. The stack height regulations make perfectly clear that formula height may only be calculated based on structures that are within a distance of 5L of the stack, where L is the lesser of the height or width of the structure. *See* 40 CFR 51.100(jj)(1). If a structure is not within 5L of the stack, it may not be used to calculate formula height of the stack, and there is no formula height derived from such structure that *can* be verified under subsection (kk)(3) or (kk)(2). It is irrelevant that a distance greater than 5L may be considered ''nearby'' for purposes of a fluid modeling demonstration under 40 CFR 51.100(jj)(2). This fact does not validate the use of a within-formula fluid modeling demonstration. Contrary to the commenter's assertion, we are not interpreting the subsection (jj)(1) definition of ''nearby'' (for determining formula height) so as to override the subsection (jj)(2) definition of nearby (for fluid modeling). We are giving each independent effect as they are written. It is the commenter who is interpreting subsection (jj)(2) as trumping subsection (jj)(1), and in so doing, is ignoring the fact that our regulations require a different type of fluid modeling study to justify above-formula stack height credit. Our ''simplistic interpretation,'' which the commenter derides, is the law on this point.

(g) *Comment:* One commenter (CPP letter, document # IV.A–18, exhibit A, Attachment I), relying on language from the preamble to the stack height regulations to the effect that the formula may not adequately represent all structures, argued that this necessarily means 40 CFR 51.100(kk)(3) should be used to define the parameters of a fluid modeling study whenever there may be a question about the application of the formula in a given situation. The commenter asserted that the stack height regulations must be interpreted consistent with their intent, and part of this intent is to ensure that a ''stack is built and credited tall enough to avoid this adverse downwash effect.''

Response: We disagree with the commenter. As we have stated elsewhere, subsections (kk)(2) and (kk)(3) of 40 CFR 51.100 only apply to within-formula fluid modeling demonstrations. They are used to determine whether a source should receive full credit for a formula height determination. As a starting point, a formula height must first be calculated in accordance with 40 CFR 51.100(ii)(2), and this formula height then becomes the upper bound for any fluid modeling demonstration under subsection (kk)(2) or (kk)(3). In our view, a formula height that is not calculated in accordance with 40 CFR 51.100(ii)(2) is not a formula height at all; in this situation, there is no formula height to be verified and one never reaches fluid modeling under subsection (kk)(2) or (kk)(3). As we describe in detail elsewhere, we do not believe formula height for MSCC's stack under 40 CFR 51.100(ii)(2) may be calculated based on the BGI structure or the stack support structure. Neither is a nearby structure under 40 CFR 51.100(jj)(1). It is only when the *accuracy* of the formula for a *nearby structure* is questioned that subsection (kk)(2) or (kk)(3) apply. We describe elsewhere when each applies.

The commenter mis-reads the intent of the stack height regulations. The stack height regulations are intended to ensure that inappropriate dispersion is not used in lieu of emissions controls. Generally speaking, the regulations restrict stack height credit to the minimum needed to avoid excessive concentrations. And, the regulations do not require or ensure that stacks of any particular height be built. After all, dispersion is only one means to address ground level concentrations of pollutants. Thus, we do not believe granting greater stack height credit is a goal of the regulations, and we do not believe the commenter's interpretation of our regulations is consistent with the intent of the regulations or the Act.

(h) *Comment:* One commenter (CPP letter, document # IV.A–18, exhibit A, Attachment I) stated his understanding that EPA waives the demonstration requirement under 40 CFR 51.100(kk)(2) for existing sources where new structures have been built after the original stack was designed (referring to the BGI structure, the stack support structure, tankage and buildings) that may reasonably be expected to produce additional downwash effects.

Response: Our policy provides that it will generally be reasonable for a source seeking credit for additional stack height to recalculate its good engineering practice formula height due to the siting of a new, nearby structure, without the need to justify the increase through fluid modeling under subsection (kk)(2). *See* June 29, 1992 memorandum for John Calcagni entitled ''Credit for Stack Height Increases Due to the Siting of New, Nearby Structures,'' document # IV.C–76. As we already indicated, we do not consider either the BGI structure or the stack support structure to be nearby structures as defined in our regulations. Thus, they may not be used to calculate formula height, and within formula fluid modeling demonstrations are not appropriate. We are not sure what tanks and buildings the commenter is referring to, but to our knowledge, neither MSCC nor the State have calculated a formula height for MSCC greater than 65 meters based on tanks or other buildings.

(i) *Comment:* One commenter (CPP letter, document # IV.A–18, exhibit A, Attachment I) stated that this is one of the most extensively evaluated GEP stack heights he is aware of in his professional career, which spans over 20 years.

Response: We do not doubt the amount of effort CPP put into their evaluation. However, we strongly disagree with the commenter's interpretation of the stack height regulations. Under current conditions, we cannot approve stack height credit

for MSCC greater than 65 meters. The commenter's hypothetical about one stack A outside 5L and another stack B within 5L receiving different stack height credit is not convincing. Again, this is a result of the way the stack height regulations are written. If stack A is only built to 65 meters, and is modeled at 65 meters in an attainment demonstration, the assertion that NAAQS exceedances are likely to occur due to downwash ''fictitiously ignored'' is inaccurate. The modeling for the attainment demonstration using the actual height of the stack should ensure that NAAQS exceedances due to downwash or any other condition do not occur. If Stack A is built to 100 meters but only receives credit for 65 meters, dispersion modeling of the 65 meter stack height credit will, in a sense, over-predict the impact of Stack A emissions, and Stack A will have to control emissions as if it were a 65 meter stack. However, this is exactly what the stack height regulations require if 65 meter credit is all that's warranted under the regulations.

(j) *Comment:* One commenter (MSCC letter, document # IV.A–20, comment # 2.D) stated that BGI should be considered a nearby structure for determining formula height for the MSCC stack. The commenter claimed that guidance assumptions artificially restrict the height calculations for the BGI structure; that the true height of the BGI structure is much taller than the artificially restricted height calculations. According to the commenter, using the true height of the BGI structure in the 5L formula specified in the regulations would make the BGI structure nearby for purposes of determining formula height.

Response: The State rejected MSCC's arguments that BGI is a nearby structure for purposes of determining formula height. Because the State did not adopt MSCC's position in calculating GEP stack height credit for MSCC, we do not believe this proposition is before us in this rulemaking. Assuming for the sake of argument that we need to consider this alternative theory, MSCC has not provided information to support its assertion that the BGI is within 5L of the MSCC stack. Our information indicates that BGI is not within 5L of the MSCC stack.

(k) *Comment:* One commenter (Goetz letter, document # IV.A–18, exhibit D, pp. 31, 32) stated that MSCC's nuisance studies support a formula stack of 98.15 meters.

Response: The State did not approve GEP stack height credit for MSCC based on MSCC's nuisance studies. Because the State did not adopt this position in calculating GEP stack height credit for MSCC, we do not believe this proposition is before us in this rulemaking. However, assuming for the sake of argument that we have an obligation to consider this potential justification, we disagree with the commenter. Section 51.100(kk)(2) only applies for sources raising stacks below formula height up to formula height. The commenter assumes formula height is 98.15 meters. However, this is based on the stack support structure. As explained in our proposal and elsewhere in this document, the stack support structure may not be used to calculate formula height because it is part of the stack itself. Furthermore, under section 51.100(kk)(2), MSCC could only increase its stack height credit to the formula height calculated based on nearby structures that existed as of the time the nuisance was present—in other words, before the stack was raised.[29] *See* 50 FR 27899, 27901. In MSCC's case, this was less than the de minimis height of 65 meters, so a nuisance showing would provide no benefit. We have previously indicated that MSCC may receive credit for stack height up to 65 meters without a demonstration.

(l) *Comment:* Two commenters (CPP letter, document # IV.A–18, exhibit A, p. 5 and Attachment I; Goetz letter, document # IV.A–18, exhibit D, pp. 13—15) stated that 40 CFR 51.100(kk)(3) is the most appropriate method for determining GEP stack height credit for MSCC's SRU 100-meter stack and it does not require any presumed rate of emissions. One of the commenters (Goetz) asserted that Dr. Petersen's (MSCC's consultant) wind tunnel study verified GEP stack height at 98.15 meters under subsection (kk)(3) and that neither EPA nor the State had conducted a wind tunnel study to refute Dr. Petersen's findings.

Response: As an initial matter, we do not believe this comment is relevant to our action because the State did not adopt or approve the within-formula approach. Nevertheless, we respond to the comment. Once again, the stack support structure may not be used to establish formula height, and thus, of necessity, for any heights above 65 meters, MSCC is seeking above-formula stack height credit. Because MSCC is seeking above-formula stack height credit, subsection kk(3) is not applicable. *See* 50 FR 27900—27901, July 8, 1985. Even if MSCC *were* seeking within-formula stack height credit, subsection (kk)(3) would not apply to MSCC's fluid modeling demonstration because subsection (kk)(2) applies when a source seeks credit after October 11, 1983 for increasing *existing* stack height. Id. at 27899—27901; *NRDC* v. *Thomas,* 838 F.2d 1224, 1239—1240. MSCC had an existing stack before October 11, 1983, and is seeking credit after October 11, 1983 for increasing the existing stack height. The provisions of 40 CFR 51.100(kk)(3) only apply to new construction. 50 FR 27900—27901; *NRDC* v. *Thomas,* 838 F.2d 1224, 1239—1240, 1247. Thus, the categories under subsection (kk) are mutually exclusive and hierarchical. It becomes progressively easier to justify stack height credit as one moves from subsection (kk)(1) to subsection (kk)(3). If subsection (kk)(1) applies, a source may not use subsection (kk)(2) or subsection (kk)(3). If subsection (kk)(2) applies, a source may not use subsection (kk)(3).

Therefore, Dr. Petersen's wind tunnel study did not properly verify GEP stack height at 98.15 meters based on subsection (kk)(3), and there was no need for EPA or the State to conduct a wind tunnel study to refute Dr. Petersen's findings. Legally, those findings are not supportable.

(m) *Comment:* One commenter (CPP letter, document # IV.A–18, exhibit A, Attachment I) stated that ''[i]t has been argued that any height can be justified as GEP based on the 40% test, but as those knowledgeable in the field know, this is not true.'' The commenter suggested that subsection (kk)(3)'s requirement for a showing of a 40% increase in downwash in the wind tunnel test will constrain the amount of stack height credit that will be granted to a rounded structure like a stack.

Response: We are not sure the commenter is suggesting this, but we want to clarify that we have not taken the position that any height can be justified in the wind tunnel based on the 40% test of excessive concentrations. We recognize that the 40% test will act as a constraint on GEP stack height credit in certain situations, depending on the dimensions of nearby structures and wind conditions. This should be distinguished from our position regarding the use of stack dimensions to calculate GEP formula height. Because formula height equals one times the height of the structure plus one and a half times the lesser of the height or width of the structure, application of the formula to stack dimensions will always result in

[29] MSSCC claimed that its pre-existing 30 meter stack resulted in a nuisance and asserted that the drastic reduction in citizen complaints after the erection of the 100-meter stack demonstrated the existence of a nuisance before the 100-meter stack was erected. *see* Goetz letter, document # IV.A–18, exhibit D, at p. 32.

formula height slightly higher than the stack. We reiterate that application of the formula in this manner amounts to a stack justifying itself.

As indicated in response to the previous comment, because we do not believe the GEP formula may be applied to the stack support structure in the first instance, we do not believe MSCC may avail itself of the provisions of subsection (kk)(3) or (kk)(2) of 40 CFR 51.100, which are clearly less stringent than the requirements of 40 CFR 51.100(kk)(1).

(n) *Comment:* One commenter (CPP letter, document # IV.A–18, exhibit A, p. 5) stated that MSCC's contractor and others have conducted a number of GEP stack height demonstrations in complex terrain where a GEP stack height significantly taller than formula height has been justified. The commenter cited four examples and concludes that above formula stack heights are not rare.

Response: The import of this comment is not clear to us. If the commenter is suggesting that Congress's intent—that above-formula stack height credit should be rarely granted—has not been achieved in practice, we do not think this is relevant. It does not change Congress' intent. Furthermore, four sources, among all the possible sources within the United States, is not very many. To the extent the commenter is suggesting MSCC's contractor has expertise from other cases in conducting above-formula demonstrations, that does not alter our reading of the statute and the regulations, and our view that MSCC's various stack height demonstrations are not supportable.

(o) *Comment:* One commenter (Goetz letter, document # IV.A–18, exhibit D, pp. 29—31) stated that EPA must evaluate MSCC's air dispersion study, which allegedly demonstrated excessive concentrations. According to the commenter, EPA's rejection (for both ExxonMobil and MSCC) of dispersion modeling for purposes of showing excessive concentrations is arbitrary and in violation of its modeling guidelines. The commenter quoted from EPA's guidelines.

Response: The State did not approve GEP stack height credit for MSCC based on MSCC's air dispersion study. Because the State did not adopt this position in calculating GEP stack height credit for MSCC, we do not believe this proposition is relevant to our action. However, assuming for the sake of argument that we have an obligation to consider this potential justification, we disagree with the commenter. The stack height regulations are clear—GEP stack height is defined as the greater of (1) 65 meters, (2) formula height, or (3) ''the height demonstrated by a fluid model or a field study * * *'' 40 CFR 51.100(ii). The regulation does not allow for disperson modeling demonstrations of downwash.

Furthermore, the commenter misinterprets our modeling guideline at 40 CFR part 51, appendix W, section 7.2.5. Section 7.2.5(a) of appendix W clearly indicates that GEP stack height is defined elsewhere and that other documents should be followed for determining GEP stack height credit. Section 7.2.5(b) of appendix W must be read in conjunction with the remainder of appendix W (section (a) of the Preface to appendix W is instructive) to understand its application. Section 7.2.5(b) does not indicate that dispersion modeling may be used to determine downwash under our stack height regulations; instead, it indicates that dispersion modeling may be used to calculate cavity and wake effects for stacks under formula height when a State or EPA is evaluating air quality impacts and the adequacy of a control strategy in a SIP revision. This is a different purpose, and, as we noted in our September 16, 1994 letter from Douglas Skie to Jeffrey Chaffee (document #IV.A–17, MSCC Exhibit 123), the dispersion model (ISC) is based on assumptions regarding the existence of downwash for stacks less than formula height that are not appropriate for a fluid modeling demonstration.

(p) *Comment:* One commenter (Goetz letter, document #IV.A–18, exhibit D, p. 17) stated that EPA's position, that it need not review the issue of whether MSCC is entitled to formula height of 98.15 meters because this was not a basis for the approval request submitted by Montana, is wrong. The commenter cited *Bethlehem Steel Corp.* v. *U.S. EPA,* 782 F.2d 645, 651–652 (7th Cir. 1986). MSCC's alternative demonstrations must be addressed.

Response: We disagree with the commenter. As we have already discussed, we do not believe we are obligated to review stack height demonstrations the State has not endorsed and submitted to us for approval. We also do not believe the case the commenter has cited stands for the proposition that we must review theories the State has not endorsed and submitted to us. In the portion of *Bethlehem Steel Corp.* that the commenter cites, EPA disapproved a State regulation that the State had submitted for approval into the SIP, and the Court held that EPA's disapproval was reviewable. Unlike in *Bethlehem Steel Corp.,* MSCC's alternative demonstrations were neither adopted by the State nor submitted to us for approval. In the event that a Court decides we are obligated to consider MSCC's alternative demonstrations, we have considered all comments related to MSCC's other theories and have provided our reasons for rejecting those theories.

(r) *Comment:* Two commenters (MSCC letter, document #IV.A–19, comment #49; Goetz letter, document #IV.A–18, exhibit D, p. 18, footnote 9, p. 28) stated that the CPP/Bison fluid modeling analysis performed for MSCC showed a NAAQS exceedance.

Response: The State did not approve GEP stack height credit for MSCC based on the claimed NAAQS exceedance. Because the State did not adopt this position in calculating GEP stack height credit for MSCC, we do not believe this proposition is relevant to our action on the SIP before us. However, assuming for the sake of argument that we have an obligation to consider this potential justification, we disagree with the commenter. The demonstration that purportedly showed a NAAQS exceedance was improperly performed. MSCC's contractor used fluid modeling to predict ambient concentrations from background sources when evaluating whether MSCC and background sources would cause an exceedance of the NAAQS. However, fluid modeling has limited predictive abilities when applied to background sources for this purpose. We first raised this as an issue in our March 15, 1996 letter from Richard Long, EPA, to Jeffrey Chaffee, Montana DEQ (document #II.F–20.) The fluid modeling application simulated downwash at the MSCC facility based on a narrow set of meteorological conditions that would tend to maximize downwash effects. This was necessary to determine whether the stack height regulations' downwash threshold of 40% was met. Other sources, including nearby background sources, have maximum impacts that may occur under different meteorological conditions that the fluid model cannot accurately simulate. To determine the impacts of these sources on ambient concentrations for all meteorological conditions, the full five years of Billings sequential hourly meteorological data must be input to the appropriate EPA dispersion model (ISC). MSCC's contractor failed to follow State and EPA guidance on this issue. Consequently, prior to State adoption of the SIP revision, State staff performed a reanalysis of MSCC's contractor's results using appropriate dispersion models. That reanalysis only showed a MAAQS exceedance, not a NAAQS exceedance. *See* March 1, 1996 memorandum from John Coefield to

Files, document #IV.A–18, MSCC Exhibit 141; March 15, 1996 letter from Richard Long to Jeff Chaffee, document #II.F–20.

6. Miscellaneous Issues

We received various other comments regarding MSCC's stack height credit. We have considered the comments and nothing in them has caused us to change our position regarding MSCC's stack height credit and emissions limitations.

(a) *Comment:* One commenter (MSCC letter, document #IV.A–19, comment #26) stated that EPA has a policy of simply delaying and not granting stack height credit, without regard to its own rules or the intent of the Clean Air Act. According to the commenter, ''EPA has had access to these studies since 1996, and opportunity to participate in their design.''

Response: We do not have a policy of simply delaying and not granting stack height credit. We have approved stack height credit for many sources. We believe we are correctly applying our rules and the Clean Air Act to MSCC. We believe the commenter is referring to MSCC's consultants' stack height studies when the commenter refers to ''these studies.'' We had an opportunity to comment on these consultants'' analyses and raised many concerns that MSCC and/or the consultants have not heeded. Since May of 1996, we have indicated that MSCC would have to meet the NSPS as an ongoing limit in the SIP to qualify for above-formula stack height credit.

(b) *Comment:* One commenter (MSCC letter, document #IV.A–19, comment #42) stated that EPA's position appears to deny a level playing field to potential future MSCC fluid modeling because new, lower SIP limits at other sources will make MSCC's ability to remodel even more problematic. The commenter noted that such demonstrations are based in part on the level of background emissions.

Response: We do not believe this comment is relevant to our action on the SIP before us. We have not considered the appropriate approach for determining background for future fluid modeling demonstrations that MSCC may or may never conduct.

(c) *Comment:* One commenter (MSCC letter, document #IV.A–19, comment #83) stated that Montana complied with 40 CFR 51.118 in that it set limits based on GEP stack height credit for MSCC, and that the SIP limits were not affected by any stack height exceeding GEP.

Response: We disagree that the stack height used for MSCC in dispersion modeling to set SIP limits represents GEP. We have fully explained our reasoning in our proposal and in this document. We have considered all comments on this issue, but do not believe they warrant a change in our position.

(d) *Comment:* One commenter (MSCC letter, document #IV.A–19, comment #84; MSCC letter, document #IV.A–20, comment #1.G) stated that Congress' alleged concern with downwind areas is not factually correct and is not germane to this action. The commenter claimed that section 123 of the Act refers to no such concern. The commenter claimed that 123 explicitly seeks to allow and encourage stack heights that are at least GEP in height and to prohibit interference with stacks by the agency, by allowing credit up to such height. The commenter asserted that EPA's own rules and preamble dismiss the potential impacts of sources like MSCC that are under 5,000 tons per year on downwind areas as insignificant. The commenter suggested that EPA is using interpretation to selectively enforce an alleged congressional goal, and that it is highly inappropriate to do so in this case because there is no credible evidence that MSCC's relatively small emissions will negatively impact distant downwind areas. The commenter also seemed to be suggesting that it is absurd to apply this restrictive interpretation to MSCC when the only impact is on MSCC's short-term emissions (daily, 3 hour), which will not impact downwind areas, while its annual emission limit remains the same, and the NAAQS will be protected, regardless of whether stack height credit is 97.5 meters or 65 meters.

Response: The commenter's interpretation is inconsistent with the language and structure of section 123 of the Act, the legislative history of section 123, holdings of the D.C. Circuit, and EPA's statements in the preamble to the stack height regulations. Section 123 makes clear that a state may not consider stack height exceeding GEP in setting SIP emission limits. Thus, the commenter's assertion that Congress wanted to encourage stack heights at least GEP in height is inaccurate. Congress wanted to allow for stack heights up to GEP to be considered in setting SIP limits, but not beyond. This was clearly Congress' means of pushing sources to install controls rather than use greater-than-GEP stacks to meet SIP requirements. One of the reasons Congress did so was out of concern for downwind transport of pollutants and general loading of pollutants to the atmosphere. H.R.Rep. No. 294, 95th Cong., 1st Sess. 83—86 (1977). If Congress wanted to encourage stack heights at least GEP in height, it could have given states and the Administrator the authority to encourage stacks at least GEP in height. Congress did not do so.

The commenter is correct that we concluded in our preamble to the final regulations that the combined impact of sources under 5,000 tons per year was de minimis for certain specified purposes. 50 FR 27904, July 8, 1985. Based on this conclusion, we promulgated a final regulation that exempted from the definition of certain dispersion techniques, sources with allowable emissions less than 5,000 tons per year. However, this exemption does not apply to use of stack height above GEP in setting SIP emission limits. The rule is clear on its face, and the preamble does not provide a different interpretation of the rule language.

The commenter's claim that we are applying the regulation and interpretation of congressional intent selectively to MSCC is not accurate. We are applying a consistent interpretation of the regulation, which is supported by the congressional intent underlying section 123 of the Act, to MSCC and other sources. The potential downwind impact and impact on atmospheric loadings from MSCC may not be as great as from a large eastern power plant, but the principle is the same. A source's limits in a SIP cannot be set based on stack height that exceeds GEP.

EPA established a de minimis stack height credit of 65 meters, which is the only ''exemption'' that applies for purposes of stack height credit. MSCC has chosen not to take advantage of this exemption, and because MSCC is seeking above-formula height, it is subject to all of the restrictions that apply to above-formula demonstrations, for all sources.

(e) *Comment:* One commenter (MSCC letter, document #IV.A–20, comment # 1.H) stated that the 1990 amendments to the Act exempted sources like MSCC from the acid rain program and EPA's proposed disapproval of MSCC's stack height credit is thus unnecessary to achieve any acid rain goal.

Response: The fact that MSCC may not be subject to the acid rain provisions of the Act has no relevance to whether MSCC's stack is subject to the stack height regulations. The focus of section 123 and the focus of the acid rain program may be different even if some of their overarching goals are the same. Congress did not repeal section 123 when it enacted the acid rain program.

(f) *Comment:* One commenter (MSCC letter, document #IV.A–19, comment # 85) stated that EPA is not accurate in the TSD, page 52, when it states that Congress limited the height that may be credited to stacks in dispersion modeling used to demonstrate

attainment and maintenance of the NAAQS. The commenter indicated that section 123 makes no mention of dispersion modeling.

Response: The commenter is correct that section 123 does not specifically mention dispersion modeling. However, dispersion modeling is clearly one means of setting SIP emission limits, a means that we have the discretion to require under section 110(a)(2)(K) of the CAA and that we have required under our SIP regulations, at 40 CFR 51.112. It is difficult to imagine how section 123 restrictions would be implemented without some form of modeling, something the D.C. Circuit clearly recognized. *See Sierra Club* v. *EPA,* 719 F.2d 436, 441 (D.C. Cir. 1983). Contrary to the commenter's assertion, we are not attempting to interpret our regulations to specifically deny MSCC stack height credit.

(g) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment #s 34, 97) stated that EPA did not intervene in the State contested case hearing regarding MSCC's limits, did not present evidence at the Board hearing adopting the State's findings, and did not meet with MSCC directly until after the Board had acted. The commenter asserted that EPA's only recourse if it disagreed with the State's determination of GEP or approval of the fluid modeling demonstration was to challenge the Montana Board's adoption of the stipulation for MSCC in state court.

Response: The CAA grants us an approval role for SIPs. We have an obligation to evaluate the SIP against CAA and regulatory requirements pursuant to federal procedural requirements contained in the Administrative Procedure Act. There is no requirement that we pursue our objections through state administrative or judicial procedures. And, we are not required to rubber stamp a stack height determination made by a state.

Notwithstanding the foregoing, we were very involved in providing input to the State regarding these issues throughout the development of the SIP. The State and MSCC chose to disregard our input on stack height issues. We would have been happy to meet with MSCC at any time during the process, but did not want to interfere with the State's process. We did meet with MSCC and the State at critical junctures regarding the SIP.

(h) *Comment:* One commenter (MSCC letter, document # IV.A–19, # 36) stated that even if EPA had authority under the CAA to disapprove credit granted by a state, EPA should have the burden of proof to show that the state erred grossly and substantively in its findings and interpretation of the rules defining the GEP demonstration that the state approved, and that the State's error caused or is likely to cause substantial harm.

Response: Our responsibility is to ensure that the SIP meets the Act's requirements. There is no burden of proof or gross error standard that applies to our review of the SIP, and we need not find any causation of substantial harm other than the simple failure of the SIP to meet CAA requirements. As mentioned above, section 110(k)(3) of the Act indicates we can approve the plan if it meets all of the applicable requirements of the Act and disapprove parts of the plan if it does not. Also, section 110(l) of the Act indicates we shall not approve a revision of a plan if the revision will interfere with any provisions of the Act.

(i) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment # 102; MSCC letter, document # IV.A–20, comment # 8) complained that EPA did not quote legislative history of 123 more in its proposed rulemaking, and stated his suspicion that the language EPA did quote ''is the comment of one legislator talking about the prior EPA guidance (before section 123).'' The commenter asserted that the cited language is not credible as to the intent of Congress as a whole. The commenter also stated that the court's reading into section 123 the admonition that credit above formula height should be granted only with ''utmost caution'' is not supported in any explicit way by the CAA text.

Response: We did not feel it was necessary to quote further from section 123's legislative history. We have referred to language from the legislative history that the D.C. Circuit found persuasive in two different cases challenging the stack height regulations and that we relied on in promulgating the stack height regulations. *See NRDC* v. *Thomas,* 838 F.2d 1224, 1242;1 *Sierra Club* v. *EPA,* 719 F.2d 436, 450; 50 FR 27898. The language, that above-formula stack height credit would ''be highly infrequent and that the latitude given the Administrator to allow full credit for such stack height (would) be exercised with circumspection and utmost caution in those rare circumstances proven to justify its use,'' appears in the House committee report for the 1977 amendments to the Clean Air Act. H.R.Rep. No. 294, 95th Cong., 1st Sess., p. 93.

We do not believe it's relevant that section 123 does not explicitly include the admonition from the legislative history. As noted above, this language has been critical in the promulgation and proper interpretation of the stack height regulations.

(j) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment # 104) stated that MSCC is not in a position to trade for emissions from other entities, and wants to know who it would trade with.

Response: This is one potential option a source may employ to comply with the stack height regulations. We are not in a position to evaluate the commenter's assertions regarding feasibility of obtaining emissions credits from another source. Often, a source might be willing to trade emission credits in exchange for compensation.

(k) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment # 105) stated that MSCC cannot accept the option of stack height credit of 65 meters, the lowest defined by law. According to the commenter, MSCC can hardly embrace this since it built its stack in full expectation that the government would honor its agreement that a 100-meter stack was good engineering height if built.

Response: MSCC need not accept a 65 meter stack height credit if it can make a demonstration for a higher stack height credit in accordance with regulatory requirements. We are not sure what government the commenter is referring to. In any event, it is well-settled under applicable case law that any 100 meter stack height credit the State may have granted MSCC in 1977 was not grandfathered when we issued our 1985 stack height regulations. *See NRDC* v. *Thomas,* 838 F.2d 1224, 1249. Thus, MSCC's complaint is with the stack height regulations, which may not be challenged in this action.

(l) *Comment:* One commenter (Goetz letter, document # IV.A–18, exhibit D, p. 60) stated that a 1977 stipulation between the State and MSCC establishes a 100 meter stack height as good engineering design. The commenter noted that EPA approved this stipulation as part of the SIP and reads a June 29, 1993 letter from EPA to the State to mean that MSCC's 100-meter stack height credit should be preserved. In the commenter's view, the July 1985 stack height regulations did not overturn MSCC's 1977 stack height credit. The commenter also argued that ''the Government,'' in this case the State, should be forced to keep its ''word.'' The commenter suggested that it would be equitable to force the State to abide by its 1977 agreement and for the EPA to cease to interfere. Another commenter (MSCC letter, document # IV.A–19, comment # 37) stated that EPA gave guidance before and while the

stack was being built that credit once lawfully given is normally retained.

Response: See our response to the previous comment. MSCC's 1977 stack height credit was not grandfathered under our 1985 stack height regulations because MSCC did not build the 100 meter stack before the trigger dates in the regulations. MSCC documents show that stack construction did not begin until November 1993. *See* document # IV.A–17, MSCC Exhibit 37. Thus, the 1985 stack height regulations *did* overturn MSCC's 1977 stack height credit. In fact, the D.C. Circuit said the following on this subject:

> A second preliminary issue is whether the regulations, which say nothing explicit on the subject, actually invalidate the prior approvals. *We believe they do.*

NRDC v. *Thomas,* 838 F.2d 1224, 1249, emphasis added. Under the circumstances, it would not be equitable to grandfather MSCC's 1977 stack height credit now. We cannot ignore the requirements of our regulations in acting on the Billings SIP.

The commenters mischaracterize our communications on this issue. In our June 29, 1993 letter to the State, we clearly stated that the 1977 stack height credit could only be preserved if it had not been overturned by the 1985 stack height regulations:

> Therefore, before EPA would accept that 100 meters is the GEP height, documentation would need to be provided which demonstrates that the 100 meters credit was legitimately given and was not later overturned by the July 8, 1985 rules.

See letter from Douglas Skie to Jeffrey Chaffee, document # IV.C–43. Since the 1985 stack height regulations overturned MSCC's prior stack height credit, the credit was not preserved.

In any event, the State did not adopt the position that the 1977 stack height credit was grandfathered, and thus, we do not believe this issue is relevant to our action.

(m) *Comment:* One commenter (MSCC letter, document # IV.A–19, comment # 106) stated that EPA has not offered options in a form that MSCC could understand.

Response: We believe the options are understandable.

(n) *Comment:* One commenter (State letter, document # IV.A–23, p. 21) requested that EPA include in the record all briefs filed in *NRDC* v. *Thomas,* No. 85–1488 and Consolidated Cases and all briefs filed in the *Ohio Power* case, Nos. 86–1331 and 86–1362.

Response: We will include all briefs from these cases that we considered.

(o) *Comment:* One commenter (State letter, document # IV.A–23, p. 11) stated that the State provided its legal analysis of the stack height issue to EPA, but EPA did not provide its legal analysis to the State until EPA developed its technical support document for this action.

Response: This comment is irrelevant to the adequacy of the SIP. However, we made our legal position known in the Spring and Summer of 1996 and provided various documents to Jim Madden, the State's attorney, that supported our position on the stack height issue (*see* document #IV.C–44).

(p) *Comment:* One commenter (State letter, document # IV.A–23, p. 11) stated that under the State's interpretation of EPA's rules, the NAAQS are protected. According to the commenter, even if EPA were to prevail in its interpretation of the stack height rules, it is unlikely that any additional emissions controls will be required at MSCC. Another commenter (MSCC letter, document # IV.A–19, #s 52, 53) stated essentially the same thing and added that MSCC's operation at lower rates will not improve modeled NAAQS compliance. This commenter also suggested that our denial of stack height credit to MSCC will only serve to transfer emission rights to some other source in some future re-apportionment of the airshed.

Response: The standard for approval or disapproval of stack height credit is not based on whether an area can demonstrate attainment or maintenance. We have made clear that it is possible to protect the NAAQS through dispersion as well as through emission control. This is something the courts have also recognized. *See NRDC* v. *Thomas,* 838 F.2d 1224, 1230–1231. However, in enacting section 123 of the CAA, Congress sought to limit the degree to which dispersion could be used to attain and maintain the NAAQS, and, pursuant to Congress' directive, we have promulgated regulations to limit the use of stack height to meet SIP requirements. These regulations have been upheld by the D.C. Circuit and we are applying our regulations to the Billings SIP.

The extent of emission reductions that would result at MSCC through application of our interpretation of the stack height regulations might not be that significant. (Under our interpretation, MSCC would have to accept a de minimis 65 meter stack height credit. It is only when above-formula stack height credit is granted that the source must meet NSPS or BART.) We believe MSCC's 3 hour and 24 hour limits would probably have to be reduced, but MSCC's annual limit would probably remain the same. The fact that MSCC's limits would not change that much, however, is not a reason for us to ignore the requirements of our regulations. Furthermore, one of the reasons MSCC could meet a lower 3 hour and 24 hour limit is because it has recently installed additional control equipment. We understand MSCC did this for business purposes and not necessarily to meet State-imposed SIP limits. However, it appears that the recently-installed Super Claus unit might help the State and MSCC meet the requirements of the stack height regulations without the need for above-formula stack height credit at MSCC.

The assertion of emission rights in the airshed is something we address more fully elsewhere in this document. However, in the first instance, we believe the assertion regarding transfer of emission rights is irrelevant. If such a transfer occurs through the correct application of section 123 of the Act and our stack height regulations, then this is merely a result of the structure of the statute and the stack height regulations, and the commenter may not challenge either in this action. Second, a particular allocation of emissions among sources within an airshed is not a goal of the stack height regulations. Instead, the goal is to ensure that unsanctioned dispersion is not used to set emissions limitations for sources generally. To the extent unsanctioned dispersion is avoided, emissions limitations within an airshed generally will be lower. However, for any area modeling attainment, the emissions limitations for each individual source may vary significantly. In this case, if the ultimate result for MSCC is the de minimis 65 meter stack height credit that we think is valid, it is likely that a lower 3-hour emission limit at MSCC will be necessary, as discussed above. We do not believe any other source would be able to increase its emissions limitations as a result, because any dispersion modeling for attainment would be required to model MSCC's stack at 65 meters.

(q) *Comment:* One commenter (Goetz letter, document # IV.A–18, exhibit D, pp. 6, 7) stated that MSCC would have to make expensive changes to meet short-term limits based on a 65 meter stack height credit, and that these changes would result in only marginal reductions in sulfur dioxide. The commenter intimated that this could affect MSCC's ability to survive.

Response: In evaluating a SIP, our obligation is to determine whether the SIP meets the requirements of the Clean Air Act and our regulations. Essentially, the commenter is saying we should ignore applicable requirements because applying them would impose an

economic burden on MSCC. We are not permitted to do this in taking action on a SIP submission. *See Union Electric Company v. EPA,* 96 S.Ct. 2518 (1976). Furthermore, our disapproval of MSCC's emission limits and stack height credit will not force MSCC to immediately meet an emission limit based on a 65 meter stack height credit; we are not substituting our emission limits for MSCC as part of this action. Also, please see our response to the previous comment.

(r) *Comment:* One commenter (Goetz letter, document # IV.A–18, exhibit D, p. 8) stated that from the point of view of fundamental fairness and environmental protection, EPA should take a reasonable attitude toward GEP credit for MSCC's existing 100-meter stack. The commenter noted that MSCC is forced to have greater emission controls for pound of sulfur than ExxonMobil and other sources because MSCC has less natural buoyancy flux or plume rise. The commenter asserted that greater stack height credit should be approved as a substitute for MSCC's lack of natural plume rise.

Response: We believe our fundamental obligation is to implement the requirements of section 123 of the Act and our regulations. In this case, the emission limits the State has established for MSCC are too high because they are based on invalid stack height credit. The State could have addressed MSCC's concerns with its plume rise by imposing greater controls on other sources, but chose not to.

(s) *Comment:* One commenter (Goetz letter, document # IV.A–18, exhibit D, p. 10) stated that EPA's stack height regulations are two pages in length and that one would think the regulations ''could be applied rationally and with dispatch.'' The commenter asserted that, instead, EPA and the State have shifted positions numerous times on various points, apparently having great difficulty interpreting their own rule. Among other things, the commenter cited from testimony of the State's meteorologist, John Coefield, indicating that he considered the stack height regulations to be very complicated.

Response: We have responded to most of these assertions elsewhere in this document. However, we agree with the commenter and the State's meteorologist that the stack height regulations, despite their brevity, are quite complicated. This is an additional reason we believe our official interpretation of our stack height regulations, which has been consistent since the stack height regulations were promulgated, is entitled to deference.

(t) *Comment:* One commenter (MSCC letter, document # IV.A–19, # 13), while arguing that we subjected MSCC to ex post facto laws, indicated that we changed position regarding the requirements of the stack height regulations during the development of the SIP and MSCC's attempts to demonstrate GEP stack height. The commenter gave the following examples regarding stack height: ''Redefinition of GEP following 1977; prior to its 1996 demonstration (regarding structure for formula height); following its 1996 demonstration; following its 1996 approval by the State of that demonstration; 1990 CAA imposition of deadlines for SIPS while not readjusting the GEP rules to accommodate those time frames; * * * decrees that 'you cannot use formula height' because we will not apply it; hence you cannot get credit for your stack even though if we did allow you to use formula height your demonstration works.''

Response: As to the assertion that we acted unconstitutionally, we respond to this comment in another section. To the extent the commenter is also suggesting that we are estopped from disapproving the stack height credit for MSCC because EPA personnel allegedly provided preliminary comments that were not consistent with our current position, we believe the commenter is mistaken. We believe we have an ultimate obligation, in taking a final action on a SIP, to apply our regulations and the CAA correctly, and that it is inappropriate to ignore legal requirements even where inconsistent advice may have been given during SIP development. We also believe that any inaccurate statements were promptly corrected, and that MSCC and the State had ample time to correct any problems in MSCC's fluid modeling demonstration and emission limits. MSCC and the State have been aware of our official position for over five years. This same estoppel issue was raised in *NRDC v. Thomas,* except that in that case, unlike this one, we had actually approved a fluid modeling demonstration and GEP stack height credit. Despite this fact, the Court upheld the stack height regulations' requirement that the sources perform new demonstrations, based on the new regulations. The position we are taking regarding stack height requirements is not new. It has been apparent since we promulgated the 1985 stack height regulations, which obviously pre-date MSCC's construction of its 100-meter stack.

(u) *Comment:* One commenter (Goetz letter, document # IV.A–18, exhibit D, pp. 10, 13) stated that MSCC has incurred unnecessary expenditures because EPA and the State have been vague and equivocal in interpreting the stack height regulations. The commenter stated that EPA and DEQ have shifted positions numerous times on various points, and have had great difficulty interpreting the stack height regulations. For example, the commenter complained that the State was uncertain what type of modeling would be required to verify formula height. According to the commenter, the State initially said dispersion modeling could be used and then changed its mind when EPA said fluid modeling would be necessary. The commenter claims this is an example of agency flip-flopping which resulted in a waste of time and money for MSCC.

Response: Although we have corrected some of our positions during this process, it is not apparent that we have caused MSCC to incur expenditures that it would not have otherwise incurred. For example, MSCC conducted dispersion modeling to show downwash despite being aware that we had rejected use of dispersion modeling to justify stack height credit. *See* document # IV.A–17, MSCC Exhibit 124, Direct Testimony of Harold W. Robbins, December 5, 1995, p. 16. Likewise, MSCC has shown no reluctance to continue pursuing theories to justify greater stack height credit that have been rejected by EPA and/or the State. Furthermore, whether MSCC incurred expenditures it otherwise would not have is not relevant to our decision in this action. Our duty is to apply the Clean Air Act and relevant regulations correctly in this action. *See* our response to the previous comment.

We believe the portion of the comment that relates to the conduct of a within formula stack height demonstration is doubly irrelevant to our action because the State did not agree with or adopt MSCC's formula height calculation. Therefore, the SIP is not based on this theory. As to the substance of the comment, the regulation is explicit that fluid modeling or a field study are necessary, something we have discussed at length in response to a previous comment. Thus, it is not clear why MSCC's contractor thought this approach (dispersion modeling) would be acceptable.

(v) *Comment:* One commenter (MSCC letter, document # IV.A–20, comment # 1.L) stated that EPA itself has argued in its preamble in apologizing for various defects found in its own rules and formula that the effect of a few percent difference in determined GEP cannot have a substantial effect on emissions or substantially defeat any legitimate

legislative intent. The commenter asserted, however, that these small differences can be of critical importance to MSCC in meeting short-term limits.

Response: We do not know the preamble language the commenter is referring to. However, it appears the commenter is suggesting we ignore the requirements of the stack height regulations because the effects are likely to be insignificant at some larger level, but are significant for MSCC. We do not think we may ignore the requirements of section 123 of the Act and our stack height regulations.

(w) *Comment:* One commenter (MSCC letter, document # IV.A–20, comment # 2.L) stated that, given that EPA could have participated in the State's contested case hearing and rebutted MSCC's demonstrations, it is difficult to understand EPA's contention that MSCC's and Montana's objections are untimely.

Response: As we have stated elsewhere, we are not required to participate in the State's administrative proceedings related to SIP adoption. In our proposal, we indicated that MSCC's and the State's objections were untimely to the extent they questioned the validity of the stack height regulations themselves, which were adopted in 1985 and which were challenged and upheld in the United States Court of Appeals for the D.C. Circuit. MSCC has the opportunity in this action to challenge our application of the stack height regulations.

(x) *Comment:* One commenter (MSCC letter, document # IV.A–20, comment # 2.O) stated that EPA runs no substantial risk to any legitimate policy or goal of the Clean Air Act by approving MSCC's stack height credit.

Response: We respectfully disagree with the commenter. More importantly, we cannot approve MSCC's emission limits because they are inconsistent with the requirements of section 123 of the Act and our stack height regulations.

(y) *Comment:* One commenter (MSCC letter, document # IV.A–20, 2nd comment #'s 8.C and D) stated that a hearing was held on MSCC's stack height credit and no one objected. The commenter claimed that in fact, EPA recommended at the hearing that the State approve the SIP revision containing the approved demonstration and stack height credit for MSCC and forward it to EPA.

Response: We recommended that the State approve the SIP revision and forward it to us based on prior meetings and discussions with the State that indicated the State and MSCC were unwilling to change their position on the stack height issue. Under the circumstances the State and EPA agreed that rather than spend more time trying to resolve this issue, the State should adopt the entire SIP revision and forward it to us for review ''as a whole.'' *See* transcript of August 9, 1996 State hearing, testimony of John Wardell, pp. 36–38, document # II.C–3. All parties were well aware that we did not agree with the stack height credit for MSCC. It is irrelevant whether anyone objected to MSCC's stack height credit at the State hearing. We have an ultimate responsibility to ensure that the SIP is consistent with the Act and our regulations.

(z) *Comment:* One commenter (MSCC letter, document # IV.A–20, 2nd comment # 8.I) stated that EPA has stated that states may use EPA's fluid modeling guidelines as guidelines and that states have the freedom to impose more or less stringent requirements on fluid modeling demonstrations that the state approves. The commenter claimed that Montana had the freedom to impose less stringent requirements in this case.

Response: We are not sure what the commenter is referring to. Our guidelines do not allow states to ignore the requirements of the Act or regulations.

(aa) *Comment:* One commenter (MSCC letter, document # IV.A–20, comment # 10) stated that it is strained to argue that Congress did not allow the agency latitude in rulemaking to accommodate any factor other than downwash in its GEP rule while arguing that Congress authorized or required NSPS requirements for existing sources seeking increased stack height credit. The commenter claimed that section 123 of the Act only enumerates the requirement that a demonstration be made prior to public hearing. The commenter stated that it is also strained to argue that Congress intended to void contract law for determinations already made by the states just because Congress specifically exempted certain classes of sources based on the age of their stacks.

Response: Although we do not completely understand the comment, we do not believe our position is ''strained.'' As we have explained elsewhere, our position stems from the regulations, the preamble to the regulations, the statute, relevant case law, and numerous other documents.

(bb) *Comment:* One commenter (ExxonMobil letter, document # IV.A–28, Attachment 1, pp. 1, 2) stated that EPA should approve the stack height demonstration and emissions limitations for MSCC because these form the cornerstone of the attainment demonstration and have successfully undergone substantial technical peer review. The commenter also noted that the State continues to believe it has made the right interpretation.

Response: As fully described elsewhere in this document, our proposal, and our TSD, we do not believe it would be appropriate to approve MSCC's emissions limitations because they are based on stack height credit that is not valid under the Act and our regulations. We strongly disagree with the State's interpretation. We are not sure what ''peer review'' the commenter is referring to, but we believe this is irrelevant. We are not prepared to approve emissions limitations based on stack height credit that is not consistent with the Act and our regulations.

(cc) *Comment:* One commenter (CPP letter, document # IV.A–18, exhibit A, pp. 1—4) provided his chronology of events related to MSCC's efforts to demonstrate GEP stack height for MSCC's 100-meter stack.

Response: We do not view this chronology as a comment. Therefore, we are not providing a specific response. However, any issues related to this chronology have been raised in specific comments on our action and are addressed in our responses to those comments.

(dd) *Comment:* Three commenters (McGarity letter, document # IV.B–1, p. 2; Zaidlicz letter, document # IV.A–30, p. 2; Yellowstone Valley Citizens Council letter, document # IV.A–29, p. 2) stated their support for EPA's proposal to disapprove the 97.5 meter stack height credit for MSCC.

Response: We acknowledge the support and are finalizing our disapproval of the emissions limitations for MSCC's 100-meter stack.

VI. 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.''

C. 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 does not involve decisions intended to mitigate environmental health or safety risks.

D. 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 partially or limitedly approves or disapproves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Executive Order 13175

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 final rule does not have tribal implications, as specified in Executive Order 13175. 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. This action does not involve or impose any requirements that affect Indian Tribes. Thus, Executive Order 13175 does not apply to this rule.

F. Executive Order 13211

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.

G. 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.

The partial and limited approval portions of 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 approve requirements that the State is already imposing. 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).

Moreover, EPA's partial and limited disapproval rule will not have a significant impact on a substantial number of small entities because the partial and limited disapproval action affects only seven industrial sources of air pollution in Billings/Laurel, Montana: Cenex Harvest Cooperatives, Conoco, Inc., ExxonMobil Company, USA, Montana Power Company, Montana Sulphur & Chemical Company, and Yellowstone Energy Limited Partnership. Only a limited number of sources are impacted by this action. Furthermore, as explained in this action, the submission does not meet the requirements of the Clean Air Act and EPA cannot approve the submission. The partial and limited disapproval will not affect any existing State requirements applicable to the entities. Federal disapproval of a State submittal does not affect its State enforceability. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

H. Unfunded Mandates

Under sections 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 and disapproval actions promulgated do 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 partially and limitedly approves and disapproves 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.

I. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following

types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. section 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

J. 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.

K. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 1, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: March 26, 2002.

Jack W. McGraw,

Acting Regional Administrator, Region 8.

40 CFR Part 52 is amended to read as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

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

Subpart BB—Montana

2. Section 52.1370 is amended by adding paragraph (c)(46) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

(46) The Governor of Montana submitted sulfur dioxide SIP revisions for Billings/Laurel on September 6, 1995, August 27, 1996, April 2, 1997 and July 29, 1998. On March 24, 1999, the Governor submitted a commitment to revise the SIP.

(i) Incorporation by Reference.

(A) Board Order issued on June 12, 1998, by the Montana Board of Environmental Review adopting and incorporating the stipulation of the Montana Department of Environmental Quality and Cenex Harvest Cooperatives, including the stipulation and exhibit A and attachments to exhibit A, except for the following:

(*1*) Paragraph 20 of the stipulation;

(*2*) Section 3(A)(1)(d) of exhibit A;

(*3*) The following phrase from section 3(B)(2) of exhibit A: ''except that those sour water stripper overheads may be burned in the main crude heater (and exhausted through the main crude heater stack) or in the flare during periods when the FCC CO boiler is unable to burn the sour water stripper overheads from the ''old'' SWS, provided that such periods do not exceed 55 days per calendar year and 65 days for any two consecutive calendar years.'';

(*4*) Section 4(B) of exhibit A;

(*5*) Section 4(D) of exhibit A; and

(*6*) Method #6A of attachment #2 of exhibit A.

(B) Board Order issued on June 12, 1998, by the Montana Board of Environmental Review adopting and incorporating the stipulation of the Montana Department of Environmental Quality and Conoco, Inc., including the stipulation and exhibit A and attachments to exhibit A, except for paragraph 20 of the stipulation.

(C) Board Order issued on June 12, 1998, by the Montana Board of Environmental Review adopting and incorporating the stipulation of the Montana Department of Environmental Quality and Exxon Company, USA, including the stipulation and exhibit A and attachments to exhibit A, except for the following:

(*1*) Paragraphs 1 and 22 of the stipulation;

(*2*) Section 2(A)(11)(d) of exhibit A;

(*3*) Sections 3(A)(1) and (2) of exhibit A;

(*4*) Sections 3(B)(1), (2) and (3) of exhibit A;

(*5*) The following phrase from section 3(E)(4) of exhibit A: ''except that the sour water stripper overheads may be burned in the F–1 Crude Furnace (and exhausted through the F–2 Crude/Vacuum Heater stack) or in the flare during periods when the FCC CO Boiler is unable to burn the sour water stripper overheads, provided that: (a) such periods do not exceed 55 days per calendar year and 65 days for any two consecutive calendar years, and (b) during such periods the sour water stripper system is operating in a two tower configuration.'';

(*6*) Sections 4(B), (C), and (E) of exhibit A;

(*7*) Section 6(B)(3) of exhibit A; and

(*8*) method #6A of attachment #2 of exhibit A.

(D) Board Order issued on June 12, 1998, by the Montana Board of Environmental Review adopting and incorporating the stipulation of the Montana Department of Environmental Quality and Montana Power Company, including the stipulation and exhibit A and attachments to exhibit A, except for paragraph 20 of the stipulation.

(E) Board Order issued on June 12, 1998, by the Montana Board of Environmental Review adopting and incorporating the stipulation of the Montana Department of Environmental Quality and Montana Sulphur & Chemical Company, including the stipulation and exhibit A and attachments to the exhibit A, except for paragraphs 1, 2 and 22 of the stipulation, and sections 3(A)(1)(a) and (b), 3(A)(3), 3(A)(4) and 6(B)(3) of exhibit A. (EPA is approving section 3(A)(2) of exhibit A for the limited purpose of strengthening the SIP. In 40 CFR 52.1384(d)(2), we are also disapproving section 3(A)(2) of exhibit A because section 3(A)(2) does not fully meet requirements of the Clean Air Act.)

(F) Board Order issued on June 12, 1998, by the Montana Board of Environmental Review adopting and incorporating the stipulation of the Montana Department of Environmental Quality and Western Sugar Company, including the stipulation and exhibit A and attachments to exhibit A, except for paragraph 20 of the stipulation.

(G) Board Order issued on June 12, 1998, by the Montana Board of Environmental Review adopting and incorporating the stipulation of the Montana Department of Environmental Quality and Yellowstone Energy Limited Partnership, including the stipulation and exhibit A and attachments to exhibit A, except for paragraph 20 of the stipulation and section 3(A)(1) through (3) of exhibit A.

(ii) Additional material.

(A) All portions of the September 6, 1995 Billings/Laurel SO2 SIP submittal other than the board orders, stipulations, exhibit A's and attachments to exhibit A's.

(B) All portions of the August 27, 1996 Billings/Laurel SO2 SIP submittal other than the board orders, stipulations, exhibit A's and attachments to exhibit A's.

(C) All portions of the April 2, 1997 Billings/Laurel SO2 SIP submittal other than the board orders, stipulations, exhibit A's and attachments to exhibit A's.

(D) All portions of the July 29, 1998 Billings/Laurel SO2 SIP submittal, other than the following: The board orders, stipulations, exhibit A's and attachments to exhibit A's, and any other documents or provisions mentioned in paragraph (c)(46)(i) of this section.

(E) April 28, 1997 letter from Mark Simonich, Director, Montana Department of Environmental Quality, to Richard R. Long, Director, Air Program, EPA Region VIII.

(F) January 30, 1998 letter from Mark Simonich, Director, Montana Department of Environmental Quality, to Richard R. Long, Director, Air Program, EPA Region VIII.

(G) August 11, 1998 letter from Mark Simonich, Director, Montana Department of Environmental Quality, to Kerrigan G. Clough, Assistant Regional Administrator, EPA Region VIII.

(H) September 3, 1998 letter from Mark Simonich, Director, Montana Department of Environmental Quality, to Richard R. Long, Director, Air Program, EPA Region VIII.

(I) March 24, 1999 commitment letter from Marc Racicot, Governor of Montana, to William Yellowtail, EPA Regional Administrator.

(J) May 20, 1999 letter from Mark Simonich, Director, Montana Department of Environmental Quality, to Richard R. Long, Director, Air and Radiation Program, EPA Region VIII.

* * * * *

3. In § 52.1384, add paragraph (d) to read as follows:

§ 52.1384 Emission control regulations.

* * * * *

(d) In § 52.1370(c)(46), we approved portions of the Billings/Laurel Sulfur Dioxide SIP and incorporated by reference several documents. This paragraph identifies those portions of the Billings/Laurel SO2 SIP that have been disapproved.

(1) In § 52.1370(c)(46)(i)(A) through (G), certain provisions of the documents incorporated by reference were excluded. The following provisions that were excluded by § 52.1370(c)(46)(i)(A) through (G) are disapproved. We cannot approve these provisions because they do not conform to the requirements of the Clean Air Act:

(i) The following paragraph and portions of sections of the stipulation and exhibit A between the Montana Department of Environmental Quality and Cenex Harvest Cooperatives adopted by Board Order issued on June 12, 1998, by the Montana Board of Environmental Review:

(A) Paragraph 20 of the stipulation;

(B) The following phrase from section 3(B)(2) of exhibit A: ''or in the flare''; and

(C) The following phrases in section 4(D) of exhibit A: ''or in the flare'' and ''or the flare.''

(ii) Paragraph 20 of the stipulation between the Montana Department of Environmental Quality and Conoco, Inc., adopted by Board Order issued on June 12, 1998, by the Montana Board of Environmental Review.

(iii) The following paragraphs and portions of sections of the stipulation and exhibit A between the Montana Department of Environmental Quality and Exxon Company, USA, adopted by Board Order issued on June 12, 1998, by the Montana Board of Environmental Review:

(A) Paragraphs 1 and 22 of the stipulation;

(B) The following phrase of section 3(E)(4) of exhibit A: ''or in the flare''; and

(C) The following phrases of section 4(E) of exhibit A: ''or in the flare'' and ''or the flare.''

(iv) Paragraph 20 of the stipulation between the Montana Department of Environmental Quality and Montana Power Company, adopted by Board Order issued on June 12, 1998, by Montana Board of Environmental Review.

(v) The following paragraphs and sections of the stipulation and exhibit A between the Montana Department of Environmental Quality and Montana Sulphur & Chemical Company, adopted by Board Order issued on June 12, 1998, by the Montana Board of Environmental Review: paragraphs 1, 2 and 22 of the stipulation; sections 3(A)(1)(a) and (b), 3(A)(3), and 3(A)(4) of exhibit A.

(vi) Paragraph 20 of the stipulation between the Montana Department of Environmental Quality and Western Sugar Company, adopted by Board Order issued on June 12, 1998, by the Montana Board of Environmental Review.

(vii) Paragraph 20 of the stipulation between the Montana Department of Environmental Quality and Yellowstone Energy Limited Partnership, adopted by Board Order issued on June 12, 1998, by the Montana Board of Environmental Review.

(2) Section (3)(A)(2) of exhibit A of the stipulation between the Montana Department of Environmental Quality and Montana Sulphur & Chemical Company, adopted by Board Order issued on June 12, 1998, by the Montana Board of Environmental Review, which section 3(A)(2) we approved for the limited purpose of strengthening the SIP, is hereby disapproved. This limited disapproval does not prevent EPA, citizens, or the State from enforcing section 3(A)(2).

[FR Doc. 02–10332 Filed 5–1–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MT–001–0010; MT–001–0028; FR–174–9]

Approval and Promulgation of Air Quality Implementation Plans; Montana; Billings/Laurel Sulfur Dioxide State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to partially approve and limitedly approve and limitedly disapprove revisions to the Billings/Laurel sulfur dioxide (SO2) State Implementation Plan (SIP) submitted by the State of Montana on July 29, 1998 and May 4, 2000. The May 4, 2000 SIP revision was submitted to satisfy earlier commitments made by the Governor. The intended effect of this action is to make federally enforceable those provisions that EPA is proposing to partially and limitedly approve and to limitedly approve and to limitedly disapprove those provisions that are not approvable. EPA is taking this action under sections 110 and 179 of the Clean Air Act (Act). In a separate action being published today, we are finalizing action on other provisions of the Billings/Laurel SO2 SIP.

DATES: Written comments must be received on or before July 1, 2002.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202. Copies of the State documents relevant to this action are available for public inspection at the Montana Department of Environmental Quality, Air and Waste Management Bureau, 1520 E. 6th Avenue, Helena, Montana 59620.

Docket: You can inspect the docket concerning this action, docket #R8–99–01, at the Air Program Office, Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202. Call Laurie Ostrand to make an appointment at (303) 312–6437.

FOR FURTHER INFORMATION CONTACT: Laurie Ostrand, EPA, Region 8, (303) 312–6437.

SUPPLEMENTARY INFORMATION:

Table of Contents

Definitions
I. Summary of EPA's Proposed Action on Portions of the State of Montana's July 29, 1998 Submittal and all of the May 4, 2000 Submittal
II. Background
III. EPA's Proposed Action on Portions of the State of Montana's July 29, 1998 Submittal and all of the May 4, 2000 Submittal
A. Why Is EPA Proposing to Partially and Limitedly Approve and Limitedly Disapprove Parts of the July 29, 1998 and May 4, 2000 Submittals?
B. What Happens When EPA Approves Parts of the State of Montana's Plan?
C. What Happens When EPA Limitedly Approves and Limitedly Disapproves Parts of the State of Montana's Plan?
IV. Request for Public Comments
V. Administrative Requirements

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The initials *CEMS* mean or refer to continuous emission monitoring systems.

(iii) The initials *CO* mean or refer to carbon monoxide.

(iv) the words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(v) The initials *FCC* mean or refer to fluid catalytic cracking unit.

(vi) The initials *FIP* mean or refer to Federal Implementation Plan.

(vii) The initials *H2S* mean or refer to hydrogen sulfide.

(viii) The initials *MBER* mean or refer to the Montana Board of Environmental Review.

(ix) The initials *MDEQ* mean or refer to the Montana Department of Environmental Quality.

(x) The initials *NAAQS* mean or refer to the national ambient air quality standards.

(xi) The initials NO_X mean or refer to nitrogen oxides.

(xii) The initials *SIP* mean or refer to State Implementation Plan.

(xiii) The initials *SO2* mean or refer to sulfur dioxide.

(xiv) The words *State* and *Montana* mean the State of Montana, unless the context indicates otherwise.

(xv) The initials *SWS* mean or refer to sour water stripper.

(xvi) The initials *TSD* mean or refer to the Technical Support Document.

(xvii) The initials *YELP* mean or refer to the Yellowstone Energy Limited Partnership.

I. Summary of EPA's Proposed Action on the Portions of the State of Montana's July 29, 1998 Submittal and All of the May 4, 2000 Submittal

We are proposing to approve the following provisions:

- YELP's emission limits in section 3(A)(1) through (3) and reporting requirements in section 7(C)(1)(b) of YELP's exhibit A submitted on May 4, 2000.
- Provisions related to the burning of SWS overheads in the F–1 Crude Furnace (and exhausted through the F–2 Crude/Vacuum Heater stack) at ExxonMobil in sections 3(E)(4) and 4(E) (excluding ''or in the flare'' and ''or the flare'' in both sections), 3(A)(2), and 3(B)(3) of ExxonMobil's exhibit A, submitted on July 29, 1998 and method #6A–1 of attachment #2 of ExxonMobil's exhibit A, submitted on May 4, 2000.
- Minor changes in sections 3, 3(A) and 3(B) (only the introductory paragraphs); and sections 3(E)(3), 6(B)(7), 7(B)(1)(d), 7(B)(1)(j), 7(C)(1)(b), 7(C)(1)(d), 7(C)(1)(f), and 7(C)(1)(l) of ExxonMobil's exhibit A, submitted on May 4, 2000.

We are proposing to limitedly approve and limitedly disapprove the following provisions:

- Provisions related to the fuel gas combustion emission limitations at ExxonMobil in sections 3(B)(2), 4(B), and 6(B)(3) of ExxonMobil's exhibit A, submitted on July 29, 1998 and section 3(A)(1) of ExxonMobil's exhibit A, submitted on May 4, 2000.
- Provisions related to ExxonMobil's coker CO-boiler emission limitation in sections 2(A)(11)(d), 3(B)(1) and 4(C) of ExxonMobil's exhibit A, submitted on May 4, 2000.
- Provisions related to the burning of SWS overheads at Cenex in sections 3(B)(2) and 4(D) (excluding ''or in the flare'' and ''or the flare'' in both sections), 3(A)(1)(d), and 4(B) of Cenex's exhibit A, submitted on July 29, 1998, and method #6A–1 of attachment #2 of Cenex's exhibit A, submitted on May 4, 2000.

We caution that if sources are subject to more stringent requirements under other provisions of the Act (*e.g.,* section 111 new source performance standards; Title I, Part C, (prevention of significant deterioration); or SIP-approved permit programs under Title I, Part A), our approval and limited approval of the SIP (including emission limitations and other requirements), would not excuse sources from meeting these other more stringent requirements. Also, our action on this SIP is not meant to imply any sort of applicability determination

under other provisions of the Act (*e.g.,* section 111; Title I, Part C; or SIP-approved permit programs under Title I, Part A).

II. Background

For a complete discussion of the SO2 SIP issues in the Billings/Laurel, Montana area *see* our July 28, 1999 proposed rulemaking action (64 FR 40791) (docket # III.A.–2).

In our July 28, 1999 action, we proposed to conditionally approve several provisions of the Billings/Laurel SO2 SIP based on commitments from the Governor of Montana to adopt specific enforceable measures by a specified date. *See* the July 28, 1999 **Federal Register** action, starting at page 40802, for a complete discussion of those parts of the plan we proposed to conditionally approve. On May 4, 2000, the Governor of Montana submitted a SIP revision to fulfill these commitments. Since the Governor has fulfilled his commitments, we believe it is not appropriate to take final action on the conditional approval. Instead, in this document we are proposing action on parts of the July 29, 1998 submittal (i.e., those parts we proposed to conditionally approve on July 28, 1999) and all of the May 4, 2000 submittal. In a separate document published today we are taking final action on the remainder of the July 29, 1998 submittal.

III. EPA's Proposed Action on Portions of the State of Montana's July 29, 1998 Submittal and All of the May 4, 2000 Submittal

A. Why Is EPA Proposing to Partially and Limitedly Approve and Limitedly Disapprove Parts of the July 29, 1998 and May 4, 2000 Submittals?

For the reasons given below we are proposing to partially and limitedly approve and limitedly disapprove parts of the July 29, 1998 and May 4, 2000 submittals. EPA believes proposing to partially and limitedly approve these parts of the Billings/Laurel SO2 SIP meets the requirements of section 110(l) of the Act. The provisions of the plan that we are proposing to partially and limitedly approve strengthen the Montana SIP by providing specific emission limits for several SO2 sources in Billings/Laurel. This will achieve progress toward attaining the SO2 NAAQS.

(1) YELP's Emission Limitations

In our July 28, 1999 action on the SO2 SIP for the Billings/Laurel, MT, area (64 FR 40791, page 40802, middle column), we proposed to conditionally approve the SIP as it applies to YELP's emission limitations in sections 3(A)(1) through (3) of YELP's exhibit A, based on the Governor's commitment to revise these provisions in the YELP exhibit. We were concerned that the emission limits in sections 3(A)(1) and (2) of YELP's exhibit A were not practically enforceable and that the emission limits in section 3(A)(3) were not clearly defined. With the May 4, 2000 submittal, the State revised sections 3(A)(1) through (3) of the YELP exhibit A to address our concerns and also revised section 7(C)(1)(b) to clarify a reporting requirement. We are proposing to approve sections 3(A)(1) through (3) and 7(C)(1)(b) of the YELP exhibit A. We realize, however, that the time-of-day-restricted and pro-rated emission limitations may be somewhat more difficult to enforce than a simple fixed limitation. If we were to find that the time-of-day-restricted or pro-rated emission limitations were too difficult to enforce, we would reconsider our approval. Our reconsideration could occur under section 110(k)(6) of the Act or we could complete another SIP Call under sections 110(a)(2)(H) and 110(k)(5) of the Act or take other appropriate action under the Act.

(2) ExxonMobil's F–2 Crude/Vacuum Heater Stack Emission Limitations and Attendant Compliance Monitoring Method

In our July 28, 1999 action (64 FR 40803, middle column) we proposed to conditionally approve the SIP as it applies to the F–2 crude/vacuum heater stack emission limitation and attendant compliance monitoring methods—sections 3(E)(4) and 4(E) (only as they apply to the F–2 crude/vacuum heater stack), 3(A)(2), 3(B)(3), and attachment #2, of ExxonMobil's exhibit A—based on the Governor's commitment to revise attachment #2 of the ExxonMobil exhibit.[1] We were concerned that method #6A of attachment #2, which contains the analytical method used to determine the H2S concentration in the sour water, was not acceptable. (The H2S concentration in the sour water is needed to monitor compliance with the F–2 crude/vacuum heater stack emission limitation.)

On reviewing the May 4, 2000 submittal and subsequent correspondence from the State and ExxonMobil, we believe the revised method #6A–1 (previously called method #6A) of attachment #2 is acceptable. On March 10, 2000, we submitted comments on the draft revision of the method when the State took the rule to public hearing. *See* document #IV.C–30. We wanted assurance that the method would measure all sulfide compounds and that no sulfide compounds would be lost when collecting and analyzing the sample. The State responded to our concern in an April 4, 2000 letter to us (*see* document #IV.C–33) and subsequently forwarded a letter ExxonMobil had sent the MDEQ, dated July 25, 2000 (*see* document #IV.C–37). The April 4, 2000 State letter and July 25, 2000 ExxonMobil letter address our concerns.

We are proposing to approve method #6A–1 of attachment #2 of ExxonMobil's exhibit A submitted with the State's May 4, 2000 submittal, and the attendant compliance monitoring methods, emission limitations and facility modifications in sections 3(E)(4) and 4(E) (excluding ''or in the flare'' and ''or the flare'' in both sections), 3(A)(2), and 3(B)(3) of ExxonMobil's exhibit A, submitted on July 29, 1998.

(3) ExxonMobil's Fuel Gas Combustion Emission Limitations and Attendant Compliance Monitoring Method

In our July 28, 1999 action (64 FR 40803, middle column), we proposed to conditionally approve the SIP as it applies to ExxonMobil's refinery fuel-gas combustion emission limitations and attendant compliance monitoring methods in sections 3(A)(1), 3(B)(2), 4(B), and 6(B)(3), of ExxonMobil's exhibit A, based on the Governor's commitment to address our concerns about the method for monitoring compliance with the emission limitation. We had concerns that H2S concentration in the refinery fuel gas could exceed the levels which the H2S CEMS was able to monitor.

With the May 4, 2000 submittal, the State did not address our concerns regarding the H2S CEMS. On March 10, 2000, we submitted comments on the draft SIP revision the State was taking to public hearing (*see* document #IV.C–30). In the public hearing documents, the State indicated that it would not be revising ExxonMobil exhibit A to address our concerns regarding the H2S CEMS. In our March 10, 2000 letter we indicated that even though it was rare for ExxonMobil's fuel gas H2S concentration to exceed the range of the

[1] Because we believe the emission limit and compliance monitoring method are not separable, in addition to proposing conditional approval of the compliance monitoring method in attachment #2 of ExxonMobil's exhibit A, we also proposed conditional approval of the emission limit and other related provisions in the exhibit. In addition, we proposed to conditionally approve all of attachment #2 of ExxonMobil's exhibit. We should have limited our proposed conditional approval to only method #6A of attachment #2.

H2S CEMS, we believed that ExxonMobil's exhibit A should be revised to address this issue. We suggested that exhibit A could be revised to require an alternative method to monitor H2S concentration when the range of the CEMS is exceeded, or to provide that any time the range of the CEMS is exceeded will be considered a violation of the refinery fuel gas emission limitation. In its April 4, 2000 letter to us, the State indicated that it believes the ExxonMobil fuel gas monitoring method is adequate for compliance monitoring purposes and that it is unnecessary and inappropriate to further modify ExxonMobil's monitoring requirements (*see* document #IV.C–33).

We continue to believe that ExxonMobil exhibit A is not acceptable, because the combustion emission limitation is not enforceable under all scenarios and thus, does not meet the requirements of section 110(a)(2)(A) of the Act that the SIP contain enforceable emission limitations. Therefore, we believe we cannot propose to fully approve the refinery fuel-gas combustion emission limitations and attendant compliance monitoring methods in sections 3(A)(1), 3(B)(2), 4(B), and 6(B)(3) of ExxonMobil's exhibit A.

However, we do believe it is appropriate to propose limited approval and limited disapproval of these provisions. In some cases, a SIP rule may contain certain provisions that meet the applicable requirements of the Act, but that are inseparable from other provisions that do not meet all the requirements. Although the submittal may not meet all of the applicable requirements, we may consider whether the rule, as a whole, has a strengthening effect on the SIP. If this is the case, limited approval may be used to approve a rule that strengthens the existing SIP as representing an improvement over what is currently in the SIP and as meeting some of the applicable requirements of the Act. At the same time we disapprove the rule for not meeting all of the applicable requirements of the Act. Under a limited approval/disapproval action, we approve and disapprove the entire rule even though parts of it do and parts do not satisfy requirements under the Act. The rule remains a part of the SIP, even though it has been limitedly disapproved, because the rule strengthens the SIP. The disapproval only concerns the failure of the rule to meet a specific requirement of the Act and does not affect incorporation of the rule as part of the approved, federally enforceable SIP.

Therefore, we are proposing to limitedly approve and limitedly disapprove sections 3(A)(1), 3(B)(2), 4(B), and 6(B)(3), of ExxonMobil's exhibit. We believe emission limitations under sections 3(A)(1) and 3(B)(2) are enforceable under most but not all scenarios. Because the limitations are not enforceable under all scenarios, we believe the SIP does not fully satisfy the requirement of section 110(a)(2)(A) of the Act that the SIP contain enforceable emission limitations. We believe limitedly approving these provisions will strengthen the SIP. However, we believe the SIP should also be revised to address the enforceability concern. As indicated in a separate action published today, we intend to propose a FIP to gap-fill those provisions of the Billings/Laurel SO2 SIP which are being disapproved. We would do the same here. If this proposed limited disapproval becomes a final action, we intend to address these concerns in a FIP.

(4) ExxonMobil's Coker CO-Boiler Emission Limitation

In our July 28, 1999 action (64 FR 40803, first column) we proposed to conditionally approve the SIP as it applies to the coker CO-boiler stack emission limitation in section 3(B)(1) of ExxonMobil's exhibit A, based on the Governor's commitment to adopt a compliance monitoring method for the coker CO-boiler stack emission limitation. The July 29, 1998 SIP submittal did not contain such a method.

For the May 4, 2000 SIP submittal, the State developed an empirical method to monitor compliance with ExxonMobil's coker CO-boiler stack emission limitation. The compliance monitoring method is an equation that was derived from historical testing and CEMS data, whereby one can determine pounds per hour of SO2 emissions from the coker CO-boiler by multiplying a constant by the coker fresh feed rate. On March 10, 2000, we submitted comments on the draft SIP revision the State was taking to public hearing (*see* document #IV.C–30).

We had three concerns with the State's empirical method for determining compliance with ExxonMobil's coker CO-boiler stack emission limitation: (1) The empirical method does not apply, and hence there is no compliance monitoring method, when the sulfur content of the reactor feed exceeds 5.11 percent of weight. We believe the SIP should contain a compliance monitoring method for all operating scenarios. (2) The compliance monitoring equation is basically the ''best fit'' line through the test data. To be more conservative, we believe the compliance monitoring equation should be the upper bound of the 95% confidence level of the equation. (3) Finally, since a feed-rate meter for the coker unit is required for the compliance monitoring method, the feed-rate meter should be subject to QA/QC requirements similar to those for the FCC feed-rate meter. Therefore, section 6(E) of ExxonMobil exhibit A should be revised to include the fresh feed-rate meter for the coker unit, along with the other monitor and meter mentioned in that section.

In its April 4, 2000 letter to us (document #IV.C–33), the MDEQ did not agree with our concerns (1) and (2), but did agree with our concern in (3). With respect to the concern in (3), MDEQ indicated that it would revise the SIP at a later time to address the concern. With respect to the concern that the empirical method does not provide a compliance monitoring method when the sulfur content of the reactor feed exceeds 5.11 percent by weight, our March 10, 2000 letter suggested that exhibit A should plan for the situation now. We state that exhibit A should indicate that if the sulfur content of the reactor feed exceeds 5.11 percent by weight, then the excess sulfur over the average sulfur content of the reactor feed from the testing results (which is 4.89 percent of weight) shall be assumed to be emitted as SO2 from the coker CO-boiler stack. Our letter provided some suggested calculations for determining the SO2 emissions from the coker CO-boiler when the sulfur content of the reactor feed exceeds 5.11 percent by weight. In its April 4, 2000 letter, the MDEQ provided several reasons why it did not agree with us. First, the MDEQ did not believe that the data supported the assumption that all sulfur contained in the reactor feed at concentrations above 4.89 percent is emitted as SO2. Second, the MDEQ concluded that such an approach would do nothing to improve the compliance monitoring method; it would simply set an arbitrary limit on the process feed rate. Third, the MDEQ believed the empirical method was reliable within the range tested, but had not concluded that the empirical method was not reliable outside that range. Rather, the MDEQ chose to reserve judgement on the empirical method's reliability outside the testing range. Finally, the MDEQ believed that the empirical method would be used infrequently. In addition, MDEQ questioned the reasons for our suggested calculations for determining SO2 emissions from the

coker CO-boiler when the sulfur content of the reactor feed exceeds 5.11 percent by weight.

We still believe that the test method should cover all operating scenarios; as currently written, the SIP provides no way to monitor compliance with the limit if the sulfur content of the reactor feed exceeds 5.11 percent by weight. Because the limitations are not enforceable under all scenarios, we believe the SIP does not satisfy section 110(a)(2)(A) of the Act. Therefore, there needs to be a method to monitor compliance when the sulfur content of the reactor feed exceeds 5.11 percent by weight. That method could be similar to the approach we suggested in our March 4, 2000 letter, or some other acceptable method.

With respect to the concern regarding the upper bound of the equation, we indicated in our March 4, 2000 letter to MDEQ that the compliance monitoring equation should be the upper bound of the 95% confidence level of the equation, in lieu of the ''best fit'' line through the test data. In an April 4, 2000 letter to us, MDEQ indicated that it believed the ''best fit'' line was appropriate because the coefficient of correlation (r) between the coker fresh feed rate and the corresponding SO2 emission is approximately 0.95, and the results of the Relative Accuracy (RA) test on the proposed monitoring method indicate an RA of 4.9%. An r-value 0.95 is generally considered indicative of a very strong relationship. Also, MDEQ believed that under our SO2 and NOx CEMS requirements, CEMS performance is considered acceptable if the RA tests yield a value of 20% or less.

We still believe that a conservative approach is necessary to assure that the empirical equation will adequately monitor compliance and thus assure attainment of the NAAQS. As can be seen in the scatter diagram in figure 1 of Tim Schug's August 16, 1999 letter to the MDEQ, contained in document # IV.C.–29, there are many points above the regression line (the regression line plus a constant is the equation used to monitor compliance with the coker CO-boiler emission limitation). Therefore, the regression line underestimates the measured emissions for these points. Using the 95% confidence interval (or some other approvable approach) would assure that the measured emissions for all test data points fall below the regression line.

Because of these three concerns, we cannot propose to fully approve the coker CO-boiler stack emission limitation and attendant compliance monitoring method in sections 3(B)(1), 2(A)(11)(d) and 4(C) of ExxonMobil's exhibit A, submitted on May 4, 2000. However, we believe it is appropriate to limitedly approve and limitedly disapprove these provisions. *See* discussion above, in section III.A.3, concerning limited approval and limited disapproval of SIPS.

Therefore, we are proposing to limitedly approve and limitedly disapprove sections 2(A)(11)(d), 3(B)(1) and 4(C) of ExxonMobil's exhibit A submitted on May 4, 2000. We believe the emission limitations under section 3(B)(1) are enforceable under some but not all scenarios. Because the emission limitations are not enforceable under all scenarios, we believe the SIP does not satisfy section 110(a)(2)(A) of the Act. We believe limitedly approving these provisions will strengthen the SIP. However, we believe the SIP should also be revised to address the concerns mentioned above. As indicated in a separate action published today, we intend to propose a FIP to gap-fill those provisions of the Billings/Laurel SO2 SIP which are being disapproved. We would do the same here. If this proposed limited disapproval becomes a final action, we intend to address these concerns in a FIP.

(5) Other Minor Changes to ExxonMobil's Exhibit A

In the May 4, 2000 submittal, other minor changes were made to ExxonMobil's exhibit A. The following sections were added or revised: section 3 was revised to add new introductory text; the introductory text of sections 3(A) and 3(B) was rewritten to more clearly explain how the emission limitations apply; section 3(E)(3) was revised to correct a referenced date; and sections 7(B)(1)(j) and 7(C)(1)(1) were added and sections 6(B)(7), 7(B)(1)(d), 7(C)(1)(b), 7(C)(1)(d) and 7(C)(1)(f) were revised because of other changes needed to address the coker CO-boiler issue.

We believe these minor changes are acceptable and are proposing to approve these additions and revisions.

(6) Cenex Sour Water Stripper (SWS)

In our July 28, 1999 action (64 FR 40803, right column) we proposed to conditionally approve the SIP as it applies to the combustion source emission limitation and the attendant compliance monitoring methods, sections 3(B)(2) and 4(D) (only as they apply to the main crude heater), 3(A)(1)(d), 4(B), and attachment #2, of Cenex's exhibit A, based on the Governor's commitment to revise attachment #2 of the Cenex exhibit.[2] We were concerned that method #6A of attachment #2, which contains analytical method used to determine the H2S concentration in the sour water, was not acceptable. (The H2S concentration in the sour water is needed to monitor compliance with the combustion source emission limitation when sour water stripper emissions are being combusted in the main crude heater.)

On reviewing the May 4, 2000 submittal and subsequent correspondence from the State and Cenex, we still believe the revised method #6A–1 (previously called method #6A) of attachment #2 is not acceptable. On March 10, 2000, we submitted comments on the draft revision of attachment #2 to Cenex's exhibit A when the State took the rule through public hearing. *See* document #IV.C–30. We wanted assurance that the method would measure all sulfide compounds and that no sulfide compounds would be lost as a result of collecting and analyzing the sample. The State responded to our concern in an April 4, 2000 letter to us (*see* document #IV.C–33) and subsequently followed up with a September 5, 2000 telefax containing a letter from Cenex to the MDEQ dated August 30, 2000 (*see* document #IV.C–38). Based on the September 5, 2000 telefax and August 30, 2000 Cenex letter, it does not appear that Cenex's method #6A–1 of attachment #2 will assure that all sulfide compounds will be measured.

Therefore, we believe we cannot propose to fully approve the combustion source emission limitation and attendant compliance monitoring methods—sections 3(A)(1)(d), 3(B)(2), 4(B), 4(D) and method #6A–1 of attachment #2 of the Cenex exhibit. However, we do not believe it is appropriate to limitedly approve and limitedly disapprove these provisions (excluding ''or in the flare'' and ''in the flare'' in sections 3(B)(2) and 4(D)). *See* discussion above, in section III.A.3, concerning limited approval and limited disapproval of SIPS.

Therefore, we are proposing to limitedly approve and limitedly disapprove sections 3(B)(2) and 4(D) (excluding ''or in the flare'' and ''in the flare'' in both sections), 3(A)(1)(d), 4(B), submitted on July 29, 1998, and method

[2] Because we believe the emission limit and compliance monitoring method are not separable, in addition to proposing conditional approval of the compliance monitoring method in attachment #2 of Cenex's exhibit, we also proposed conditional approval of the emission limit and other related provisions in Cenex's exhibit. Also, we proposed to conditionally approve all of attachment #2 of Cenex's exhibit. We should have limited our proposed conditional approval to only method #6A of attachment #2 of Cenex's exhibit.

#6A–1 of attachment #2 of the Cenex exhibit A submitted on May 4, 2000. We believe the emission limitations under 3(A)(1)(d) are enforceable under most but not all scenarios. The emission limitations may not be enforceable when sour water stripper overheads are burned in the main crude heater. Because the limitations are not enforceable under all scenarios, we believe the SIP does not meet section 110(a)(2)(A) of the Act. We believe limitedly approving these provisions will strengthen the SIP. However, we believe the SIP should also be revised to address the enforceability concern. As indicated in a separate action published today, we intend to proposed a FIP to gap-fill those provisions of the Billings/Laurel SO2 SIP which are being disapproved. We would do the same here. If this proposed limited disapproval becomes a final action, we intend to address these concerns in a FIP.

B. What Happens When EPA Approves Parts of the State of Montana's Plan?

One we approve a SIP, or parts of a SIP, the portions approved are legally enforceable by us and citizens under the Act.

C. What Happens When EPA Limitedly Approves or Limitedly Disapproves Parts of the State of Montana's Plan?

Once we limitedly approve/disapprove a SIP, or parts of SIP, the SIP provisions are legally enforceable by us and citizens under the Act. Under a limited approval/disapproval action, we approve and disapprove the entire rule even though parts of it do and parts do not satisfy requirements under the Act. The rule remains a part of the SIP, however, even though there is a disapproval, because the rule strengthens the SIP. The disapproval only concerns the failure of the rule to meet specific requirements of the Act and does not affect incorporation of the rule as part of the approved, federally enforceable SIP.

IV. Request for Public Comment

We are soliciting public comment on all aspects of this proposed SIP rulemaking action. Send you comments in duplicate to the address listed in the front of this Notice. We will consider your comments in deciding our final action if your letter is received before [insert date, 30 days from publication].

V. 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 proposed rule is not subject to Executive Order 13045 because 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 proposed 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 proposes to partially or limitedly approve and limitedly disapprove a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirement of section 6 of the Executive Order do not apply to this rule.

D. Executive Order 13175

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 proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This action does not involve or impose any requirements that affect Indian Tribes. Thus, Executive Order 13175 does not apply to this rule.

E. Executive Order 13211

This proposed 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 proposed partial and limited approval 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 approve requirements that the State is already

imposing. 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).

Moreover, EPA's proposed limited disapproval rule will not have a significant impact on a substantial number of small entities because the proposed limited disapproval action only affects two industrial sources of air pollution in Billings/Laurel, Montana: Cenex Harvest Cooperatives and ExxonMobil Company, USA. Only a limited number of sources are impacted by this action. Furthermore, as explained in this action, the submission does not meet the requirements of the Clean Air Act and EPA cannot approve the submission. The proposed limited disapproval will not affect any existing State requirements applicable to the entities. Federal disapproval of a State submittal does not affect its State enforceability. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

G. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepared 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 proposed partial and limited approval and limited disapproval actions do 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 partially and limitedly approve and limitedly disapprove 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, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

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

March 26, 2002.

Jack M. McGraw,

Acting Regional Administrator, Region 8.

[FR Doc. 02–10333 Filed 5–1–02; 8:45 am]

BILLING CODE 6560–50–M

Federal Register

Thursday,
May 2, 2002

Part III

Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 35

Standardization of Generator Interconnection Agreements and Procedures; Proposed Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM02–1–000]

Standardization of Generator Interconnection Agreements and Procedures; Notice of Proposed Rulemaking

April 24, 2002.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations to require public utilities to file the standardized interconnection agreement and procedures we will adopt in this proceeding and to take and provide interconnection service under them. The agreement and procedures also would apply to any non-public utility that seeks voluntary compliance with jurisdictional transmission tariff reciprocity conditions.

DATES: Comments are due June 17, 2002. Comments should not exceed 30 double-spaced pages and should include an executive summary.

ADDRESSES: Send comments to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Patrick Rooney (Technical Information), Office of Market, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 501–5546.

Roland Wentworth (Technical Information), Office of Market, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–1288.

Michael G. Henry (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–0532,

SUPPLEMENTARY INFORMATION:

I. Introduction

The electric power industry continues to be an industry in transition. Where the industry was once primarily the domain of large, vertically integrated utilities providing power at cost-based rates, companies selling unbundled power at rates set by competitive markets have become common. But balanced market rules and sufficient infrastructure continue to be essential for achieving a seamless nationwide power market that will provide customers with reasonably priced and reliable service.

The Commission continues to work to encourage fully competitive bulk power markets. The effort took its first big step with Order No. 888,[1] which required public utilities to provide others comparable access to their transmission lines, and continued with Order No. 2000,[2] which began the process that will result in the development of a small number of Regional Transmission Organizations (RTOs). Where necessary, the Commission has taken action to complete the establishment of robust, seamless, competitive, wholesale electric markets. To this end, the Commission currently is preparing a rulemaking on Standard Market Design that will propose a reformed open access transmission tariff (OATT) that will be applicable to RTOs and other public utilities that own, operate, or control interstate transmission facilities.

While the subject of interconnection arose in the Order No. 888 rulemaking, no explicit reference to interconnection appeared in the *pro forma* tariff. Nevertheless, interconnection is a critical component of open access transmission service, and standard interconnection agreements and procedures are essential for providing the right incentives for both transmission providers and generators. Good interconnection standards and procedures will serve several important functions: they will encourage needed investment in infrastructure, limit opportunities for transmission providers to favor their own generation, and ease entry for competitors while ensuring efficient siting decisions.

To date, the Commission has addressed interconnection issues on a case-by-case basis. However, these issues have arisen with increasing frequency as competitive markets have reacted to supply shortages. Generators seeking to build and interconnect their new energy resources with interstate transmission have been hindered by the lack of standardized interconnection procedures and agreements that would enable an expeditious and economic approval and construction process. As discussed below, it has become apparent that the case-by-case approach is insufficient to address these problems and there is a pressing need for a single, uniformly applicable interconnection agreement and set of procedures. Having a standardized set of procedures applicable to all interstate transmission facilities will expedite the development of new generation.

Our effort to address interconnection issues generically presents numerous challenges. The electric industry is faced with the competing need, on the one hand, for additional generation and transmission infrastructure that will ensure reliability and, on the other hand, for efficient price signals for appropriate siting. Efficiency considerations include the assignment of cost responsibility for system upgrades necessary to interconnect a new generator.

To properly implement an interconnection agreement and set of procedures, numerous issues must be resolved, among them: (1) How to ensure that accurate interconnection studies are produced in a timely fashion; (2) the extent to which any transmission data necessary for interconnection should be made transparent (*i.e.,* available to all); (3) how to create the proper incentives for transmission providers to treat all generation comparably; (4) how to allocate equitably the costs and benefits of siting generation; and (5) who should pay for the costs of system upgrades associated with interconnection, including the issue of whether the generator should be required to initially finance the cost of systems upgrades associated with interconnection.

The effort to generically address cost responsibility for system upgrades necessary to interconnect new generators is further complicated by prior treatment of these costs for existing Transmission Providers' system facilities that are necessary to interconnect their own generators to the transmission system. With the exception of the generator step-up transformers (GSUs), Transmission Providers' interconnection facility costs are usually recovered through the Transmission Providers' OATT rates, even when those facilities are radial or would not otherwise be necessary but for the

[1] Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 Fed. Reg. 21,540 (May 10, 1996), FERC Stats. and Regs. ¶ 31,036 (1996), *order on reh'g,* Order No. 888–A, 62 Fed. Reg. 12,274 (March 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g,* Order No. 888–B , 81 FERC ¶ 61,248 (1997), *order on reh'g,* Order No. 888–C , 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom.* Transmission Access Policy Study Group v. FERC, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom.* New York v. FERC, 122 S.Ct. 1212 (2002).

[2] Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (Jan. 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g,* Order No. 2000–A, 65 Fed. Reg. 12,088 (March 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom.* Public Util. Dist. No. 1 v. FERC, 272 F.3d 607 (D.C. Cir. 2001).

Transmission Providers' generator. Treating Transmission Providers' own generation different than generation owned by others may put the other generators at a competitive disadvantage.

The proposed rule proposes a standard interconnection agreement (IA) and standard interconnection procedures (IP) that will be made part of existing and future OATTs. The Commission believes that these documents will ensure that reliability needs will be met while providing a reasonable balance between competing needs for uniformity and flexibility.

II. Discussion

A. The Need for Generic Action

Order No. 888 set forth the Commission's open access principles as they apply to transmission service, but it did not directly address generator interconnections. Later, in *Tennessee Power Company* (*Tennessee*), 90 FERC ¶ 61,238 (2000), the Commission clarified that interconnection is an element of transmission service and must be offered under the terms of the *pro forma* tariff. In *Tennessee* we encouraged, but did not require, transmission providers to revise their open access tariffs to include interconnection procedures, including standard interconnection agreements and specific criteria, procedures, milestones, and time lines for evaluating interconnection requests.[3]

Accordingly, a number of transmission providers have filed interconnection procedures as part of their *pro forma* tariffs.[4] Some of these providers have filed *pro forma* interconnection agreements; others have submitted only procedures explaining how interconnection requests will be processed.

However, many industry participants remain dissatisfied with existing interconnection policy and procedures. In a number of contexts, the Commission has received comments from both generators and transmission providers concerning existing interconnection policy and procedures.

Generators assert, among other things, that: (1) They have experienced difficulty securing interconnection without requesting delivery, (2) the treatment they receive is not comparable to the treatment received by the transmission provider's own generation, (3) system upgrade costs charged initially to generators are sometimes not related to the interconnection, (4) there are delays and uncertainty due to the lack of binding commitments and firm deadlines in the transmission providers' *pro forma* tariffs, and (5) there is a lack of transparency of transmission information needed to make an independent assessment of the impact of an interconnection request.

Transmission providers argue that they need: (1) Minimum commitments from generators seeking to interconnect prior to performing studies to weed out those who will likely never interconnect, resulting in a more manageable and realistic queue, (2) assurance that their control area will benefit from, or at least not be burdened by, adding generators, particularly when the new generator seeks to locate on one system but serve load on another, and (3) improved communication between the generators and the loads they serve.

Interconnection plays a crucial role in bringing much-needed generation to the grid. We expect that a standard interconnection agreement and set of procedures will resolve these disputes and foster increased economic generation development and reliability through appropriate incentives for both transmission providers and generators. Accordingly, the Commission proposes to adopt a standard generator interconnection agreement and standard generator interconnection procedures. These will be required as amendments to the OATTs of all public utilities that own, operate, or control transmission facilities under the Federal Power Act (FPA).

B. Legal Authority

In fulfilling its responsibilities under FPA sections 205 and 206,[5] the Commission is required to address, and has the authority to remedy, undue discrimination. The Commission must ensure that the rates, contracts, and practices affecting jurisdictional transmission do not reflect an undue preference or advantage and are just and reasonable. Additionally, as discussed in Order No. 888, there is a substantial body of case law that holds that the Commission's regulatory authority under the FPA ''clearly carries with it the responsibility to consider, in appropriate circumstances, the anticompetitive effects of regulated aspects of interstate utility operations pursuant to [FPA] §§ 202 and 203, and under like directives contained in §§ 205, 206, and 207.'' [6] The Supreme Court recently affirmed the Commission's decision to exercise this authority and require non-discriminatory (comparable) open access as a remedy for undue discrimination.[7]

In Order No. 888, the record showed that public utilities owning or controlling jurisdictional transmission facilities had the incentive to engage in, and had engaged in, unduly discriminatory transmission practices.[8] The Commission also thoroughly discussed the legislative history and case law involving sections 205 and 206, and concluded that as a matter of law, it had the authority and responsibility to remedy the undue discrimination it had found by requiring mandatory open access, and that it could do so through a rulemaking on a generic, industry-wide basis.[9]

After issuing Order No. 888, the Commission identified interconnection as an element of transmission service that is required to be provided under the open access *pro forma* tariff.[10] Thus, the Commission may order generic interconnection terms and procedures pursuant to its authority to remedy undue discrimination and preferences under sections 205 and 206 of the FPA and further described in Order No. 888.

C. Commission Interconnection Case Law

The Commission's current interconnection policy informs this generic effort. The cases addressing interconnection have been preoccupied with drawing distinctions between interconnection and network facilities, and between interconnection service and transmission service. The Commission has developed a simple test

[3] *See, e.g.,* Commonwealth Edison Co., 91 FERC ¶ 61,083 (2000).

[4] *See, e.g.,* American Electric Power Service Corp., 91 FERC ¶ 61,308 (2000), *order denying reh'g and granting clarification,* 94 FERC ¶ 61,166 (2001), *order dismissing request for clarification,* 95 FERC ¶ 61,130 (2001), *appeal docketed sub nom. Tenaska, Inc.* v. *FERC,* No. 01–1194 (D.C. Cir. April 23, 2001); Southwest Power Pool, Inc., 92 FERC ¶ 61,109 (2000); Carolina Power & Light Co., 93 FERC ¶ 61,032 (2000), *reh'g denied,* 94 FERC ¶ 61,165 (2001), *appeal docketed sub nom. Tenaska, Inc.* v. *FERC,* No. 01–1195 (D.C. Cir. April 23, 2001); Virginia Electric & Power Co., 93 FERC ¶ 61,307 (2000), *order on clarification,* 94 FERC ¶ 61,045 (2001), *reh'g denied,* 94 FERC ¶ 61,164 (2001), *appeal docketed sub nom. Tenaska, Inc.* v. *FERC,* No. 01–1196 (D.C. Cir. April 23, 2001); Consumers Energy Co., 93 FERC ¶ 61,339 (2000), *order on reh'g and clarification,* 94 FERC ¶ 61,230 (2001), *order on clarification and denying reh'g,* 95 FERC ¶ 61,131 (2001).

[5] 16 U.S.C. 824d, 824e (1994).

[6] *Gulf States Utils. Co.* v. *FPC,* 411 U.S. 747, 758–59 (1973); *see City of Huntingburg* v. *FPC,* 498 F.2d 778, 783–84 (D.C. Cir. 1974) (noting Commission duty to consider the potential anticompetitive effects of a proposed interconnection agreement).

[7] *New York* v. *FERC,* 122 S.Ct. 1212 (2002) .

[8] Order No. 888 at 31,679–84; Order No. 888–A at 30,209–10.

[9] Order No. 888 at 31,668–73, 31,676–79; Order No. 888–A at 30,201–12; TAPS v. FERC, 225 F.3d 667, 687–88 (D.C. Cir. 2000).

[10] *See* Tennessee Power Co., 90 FERC ¶ 61,238 at 61,761, *reh'g dismissed,* 91 FERC ¶ 61,271 (2000).

for distinguishing interconnection from transmission facilities: network facilities include all facilities at or beyond the point where the customer or generator connects to the grid.[11] It follows that interconnection facilities are those found between the generator and the grid connection.

Regarding the services themselves, the Commission has clarified that a generator need not enter into a transmission service agreement to interconnect with a transmission system.[12] At the same time, interconnection service or an interconnection by itself does not confer any delivery rights from the generating facility to any points of delivery.[13] Thus, the Commission has distinguished the upgrades and services related to interconnection and those related to transmission when a customer secures the interconnection component of transmission service separately from the delivery component.[14]

D. Interconnection ANOPR

The Commission issued an Advance Notice of Proposed Rulemaking (ANOPR) on October 25, 2001.[15] As a point of departure, the ANOPR presented the Standard Generator Interconnection Agreement and Generation Interconnection Procedure of the Electric Reliability Council of Texas (ERCOT).[16] The Commission supplemented and modified the ERCOT documents with various ''best practices'' that were identified in Attachment A to that order. These ''best practices'' were based, in part, on generator interconnection agreements and procedures that have been approved by the Commission in past cases. The ANOPR also instructed the parties to assume that the Commission's current pricing policy, as described in an ANOPR attachment, would remain effective.

Commenters advocating a standard agreement and procedures other than the ERCOT model as supplemented and modified by the ''best practices'' in Attachment A were asked to specify in detail how their proposals differed and were superior to or more appropriate than the ERCOT-plus-best-practices model.

The Commission also initiated a consensus-making process for industry participants in which interested members of the electric industry, government and public had an opportunity to provide meaningful input.

Public meetings of the stakeholders were conducted from November 2001 through January 2002 and included plenary sessions, private caucuses and drafting sessions. An interactive web site was established, which permitted any interested participant to view, post, and access documents, and post comments. These procedures made it possible for interested persons anywhere to participate. Public meetings generally were held at the Commission but also in Philadelphia and Denver in response to the National Association of Regulatory Utility Commissioner's (NARUC's) request that we hold some meetings outside of Washington, DC.

Consensus was largely reached by the participants on the scope of interconnection service, responsibility for facilities, and interconnection procedures and agreements. Two drafting groups developed standard IA and IP documents. These drafting groups, generally comprising representatives from each of the electric market segments, met intensively for three weeks in December 2001 and January 2002. Their efforts resulted in two documents that have largely shaped the text of this NOPR. We will refer to these documents as the Consensus IA and IP (while recognizing that a consensus was not reached on all matters).

The drafting groups reached agreements on many issues and successfully narrowed the areas of disagreement. The Consensus IA and IP present alternative positions for certain provisions. For others, there is a reasonable degree of consensus among the industry participants. No party, however, has endorsed all parts of either Consensus IA or IP, or even all parts of all alternative provisions proposed by the sector to which that party belongs. In addition, some of the Consensus IA and IP provisions [17] have not been discussed by the Drafting Groups because of lack of time.

The consensus proposal was also the subject of a public meeting held on January 17–18, 2002.[18] Moreover, by February 1, 2002, more than 120 parties had filed comments on the ERCOT-plus-best-practices model as well as on the Consensus IA and IP. On the whole, the commenters support the Commission's efforts to standardize generator interconnection procedures and interconnection agreements to promote efficiency in energy markets. The commenters, however, also raise questions with respect to specific provisions in the interconnection agreements and procedures. We will not address the comments in detail in this NOPR, since we are requesting further comment, but they have informed our analysis of the issues.

E. ANOPR Comments on the IA and IP

Although the parties did not reach consensus on all provisions, the documents reflect substantial consensus among diverse interests. The Commission used these documents and the subsequent comments to create the proposed standardized IA and IP documents (''NOPR IA and IP''). Generally, the NOPR uses the Consensus IA and IP provisions where there was consensus. When the participants could not reach consensus on a particular issue and options were presented in the filed agreement and procedures, we sought to minimize barriers to entry of new generation as much as possible without increasing the risk of reliability problems. Where issues remained unresolved and no options were presented, the proposal generally adopts the ERCOT text. Also, the proposal generally adopts the ERCOT text where the parties noted they had changed the text but had not completed their discussions before filing the documents.

With certain exceptions, the majority of Generators and Transmission Providers endorse the inclusion of two products (Energy and Network Resource Interconnection Services [19]) in the Consensus IA and IP. Likewise, most Generators and Transmission Providers agree in concept with the principles governing queuing and restudy

[11] Entergy Gulf States, Inc., 98 FERC ¶ 61,014 at 61,023, *reh'g denied,* 99 FERC ¶ ____ (2002); *see* Public Service Co. of Colorado, 59 FERC ¶ 61,311 (1992), *reh'g denied,* 62 FERC ¶ 61,013 at 61,061 (1993).

[12] Tennessee Power Co., 90 FERC ¶ 61,238 at 61,761 (2000).

[13] *See* Arizona Public Service Co., 94 FERC ¶ 61,027 at 61,076, *order on reh'g,* 94 FERC ¶ 61,267 (2001).

[14] Nevada Power Co., 97 FERC ¶ 61,227 at 62,035–36 (2001), *reh'g pending* (*Nevada Power*).

[15] Standardizing Generator Interconnection Agreements Procedures, Advance Notice of Proposed Rulemaking, 66 Fed. Reg. 55,140 (Nov. 1, 2001), FERC Stats. & Regs. ¶ 35,540 (2001).

[16] The ERCOT agreement and procedures were attached to the ANOPR as Appendix A.

[17] Sixteen of 31 articles of the Consensus IA had not been discussed by the IA Drafting Group.

[18] Notice of Staff Public Meeting, 67 Fed. Reg. 887 (Jan. 8, 2002).

[19] Energy Resource Interconnection Service allows the Generator to connect its Facility to the Transmission System, thereby becoming eligible to deliver output using existing firm or non-firm capacity on an ''as available'' basis. IA 4.1.1.1. Network Resource Interconnection Service allows the Generator to connect its Facility in a manner comparable to that in which the Transmission Provider integrates its generating facilities to service native load or, in an independent system operator (ISO) or RTO with market-based congestion management, as in the same manner as other Network Resources. IA 4.1.2.1.

provisions set forth in the Consensus IA and IP.

While the Generators and Transmission Providers agree that the differences between the parties have narrowed significantly, disagreements remain. The following section discusses several of the disagreements and how we decided what to propose in the NOPR IA and IP.

1. Coordination With Affected Third Party Systems (IP § 3.5)

The interconnection of a generator may affect other systems. This requires the Transmission Provider to coordinate studies and upgrades to accommodate the interconnection request. Transmission Providers suggest language that requires only reasonable efforts to coordinate with affected third-party systems. Generators generally want transmission providers and affected third parties to be responsible for coordinating and performing all necessary studies and upgrades. Generators also do not want to condition interconnection on the completion of third-party upgrades.

The NOPR IP adopts the Generators' position. We believe that their approach reduces unnecessary delay by recognizing that where multiple transmission systems are affected, coordination studies and upgrades must be performed for the successful completion of a new generation project. We agree with the Generators that the alternative would likely delay the completion of the interconnection project through an iterative or sequential study process. Also, as we explicitly stated in *Nevada Power*, third-party interconnection studies and network upgrades do not apply to interconnection but to transmission delivery service.[20] So, while the generator can get interconnected to the Transmission Provider's system, it cannot deliver or may not be able to deliver all of its power for the facility until the third-party upgrades are completed. Finally, by mandating that the affected third party coordinate interconnection study and network upgrades and additional processes with the Transmission Provider, it gives Transmission Providers another incentive to move quickly to become RTOs because RTO structure requires greater regional coordination and a move to single system planning.

[20] Nevada Power Co., 97 FERC ¶ 61,227 at 62,035–36 (2001), *reh'g pending.*

2. Interconnection Construction Acceleration (IP § 12.3)

Under certain circumstances, Transmission Providers may wish to accelerate construction of network facilities either on their own initiative or to accommodate another generator's request to do so. Transmission Providers want the ability to accelerate the construction of network upgrades without having to consult with the generator who will be charged for the upgrade. Generators agree that acceleration should be permitted and generally agree with paying for accelerated upgrades as long as they either receive credits or are reimbursed by the generator requesting the accelerated construction. But Generators maintain that the Transmission Provider should bear the costs of any accelerated construction it undertakes for its own benefit or for the benefit of another generator without consultation with the Generator.

The NOPR IP adopts the Generators' proposal. The Commission believes that it is important to allow Transmission Providers to accelerate the construction of network upgrades. The approach offered by the Generators offers generators fair compensation (in the form of transmission credits) for costs that will be repaid by the Transmission Provider once the Transmission Provider recovers them from the generator requesting accelerated construction. It does not appear reasonable that, where a generator is expected to pay for construction of facilities, the Transmission Provider could accelerate the timing and therefore the need for financing without prior consultation.

3. Small Generator Interconnection Issues (IP § 14; IP Appendix 6)

Small Generators want the ability to interconnect without having to pay the cost of the interconnection studies and upgrades or having to deal with local and state regulatory requirements that may hinder development. NARUC, state regulatory agencies and certain Transmission Providers request that the Commission state unequivocally that states have jurisdiction over distribution systems and clarify that the Commission's treatment of Small Generators applies only to transmission.

The actions proposed here are well within the authority granted to the Commission in the FPA; it is clear that the FPA grants federal jurisdiction over transmission by a public utility in interstate commerce and when public utilities make sales for resale in interstate commerce.[21] Within this jurisdiction, we propose that the NOPR IA and IP will apply only when a generator interconnects to the Transmission Provider's transmission system or makes wholesale sales in interstate commerce at either the transmission or distribution voltage level.[22]

Regarding the request to exempt Small Generators from paying for study and upgrade costs, we are not inclined to adopt this proposal. Rather, we propose that Small Generators should be responsible for all studies and upgrades needed to accommodate their facilities. The utilities' other transmission customers should not have to subsidize Small Generators. However, we propose an accelerated procedure for Small Generators and system studies limited in scope (i.e., limited only to the immediate vicinity of the Small Generator's interconnection) and that the Transmission Provider use existing studies to the extent possible at no cost to the Small Generator.

4. Regional Differences

The consensus documents require all affected entities to adopt standard interconnection procedures and agreements regardless of the geographical location or configuration of the electric systems. Yet there is significant disagreement about how best to incorporate regional differences. Transmission Providers, state regulators and others contend that the IA and IP documents must acknowledge regional differences (such as system operations, reliability, environmental concerns, etc.). Florida Public Service Commission, for example, says that the IP and IA must take into account the special protective relaying schemes needed by Florida utilities to ensure that the transmission separation unique to Florida due to its peninsular nature is minimized. Generators suggest that these types of regional differences can be addressed when the compliance filings are made after the Final Rule is issued.

While the Transmission Providers, state regulators and others may have raised legitimate concerns regarding regional differences, they have not specifically identified the modifications

[21] *See* New York v. FERC, 122 S. Ct. 1212 (2002).

[22] For example, the IA and IP would apply if the Generator interconnects to the Transmission Provider's transmission system (regardless of whether the output is being sold at wholesale or retail) or if the Generator interconnects to the Transmission Provider's distribution system and the output is being sold at wholesale. However, the IA and IP would not apply if the Generator connects to a distribution system but hast not yet proposed to sell the output at wholesale.

that need to be made to the IA and IP to accommodate these differences. In some instances, parties have raised concerns that are outside the standard terms and conditions of the NOPR IA and IP. The Commission proposes to adopt the approach used in Order No. 888: however, if commenters identify legitimate concerns about a need for regional variations in specific provisions in the NOPR IA and IP, the Commission will consider revisions to these provisions that would permit regional variations as appropriate.[23]

5. Tax Indemnification Provisions (IA § 5.16)

IRS Notices 2001–82 and 88–129 suggest that contributions by Generators to Transmission Providers in connection with interconnection and network facility construction are non-taxable. Consistent with these IRS notices, the draft tax provisions in the NOPR treat the funding as a non-taxable event. The IRS is moving to further address these and other tax indemnification issues raised in the ANOPR proceeding.

Transmission Providers are concerned that the IRS Notices do not cover either transactions between a Generator and certain Transmission Providers or transmission credits for network upgrade costs. Accordingly, Transmission Providers want gross-up or secured indemnity from generators until the IRS rules that such items are not taxable. Generators argue that the IA tax provisions were negotiated by tax professionals who are familiar with and represent all sides of the electric power industry, including the Transmission Providers. They ask the Commission to either accept the tax section in its entirety or eliminate it from the IA.

The NOPR IA leaves section 5.14 in place, but adds a clarification that provides Transmission Providers with full reimbursement in the future if the IRS determines that these type of events are taxable.

6. Parties to the Agreement

The participants disagree as to the appropriate party or counter-party to the IA. Transmission Providers generally believe that the Transmission Owner, whether or not it is also the Transmission Provider, should be the sole signatory to the IA. Generators believe in general that, if the Transmission Owner and Transmission Provider are separate entities, both must sign the IA.

The Commission proposes that the Transmission Provider be required to sign the agreement because this service will be provided under the Transmission Provider's OATT. Moreover, no one disputes that the Transmission Owner must sign an agreement with the Generator, and it would be a waste of resources for the Transmission Provider and Generator to have to enter into separate agreements when one agreement would suffice. Accordingly, the Commission proposes that the Transmission Provider, and, to the extent necessary, the Transmission Owner, must become signatories to the IA.

7. Liquidated Damages (IA § 5.1, IP § 13.5)

Liquidated Damages provisions appear in both the IA and the IP. The liquidated damages provision in the Consensus IA is applicable if a Generator chooses the construction option described in IA section 5.1.B. Under this option, if a Transmission Provider fails to complete the interconnection facility by the in-service date or the network upgrades by the commercial operation date, the Transmission Provider shall pay the Generator liquidated damages. Liquidated damages would be limited to 0.5% per day of the actual aggregate costs of the interconnection facilities or network upgrades for which the Transmission Provider remains responsible, and such total shall not exceed 20% of the Transmission Provider's actual costs. The participants reached agreement on this provision in the Consensus IA.

But the participants disagree about the liquidated damages provision in the IP. The Generators propose a provision that would make Transmission Providers pay liquidated damages if the Transmission Provider fails to meet any of its obligations in the IP and does not remedy the failures within 15 business days. Liquidated damages would be 1% of the actual costs of the applicable study cost per day, but would not exceed 50% of the actual cost of the applicable study. Also, upon expiration of the remedy period, the Transmission Provider would refund any deposit amount for the applicable study that the Generator had paid in excess of actual reasonably incurred study costs.

Several transmission owners object to the Generators' proposal, stating that a Transmission Owner derives no profit from performing studies under the IP; it recovers only actual study costs. They reason that it is unfair to force a Transmission Owner to assume the risk of liquidated damages where there is no concomitant financial benefit. The National Rural Electric Cooperative Association and the American Public Power Association argue that the liquidated damages would be especially burdensome on cooperatives and public power providers because of their limited resources. They propose a reciprocal liquidated damages provision for generators applicable to the milestones that a generator must satisfy. The Arizona PSC argues that transmission providers should not be liable for delay because factors beyond their control could affect the schedule. It also argues that the Commission lacks the authority under the FPA to impose damages and argues that the liquidated damages provision is an assessment for nonperformance.

Because the participants reached consensus on the liquidated damages provision in the consensus IA, the Commission has included this provision in the NOPR IA. As for the IP, the Commission will leave the Generators' liquidated damages language in the NOPR IP. The Commission did not allow for liquidated damages in the OATT provisions related to facilities studies. [24] Nevertheless, we invite comments on whether the Commission should make the Generator's proposed provision a part of the IP in the final rule.

F. Pricing Underlying the Consensus Documents

For purposes of negotiating the IA and IP, participants were directed to assume our current interconnection pricing policy (see Attachment B to the ANOPR). While the Commission indicated that pricing would be addressed in a subsequent rulemaking, the ANOPR participants have argued forcefully that the interconnection products, terms, and conditions cannot be divorced from the underlying pricing that was assumed during negotiations. Nearly all participants have cautioned that the consensus documents will need to be modified if the Commission changes its current pricing policy.

As a result, the interconnection terms and conditions before us go hand-in-

[23] In Order No. 888, the Commission stated that it would allow parties to use regional differences to justify changes to certain tariff provisions when the proposed alternative provision is ''reasonable, generally accepted in the region, and consistently adhered to by the transmission provider.'' Order No. 888 at 31,770.

[24] Section 19.4 of the *pro forma* OATT requires Transmission Providers to use due diligence to complete a required facilities study within a 60-day period. If the Transmission Provider is unable to do so, it must notify the Transmission Customer, provide an estimate of the time needed to complete the study, and explain why the additional time is necessary. When completed, the study must include a description of the Generator's share of the cost of the required upgrade, and the time required to complete such construction and initiate the requested service.

hand with pricing. We have, therefore, concluded that interconnection pricing is best addressed at this time. The NOPR IA and IP reflect our existing pricing policies, and we invite comment on whether those existing policies should be retained. In addition, we provide clarification below on the issue of how interconnection and transmission pricing must be consistent and comparable.

1. Commission's Pricing Policies

a. Network Facilities Cannot Be Directly Assigned

The Commission has long held that the transmission grid is a single piece of equipment whose use can be priced on an average or incremental investment cost basis, but not by way of direct assignment. These standards are best described in *Public Service Company of Colorado (PSCO)*,[25] where the Commission described its then new policy of allowing use of the grid to be priced either on an incremental cost basis or on the traditional average or rolled-in cost basis:

> The Commission has long held that an integrated transmission grid is a cohesive network moving energy in bulk. Because the grid operates as a single piece of equipment, the Commission has consistently priced transmission service based on the cost of the grid as a whole. The Commission has rejected the direct cost assignment of grid facilities even if the grid facilities would not be installed but for a particular customer's service. The Commission as reasoned that, even if a customer can be said to have caused the addition of a grid facility, the addition represents a *system* expansion used by and benefitting all users due to the integrated nature of the grid. Recognizing that the grid is a cohesive network in a dynamic state of development, the Commission has even included remote facilities in the grid on the ground that they were merely the first segment of what would eventually be a network loop. The Commission has reserved direct assignments for only those transmission facilities that fall into what we have referred to as an ''exceptional category'' consisting of radials which are so isolated from the grid that they are and will remain non-integrated.
>
> Nothing in the Commission's new pricing policy changes or undermines these fundamental premises. There continues to be only one service—service over the entire grid—and both native load and third party customers ''use'' the entire grid, including any expansion. Similarly, both native load and third party customers benefit from integrated grid upgrades.
>
> The *only* change in our new policy is how to price grid service. The ''but for'' test continues to identify the additions to the grid which constitute the incremental cost of expanding the grid to serve the transmission customer. While we now permit utilities to price on the basis of this incremental grid cost, we are not directly assigning grid additions. We are not dismembering the grid or directly assigning its newest components.

At that time, service was still predominantly bundled (generation and transmission) and, therefore, the functionalization of costs between generation and transmission was not an issue. As a result, all transmission facilities, including generation interconnection facilities, were treated as part of the network.

b. Facilities Reassigned From Transmission to Generation

In 1996, the Commission issued Order No. 888, which required the unbundling of transmission and wholesale generation services. Prior to Order No. 888, when utilities were providing primarily a bundled generation and transmission service, the precise functionalization of costs as generation or transmission was not critical, as noted above. However, since unbundling, the Commission has determined that the cost of generation step-up transformers (GSUs) are part of the generation function rather than the transmission function.[26] In *KU*, we found that GSUs are used in providing generation services, and that the costs of these facilities should be charged to the customers using the generating facilities. Thus, we excluded the cost of GSUs from the Transmission Provider's transmission rates, reasoning that a more accurate method of cost recovery is to assign the costs of each GSU to the generator to which it is connected.

c. Interconnection Facilities Considered Direct Assignment Facilities Rather Than Network Facilities

As merchant generation took hold, entities sought interconnection before they had lined up specific load serving entities to purchase the output of the unit. Merchant generators, therefore, had a need to interconnect before they were ready to sign up for the delivery component of transmission service.

In *Tennessee Power Company (Tennessee)*,[27] the Commission clarified that interconnection is a component of transmission service, that the interconnection component must be offered under the terms of the *pro forma* tariff, and that this right is without regard to whether the interconnection component of transmission service is requested along with or before the delivery component of transmission service. In order to interconnect to the grid, merchant generators agreed to finance all necessary construction costs. It was at this time that Transmission Providers began to request that the cost of interconnection facilities (*i.e.,* all facilities needed to connect the generator to the network) be treated as sole use facilities and be directly assigned, rather than included as part of the network. In addition, some network upgrade costs were now being assessed prior to transmission delivery service. A choice between pricing the use of the network at its average or incremental cost could no longer be made because the average cost was a function of the rolled-in rate for a delivery service that had not as yet been requested. Therefore, the Commission allowed the Transmission Provider to assess an incremental cost rate at the time of interconnection (*i.e.,* the customer pays the cost of the network upgrade that would not have been incurred but for its service request) but required that customers receive credits for the cost of the network upgrades once the delivery component of transmission service begins. The Commission instituted this ''crediting'' policy to ensure that customers are not charged twice for the use of the network. Later, in *American Electric Power Service Corp.*,[28] the Commission required Transmission Providers to include in the Transmission Credits interest on the monies paid. In certain ISOs with comprehensive congestion management, the Commission does not require credits for network upgrades that increase the transfer capability; the customer (generator) instead receives comparable compensation in the form of price protection from the cost effects of congestion.

[25] 59 FERC ¶ 61,311 (1992), *reh'g denied*, 62 FERC ¶ 61,013 at 61,061 (1993) (footnotes omitted)

[26] Kentucky Utilities Company, 85 FERC ¶ 61,274 at 62,111 (1998) (*KU*). A GSU is located adjacent to a generating plant and increases the voltage of the plant output before it reaches the transmission network.

[27] 90 FERC ¶ 61,238 at 61,761, *reh'g dismissed*, 91 FERC ¶ 61,271 (2000).

[28] 97 FERC ¶ 61,098 at 61,530–31 (2001).

d. Summary

In *Consumers Energy Company,*[29] and *Entergy Gulf States, Inc.*,[30] the Commission underscored that the grid is a single piece of equipment from which only sole use facilities are excluded; that Commission policy prohibits the permanent direct assignment of network facilities; that the prohibition against the direct assignment of network facilities is without regard as to the purpose of the upgrade (*e.g.,* to relieve overloads, to remedy stability and short circuit problems, to maintain reliability, or to provide protection and service restoration); and that all facilities at or beyond the point where the customer (or generator) connects to the grid are network facilities.

2. Interconnection and Transmission Pricing Must Be Comparable and Consistent

In *Southern Company Services, Inc. (Southern)*, the company proposed to continue to treat the cost of interconnection facilities (meaning facilities on the generator's side of the point of interconnection) for its own generators as part of the network while directly assigning the cost of the same type of facilities to its competitors' generators.[31] *Southern* raised the issue of how to ensure comparability with interconnection and transmission pricing. Recognizing the need to address this issue on a generic basis, the Commission made *Southern* subject to the outcome of this rulemaking.

The NOPR IA and IP reflect the Commission's current interconnection pricing policy and we have invited comments on whether that policy should be retained. We will require that all transmission rates be designed in a manner that is consistent with whatever interconnection pricing is approved. To the extent our current interconnection pricing is adopted, all generation interconnection facilities, not just generator step-up transformers, must be removed from the transmission charge and directly assigned as sole use facilities. Consistent with our current pricing of generator step-up transformers, this sends a more accurate price signal by assigning the cost of interconnection facilities to the generation customers using them.

If commenters wish to propose generation interconnection pricing that differs from the pricing we propose herein, they must identify and explain to what extent the NOPR IA and IP must be changed accordingly as well as how they will ensure that the transmission rates are designed on a consistent and comparable basis.

3. Pricing for Independent Entities

After the release of the ANOPR the Commission announced its intention to reform public utility transmission tariffs using a standard market design (SMD) in Docket RM01–12. We seek comment on appropriate generator interconnection pricing in this docket consistent with the locational pricing methodology in the SMD proceeding. We note that in regions that use locational pricing, ISOs assess the cost of any new network facilities based on which network facilities would not be in the transmission expansion plan but for the interconnecting generator (this is referred to as the ''but for'' test). In this case, the generator typically receives transmission rights in return for the capacity that is created, which may take on value if the facility becomes congested in the future. This pricing method has only been allowed in regions where the transmission provider is independent of market participants. This is because of our concern that certain aspects of this method such as the congestion price signals to which the generator responds in asking for an upgrade, the determination of which generators in the queue should be responsible for which facilities, the cost of the facilities, and the assumptions underlying the power flow analysis, can be subjective. As a result, a transmission provider that is not an independent entity would have the ability and the incentive to exploit this subjectivity to its own advantage if it is able to assess the costs of network upgrades to the interconnecting generator. To address this potential problem, we invite comment on whether the Commission should accept an approach that departs from current Commission policy of providing transmission credits, and will consider alternative proposals as long as we can be assured that these cost causation determinations are made on an objective and non-discriminatory basis by an independent entity such as an RTO.

G. Other Issues

1. Force Majeure and Other Liability Issues

The ERCOT Standard Generation Interconnection Agreement contains several provisions addressing liability and a *force majeure* exception to liability. None of these provisions were reviewed and adopted by the IA drafting group, but they were filed as part of the Consensus IA. In the discussion below, we look to similar provisions in the OATT for comparison.

a. Insurance

At the outset, we note that Article 9 in the ERCOT Agreement (Article 13 in the Consensus IA) requires each party to the agreement to maintain certain minimum insurance coverages. The OATT contains no provision requiring insurance coverage.

b. Indemnification

Indemnification is the act of compensating another for a loss suffered due to a third party's act or default.[32] The ERCOT Agreement and the Consensus IA contain different indemnity provisions. The ERCOT provision (section 10.15, which incorporates by reference a Texas Public Utility Commission rule, PUCT Rule 25.202(b)(2)) does not extend indemnity protection to cases of gross negligence or intentional wrongdoing, while the Consensus IA (section 19.1) does not extend indemnity protection to cases of ordinary negligence or willful misconduct. Also, the ERCOT provision makes the legal costs of prosecuting or defending a claim by a third person an eligible liability, but does not allow indemnity protection from such costs when the action is between the parties to the agreement, while the Consensus IA draws no such distinction and makes all reasonable legal costs recoverable. The Consensus IA also includes indemnity procedures that describe how a party may pursue indemnity claims, and the procedure for doing so.

The indemnification provision in the OATT (section 10.2) indemnifies the transmission provider for legal costs due to claims by third persons arising from performance of its obligations under the OATT, and does not explicitly allow indemnification for disputes arising over enforcement of this provision. Indemnification does not extend to cases of ordinary negligence and intentional wrongdoing by the Transmission Provider.

c. Consequential Damages

Consequential damages are losses that flow indirectly from an injurious act rather than directly and immediately.[33] The ERCOT Agreement's consequential damages provision (section 10.16, which is found in section 19.6 of the Consensus IA) excuses liability for losses or costs for any special, indirect, incidental, consequential, or punitive

[29] 95 FERC ¶ 61,233, *order on reh'g,* 96 FERC ¶ 61,132 (2001).

[30] 98 FERC ¶ 61,014, *reh'g denied,* 99 FERC ¶ _____ (2002).

[31] 98 FERC ¶ 61,328 (2002).

[32] Black's Law Dictionary 772 (7th ed. 1999).

[33] *Id.* at 394.

damages. Liability for damages under another agreement will not be considered special, indirect, or consequential damages under this provision.

The OATT protects a transmission provider from consequential damages and indirect damage claims by third parties through indemnification except in cases of negligence or intentional wrongdoing by the transmission provider. No other protection against consequential damages appears in the OATT. In Order No. 888–A, the Commission stated that it saw no need to extend this protection, and noted that ''liability is a separate issue from indemnification, and that nothing in these provisions precludes transmission providers or customers from relying, when and where such law is applicable, on the protection of statutes or other law protecting parties from consequential or indirect damages.'' [34]

d. Force Majeure

Nonperformance due to a *force majeure* event shall not be considered default. The Consensus IA (Article 17) adopts the ERCOT *force majeure* provision (section 10.5), which uses a standard laundry list of causes that are considered ''beyond the reasonable control'' of the party claiming *force majeure.* Fault and negligence are still exceptions, but the *force majeure* event must ''materially prevent or impair'' the performance of the claimant's obligations. Article 17 also explains the procedure for making a claim of *force majeure.* A party affected shall exercise ''due diligence'' to remove its inability to meet its obligations with ''reasonable dispatch,'' but this does not include accepting unsatisfactory provisions that would resolve a labor dispute.

The *force majeure* provision in the OATT (section 10.1) also adopts a standard laundry list of causes but excludes acts of negligence or intentional wrongdoing (without specifying whose negligence or intentional wrongdoing). Nonperformance due to a *force majeure* event is not considered default, but parties should make all reasonable efforts to perform their obligations under the tariff.

e. Discussion

The Commission proposes adopting the protections afforded in the OATT, but making them applicable to both the transmission provider and the interconnection customer. Order No. 888 and its progeny clarified that the *pro forma* tariff was not intended to address liability issues beyond indemnification and *force majeure*,[35] and we intend to apply that principle here as well.[36] Accordingly, we have incorporated the OATT provisions into the NOPR IA, and eliminated the insurance requirements. Nevertheless, we invite comment on the Commission's proposed approach and ask commenters to address the relative merits of the alternative ERCOT and Consensus IA provisions.

2. Reciprocity

Order No. 888 required that transmission tariffs contain a reciprocity provision [37] applicable to any customer, including a non-public utility, that owns, controls or operates interstate transmission facilities and that takes service under the open access tariff, and any affiliates of the customer that own, control or operate interstate transmission facilities. The purpose of this provision was to ensure that a public utility offering transmission access to others could obtain similar service from its transmission customers, including non-public utilities. This provision further ensures that any non-public utility that wishes to take advantage of the open access transmission provided by public utilities must offer comparable transmission service in return. They may do so either on a utility-specific basis or through a Commission-approved ''reciprocity OATT'' on file with the Commission. Since we found in *Tennessee* that interconnection service is an element of transmission service that must be offered under the terms of the Transmission Provider's OATT, and the IP and IA will be added to the OATT, we find that interconnection service also will be subject to this reciprocity requirement. Although we do not have direct authority to require non-public utilities to make interconnection service generally available, we have the ability and the obligation to ensure that all aspects of open access transmission are as widely available as possible and that the implementation of this rulemaking does not result in competitive disadvantage to public utilities. Thus, we propose that the reciprocity provision apply to interconnection as well, and that any non-public utility that wishes either to take advantage of, or to continue to take advantage of, open access on a public utility's transmission system, must adopt the IA and IP into its own reciprocity service.

H. Summary of NOPR IA and IP

1. Standard Generator Interconnection and Operating Agreement

Article 1. Definitions—This Article contains the definitions of terms used in the Agreement. Capitalized terms in the summary are defined in the Agreement.

Article 2. Effective Date, Term and Termination—The term of the Agreement will be 10 years, or longer by request, and will be automatically renewed each successive year thereafter. Termination procedures are described. Parties retain the right to seek unilateral modification of this Agreement under FPA sections 205 and 206.

Article 3. Regulatory Filings—The Transmission Provider will be responsible for filing the document with the appropriate Governmental Authority. Procedures for confidential treatment of Generator information are described.

Article 4. Scope of Service—This Article describes the two kinds of interconnection products available.[38] Energy Resource (ER) Interconnection Service allows the Generator to connect its Facility to the Transmission System and be eligible to deliver output using existing firm or non-firm capacity on an ''as available'' basis. Network Resource (NR) Interconnection Service allows the Generator to connect its Facility in a manner comparable to that in which the Transmission Provider integrates its generating facilities to service native load or, in an ISO or RTO with market-based congestion management, in the same manner as other Network Resources. Neither ER nor NR Interconnection conveys any right to transmission delivery service, nor does the Agreement constitute a request for transmission delivery service. The studies for each service are described, as are the implications of the Generator's eligibility for delivery under each service.

Article 5. Interconnection Facilities Engineering, Procurement, and Construction—This Article describes

[34] Order No. 888–A at 30,302.

[35] Order No. 888–A at 30,301–02; Order No. 888–B at 62,080–81.

[36] *See, e.g.,* Delmarva Power & Light Co., 88 FERC ¶ 61,247 at 61,786, *reh'g dismissed,* 89 FERC ¶ 61,170 (1999) (rejecting two parties' competing attempts to address liability issues in their interconnection agreement, and instructing the parties to instead use the indemnification and *force majeure* provisions from the OATT); *but see* Commonwealth Edison Co., 92 FERC ¶ 61,175 at 61,620 (2000) (noting that limitation of liability provisions inconsistent with those in the *pro forma* OATT are acceptable when the individual IA demonstrates that a different limitation of liability provision was part of the specific bargain); Cinergy Services, Inc., 99 FERC ¶ 61,025 (2002).

[37] Order No. 888 at 31,760–63; Order No. 888–A at 30,281–87.

[38] This proposal was developed in advance of the standard market design proposal that the Commission will issue in RM01–12–000.

the procedures for designing, procuring, and constructing the Transmission Provider Interconnection Facilities/ Network Upgrades and the Generator Interconnection Facilities. Construction options, rights, and responsibilities are also presented. Generators will not be responsible for costs of modifications made to the Transmission Provider Interconnection Facilities or the Transmission System to facilitate interconnection of a third party or to provide transmission service under the Transmission's Provider Tariff. The Parties intend that all payments or transfers by the Generator to the Transmission Provider for installation and upgrades shall be nontaxable. If these payments ultimately are found to be taxable, the Generator shall indemnify the Transmission Provider.

Article 6. Testing and Inspection—Both Parties will conduct facility testing before the Commercial Operation Date and make any necessary modifications. The Generator shall bear the cost of these tests and modifications. After the Commercial Operation Date, each Party shall conduct routine inspection and testing of its facility at its own expense.

Article 7. Metering—The Transmission Provider will install, own, operate and maintain Metering Equipment at the Point of Interconnection, but the Generator shall bear all reasonable documented costs. The Article also describes Metering Equipment standards and testing requirements.

Article 8. Communication—The Article describes the necessary operating communications and dedicated data circuits between the Parties and the cost and maintenance responsibility for such equipment.

Article 9. Operations—The Generator and Transmission Provider should operate their respective facilities and equipment in a safe and reliable manner. This Article also describes Reactive Power requirements. In the event the Parties agree or are required to allow third parties to use any portion of the Transmission Provider Interconnection Facilities, the Generator will be compensated for capital expenses incurred based on the *pro rata* use of the Interconnection Facilities by the Transmission Provider, all third-party users, and the Generator.

Article 10. Maintenance—The Generator will be responsible for all reasonable expenses associated with owning, operating and maintaining Generator and Transmission Provider Interconnection Facilities (except for operations and maintenance expenses associated with modifications necessary for providing service to a third party that pays for such expenses).

Article 11. Performance Obligation—The Article describes the security and payment obligations of the Generator and Transmission Provider with respect to facility construction and Transmission Provider requests for service from the Generator. Section 11.4 describes the payment mechanism for Network Upgrades, in which a Generator shall receive a cash refund of the amount paid to the Transmission Provider for Network Upgrades plus interest.

Article 12. Invoice—This Article describes monthly invoice and billing dispute procedures. The Transmission Provider must provide an invoice of the final cost of construction of the Transmission Provider Interconnection Facilities and Network Upgrades within six months, and in sufficient detail to enable the Generator to compare actual costs with estimates.

Article 13. Emergencies—This Article explains the Transmission Provider's and the Generator's responsibilities when Emergency Conditions arise.

Article 14. Governing Law and Applicable Tariffs—The validity, interpretation, and performance of this Agreement shall be governed by the laws of the state where the Point of interconnection is located, without regard to that state's conflicts of law principles.

Article 15. Notices—This Article contains the addresses at which the Transmission Provider and Generator will receive, among other things, notices, bills and payments.

Article 16. Force Majeure—Force Majeure is defined as any cause beyond a Party's control. Events arising from negligence or intentional wrongdoing are not *Force Majeure.* Nonperformance due to a *Force Majeure* event shall not be considered Default.

Article 17. Default—Article 18 defines Default as the failure of either Party to perform any obligation in the time or manner provided in this Agreement. No Default exists as a result of *Force Majeure* or an act or omission of the other Party. Notice and cure procedures also are described.

Article 18. Indemnity—The Article explains that each Party shall indemnify the other from any and all damages, losses, and claims by or to third parties arising from the other Party's performance of its obligations under this Agreement on behalf of the indemnifying Party. No indemnity will be available in cases of negligence or intentional wrongdoing by the indemnifying Party.

Article 19. Assignment—Written consent ordinarily is required to assign the Agreement, but assignment may be secured without consent if the assignee is an affiliate that meets certain qualifications. No consent is required if a Generator assigns the Agreement for collateral security purposes to aid in Facility financing.

Article 20. Severability—Explains that if a court or Governmental Authority determines that any provision of this Agreement is invalid, void, or unenforceable, such determination shall not invalidate any other provision in this Agreement.

Article 21. Comparability—Parties will comply with all applicable comparability requirements and code of conduct laws, rules and regulations.

Article 22. Confidentiality—This Article describes what constitutes Confidential Information and the protections that will be afforded such information when shared between Parties.

Article 23. Environmental Releases—Describes procedures for notifying the other Party of the release or remediation of Hazardous Substances related to the Facility or the Interconnection Facilities that may be expected to affect the other Party.

Article 24. Information Requirements—This Article describes the requirements for submitting information regarding the electric characteristics of the Parties' respective facilities. Among the information, the Transmission Provider shall provide a monthly status report on construction and installation of Transmission Provider Interconnection Facilities and Network Upgrades.

Article 25. Information Access and Audit Rights—Each Party shall make information available to the other Party necessary to verify costs for which the other Party is responsible under this Agreement and to carry out its obligations and responsibilities under this Agreement.

Article 26. Subcontractors—The Parties may use subcontractors to perform obligations under this Agreement provided that the contractors comply with the applicable terms and conditions of the Agreement and each Party remains liable to the other for the subcontractor's performance. The hiring Party retains all of its obligations under this Agreement.

Article 27. Disputes—This Article explains the dispute resolution and arbitration procedures.

Article 28. Representations, Warranties and Covenants—This Article requires that each Party be organized and qualified to do business in the

relevant jurisdiction. Each Party has the Authority to enter into this Agreement, and performance of its duties does not violate or conflict with organizational or formation documents.

Article 29. Operating Committee—The Parties shall convene an Operating Committee, comprising one representative and one alternate from each Party who will also be members of the joint Operating Committee, that will meet at least annually to carry out the duties set forth in this Article.

Article 30. Miscellaneous—This Article contains provisions addressing matters such as rules of interpretation, a prohibition on third-party beneficiaries, and the right to amend the Agreement by mutual agreement.

Appendices—The Agreement contains separate appendices for Interconnection Facilities and Network Upgrades, Time Schedule, Interconnection Details, Standard Generator Interconnection Agreement, Security Arrangement Details, Commercial Operation Date, and Interconnection Guidelines.

2. Standard Generator Interconnection Procedures

Section 1. Definitions—Definitions of terms used in the Interconnection Procedures are provided. (In this summary, defined terms are capitalized.)

Section 2. Scope and Application—The Transmission Provider must follow strict comparability principles. The Interconnection Procedures do not constitute a request for, nor confer a right to receive, transmission service.

Section 3. Interconnection Requests—This section describes interconnection request procedures, including a refundable deposit of $10,000 payable to the Transmission Provider that will be applied toward the cost of the Interconnection Feasibility Study. The Generator may withdraw its request at any time, and if the Generator fails to adhere to all requirements of the Interconnection Procedures, the Transmission Provider shall deem the request to be withdrawn.

Section 4. Queue Position—The queue position is based, in general, on the date and time of receipt of the valid (*i.e.,* complete) Interconnection Request, and is used to determine the order of performing studies and cost responsibility. At the Transmission Provider's option, Interconnection System Impact Studies may be performed serially as requests are received or in clusters.

Section 5. Procedures for Interconnection Requests Submitted Prior to Effective Date of Interconnection Procedures—This section provides for the completion of studies and the finalizing of Interconnection and Operating Agreements that are pending as of the effective date of the Interconnection Procedures.

Section 6. Interconnection Feasibility Study—The Interconnection Feasibility Study shall preliminarily evaluate the feasibility of the proposed interconnection to the Transmission System and will consist of a power flow and short circuit analysis. The Generator is responsible for the actual cost of the study and any re-studies that may be required.

Section 7. Interconnection System Impact Study—The Interconnection System Impact Study shall evaluate the impact of the proposed interconnection on the reliability of the Transmission System and will consist of a short circuit analysis, a stability analysis, and a power flow analysis. The Generator is responsible for the actual cost of the study and any re-studies that may be required.

Section 8. Interconnection Facilities Study—The Interconnection Facilities Study shall specify and estimate the cost of implementing the conclusions of the Interconnection System Impact Study, including the nature and cost of any Transmission Provider Interconnection Facilities and Network Upgrades needed. It shall also provide an estimate of the time required to complete the construction and installation of these facilities. The Generator is responsible for the actual cost of the study and any re-studies that may be required.

Section 9. Agreements—In order to advance the implementation of its interconnection, the Generator may request the Transmission Provider to offer an Engineering and Procurement Agreement that authorizes the Transmission Provider to begin engineering and procurement of long lead-time items necessary for the establishment of the interconnection.

Section 10. Optional Study—The Generator may request the Transmission Provider to perform a reasonable number of Optional Studies. An Optional Study will consist of a sensitivity analysis and will identify the costs that may be required to provide transmission service or interconnection service based upon the results of the Optional Study.

Section 11. Interconnection and Operating Agreement—When the Transmission Provider delivers the draft Interconnection Facilities Study report to the Generator, the Transmission Provider shall tender a draft Interconnection and Operating Agreement with draft appendices completed to the extent practicable. Procedures and requirements for filing and complying with an unexecuted agreement also are described.

Section 12. Construction of Transmission Provider Interconnection Facilities and Network Upgrades—The Transmission Provider and the Generator shall negotiate a schedule for constructing needed facilities and upgrades. A Generator may request the Transmission Provider to advance the completion of necessary Network Upgrades that are the responsibility of another entity and would not otherwise be completed in time to support the Generator's In-Service Date. However, the Generator must commit to pay any expediting costs and the cost of the upgrades, with such payments to be refunded when the Transmission Provider receives payment from the responsible entity.

Section 13. Miscellaneous—The Interconnection Procedures include a variety of miscellaneous provisions pertaining to: (1) Confidential treatment of information provided by the Generator, (2) the Transmission Provider's right to delegate responsibility to subcontractors, (3) the Generator's obligation to pay the actual costs of Interconnection Studies, (4) the Generator's right to request the Transmission Provider to contract with a third party to perform an Interconnection Study, (5) the obligation of the Transmission Provider to pay the Generator liquidated damages, and (6) dispute resolution procedures.

Section 14. Small Generator Interconnection Requests—Small Generators are defined as units of no more than 20 MW or aggregations of interconnecting Facilities at a single Point of Interconnection totaling no more than 20 MW. Although, for Small Generators, the deposit requirement for each of the Interconnection Studies is waived, Small Generators are responsible for the costs of processing the Interconnection Request and the performance of Interconnection Studies, unless waived. Expedited procedures will be used for Small Generators' Interconnection Requests and Interconnection Studies, but Small Generators will be placed in the same queue as Generators.

Appendices—The Interconnection Procedures include five appendices that provide forms of agreement for the Interconnection Request, the Interconnection Feasibility Study, the Interconnection System Impact Study, the Interconnection Facilities Study, and the Optional Study.

III. Public Reporting Burden and Information Collection Statement

The following collections of information contained in this proposed rule are being submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the Paperwork Reduction Act of 1995. FERC identifies the information provided under Part 35 as FERC–516.

Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. The following burden estimate includes the cost of preparing and submitting tariff changes to comply with the Commission's proposed regulation.

Public Reporting Burden: Estimated Annual Burden:

Data collection FERC–516	Number of respondents	Number of responses	Hours per response	Total annual hours
Reporting	270			
(In place)	145	1	4	580
(Develop)	125	1	31	3,875
Totals	270	1	35	4,455

Total Annual Hours for Collection (reporting + record keeping, (if appropriate) = 4,455 hours (270 respondents (145 × 1 filing × 4 hours for review, clarification or 580 hours) + (125 × 1 × 31 to develop interconnection agreement format or 3,875) = 4,455). Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost for all respondents to be:

Annualized Capital/Startup Costs-Staffing requirements to review and prepare an interconnection agreement = $222,750 ($29,000 (145 respondents × $200 (4 hours @ $50 hourly rate) + $ 193,750 (125 respondents × $1,550 (31 hours @ $50 hourly rate) Annualized Costs (Operations & Maintenance). The cost per respondent is equal to $107 (145 respondents who agreements in place), $718 (125 respondents who have to develop documentation).

The OMB regulations require OMB to approve certain information collection requirements imposed by agency rule. 5 CFR 1320.11. Accordingly, pursuant to OMB regulations, the Commission is providing notice of its proposed information collections to OMB.

Title: FERC–516, Electric Rate Schedule Filings.

Action: Proposed Data Collections.

OMB Control No.: 1902–0096.

The applicant shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.

Respondents: Business or other for profit.

Frequency of Responses: One-time implementation.

Necessity of Information: The proposed rule would revise the requirements contained in 18 CFR part 35. The Commission is seeking to establish standardized interconnection procedures and agreements. In particular, the Commission will propose this proposed rule standardized interconnection agreements and procedures that public utilities must adopt. The proposed rule would require that each public utility that owns, operates or controls transmission facilities participate in one-time filings incorporating the agreement and procedures into their open access transmission tariffs. Internal Review: The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information requirements. The Commission's Office of Markets, Tariffs and Rates will use the data included in filings under Section 203 and 205 of the Federal Power Act to evaluate efforts for the interconnection and coordination of the U.S. electric transmission system and to ensure the orderly implementation of the interconnection procedures and agreement as well as for general industry oversight. These information requirements conform to the Commission's plan for efficient information collection, communication, and management within the electric power industry.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 [Attention: Michael Miller, Capital Planning and Policy Group, Phone: (202) 208–1415, fax: (202) 208–2425, E-mail: *michael.miller@ferc.gov*.]

For submitting comments concerning the collection of information(s) and the associated burden estimate(s), please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–7318, fax: (202) 395–7285].

IV. Environmental Statement

The Commission concludes that promulgating the proposed rule would not present a major federal action having a significant adverse impact on the human environment under the Commission's regulations implementing the National Environmental Policy Act.[39] The proposed rule falls within the categorical exemption provided in the Commission's regulations for approval of actions under §§ 203 and 205 of the Federal Power Act relating to provided for the filing of schedules containing all rates and charges for any transmission or sale subject to the Commission's jurisdiction, plus the classification, practices, contracts and regulations that affect rates, charges, classifications and services.[40] Consequently, neither an environmental assessment nor an environmental impact statement is required.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)[41] requires rulemakings to contain either a description and analysis of the effect that the proposed rule will have on small entities or a certification that the rule will not have a significant economic impact on a substantial number of small entities. The regulations proposed here impose requirements only on interstate transmission providers, which are not small businesses, and, these requirements are, in fact, designed to benefit all customers, including small businesses. Accordingly, pursuant to

[39] 18 CFR Part 380.

[40] 18 CFR Part 380.4(a)(15)(16).

[41] 5 U.S.C. 601–612 (1994).

section 605(b) of the RFA, the Commission hereby certifies that the proposed regulations will not have a significant adverse impact on a substantial number of small entities.

VI. Comment Procedures

The Commission invites interested persons to submit comments, data, views and other information concerning matters set out in this notice.

To facilitate the Commission's review of the comments, commenters are requested to provide an executive summary of their positions. Commenters are requested to identify each specific issue posed by the NOPR that their discussion addresses and to use appropriate headings that clearly identify the relevant IA and IP sections. Additional issues the commenters wish to raise should be identified separately. The commenters should double-space their comments.

Comments may be filed on paper or electronically via the Internet and must be received by the Commission by June 17, 2002. Comments should not exceed 30 double-spaced pages and should include an executive summary. Those filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. RM02–1–000.

Comments filed via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's website at *www.ferc.gov* and click on ''e-Filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-Mail address upon receipt of comments.

User assistance for electronic filing is available at 202–208–0258 or by E-Mail to *efiling@ferc.fed.us.* Comments should not be submitted to the E-Mail address. All comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington, DC 20426, during regular business hours. Additionally, all comments may be viewed, printed, or downloaded remotely via the Internet through FERC's Homepage using the RIMS link. User assistance for RIMS is available at 202–208–2222, or by E-mail to *RimsMaster@ferc.fed.us.*

VIII. Document Availability

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

From FERC's Home Page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

—CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.

—CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document is available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.

—RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the Website during normal business hours from our Help line at (202) 208–2222 (E-Mail to *WebMaster@ferc.fed.us*) or the Public Reference at (202) 208–1371 (E-Mail to *public.referenceroom@ferc.fed.us*).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By direction of the Commission.

Linwood A. Watson, Jr.,

Deputy Secretary.

In consideration of the foregoing, the Commission proposes to amend Part 35, Chapter I, Title 18 of the Code of Federal Regulations, as follows.

PART 35—FILING OF RATE SCHEDULES

1. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. Add § 35.28(f) to read as follows:

§ 35.28 Nondiscriminatory open access transmission tariff.

* * * * *

(f) *Standardized interconnection agreement and procedures.* (1) Every public utility that is required to have on file a non-discriminatory open access transmission tariff under this section must amend such tariff by adding the standardized interconnection agreement and procedures contained in Order No. ____, FERC Stats. & Regs. ¶ _____ [Final Rule on Interconnection] or such other interconnection agreement and procedures as may be approved by the Commission consistent with Order No. ____, FERC Stats. & Regs. ¶ _____ [Final Rule on Interconnection].

(i) The amendment required by the preceding paragraph must be filed no later than [60 days after the issuance of the final rule].

(ii) Any public utility that seeks a deviation from the standardized interconnection agreement and procedures contained in Order No. ____, FERC Stats. & Regs. ¶ _____ [Final Rule on Interconnection], must demonstrate that the deviation is consistent with the principles of Order No. ____, FERC Stats. & Regs. ¶ _____ [Final Rule on Interconnection].

(2) The non-public utility procedures for tariff reciprocity compliance described in paragraph (e) of this section are applicable to the standardized interconnection agreement and procedures.

[**Note:** The following Attachments will not be Published in the Code of Federal Regulations]

Standard Generator Interconnection and Operating Agreement

Table of Contents

Article 1. Definitions

Article 2. Effective Date, Term and Termination

2.1 Effective Date
2.2 Term of Agreement
2.3 Termination Procedures
2.3.1 Written Notice
2.3.2 No Commercial Operation
2.3.3 Default
2.4 Termination Costs
2.4.1

2.4.2
2.4.3
2.5 Disconnection
2.6 Survival
2.7 Reservation of Rights

Article 3. Regulatory Filings

3.1 Filing

Article 4. Scope of Service

4.1 Interconnection Product Options
4.1.1 Energy Resource Interconnection Service
4.1.1.1 The Product
4.1.1.2 The Study
4.1.1.3 Delivery Service Implications
4.1.2 Network Resource Interconnection Service
4.1.2.1 The Product
4.1.2.2 The Study
4.1.3 Delivery Service Implications
4.2 Provision of Service
4.3 Generator Balancing Service Arrangements
4.3.1
4.4 Performance Standards
4.5 No Transmission Delivery Service
4.6 Generator Provided Services

Article 5. Interconnection Facilities Engineering, Procurement, and Construction

5.1 Options
5.2 Power System Stabilizers
5.3 Equipment Procurement
5.3.1
5.3.2
5.3.3
5.4 Construction Commencement
5.4.1
5.4.2
5.4.3
5.4.4
5.5 Work Progress
5.6 Information Exchange
5.7 Limited Operation
5.8 Generator Interconnection Facilities (''GIF'')
5.8.1 Generator Specifications
5.8.2 Transmission Provider's Review
5.8.3 GIF Construction
5.9 Transmission Provider Interconnection Facilities Construction
5.10 Access Rights
5.11 Lands of Other Property Owners
5.12 Early Construction of Base Case Facilities
5.13 Suspension
5.14 Taxes
5.14.1 Generator Payments Not Taxable
5.14.2 Representations And Covenants
5.14.3 Indemnification for Taxes Imposed Upon Transmission Provider
5.14.4 Tax Gross-Up Amount
5.14.5 Private Letter Ruling or Change or Clarification of Law
5.14.6 Contests
5.14.7 Refund
5.14.8 Taxes Other Than Income Taxes
5.14.9 Transmission Owners Who Are Not Transmission Providers
5.15 Tax Status
5.16 Modification
5.16.1 General
5.16.2 Standards
5.16.3 Modification Costs

Article 6. Testing and Inspection

6.1 Pre-Commercial Operation Date Testing and Modifications
6.2 Post-Commercial Operation Date Testing and Modifications
6.3 Right to Observe Testing
6.4 Right to Inspect

Article 7. Metering

7.1 General
7.2 Check Meters
7.3 Standards
7.4 Testing of Metering Equipment
7.5 Metering Data

Article 8. Communications

8.1 Generator Obligations
8.2 Remote Terminal Unit
8.3 No Annexation

Article 9. Operations

9.1 General
9.2 Control Area Notification
9.3 Transmission Provider Obligations
9.4 Generator Obligations
9.5 Start-Up and Synchronization
9.6 Reactive Power
9.6.1 Power Factor Design Criteria
9.6.2 Voltage Schedules
9.6.2.1 Governors and Regulators
9.6.3 Payment for Reactive Power
9.7 Outages, Interruptions, and Disconnection
9.7.1 Outages
9.7.1.1 Outage Authority and Coordination
9.7.1.2 Outage Schedules
9.7.1.3 Outage Restoration
9.7.2 Continuity of Service
9.7.2.1
9.7.2.2
9.7.2.3
9.7.2.4
9.7.2.5
9.7.3 Under-Frequency Load Shed Event
9.7.4 System Protection and Other Controls Requirements
9.7.4.1 Protection and System Quality
9.7.4.2
9.7.4.3
9.7.4.4
9.7.4.5
9.7.4.6
9.7.5 Requirements for Protection
9.7.6 Power Quality
9.8 Switching and Tagging Rules
9.9 Use of Interconnection Facilities by Third Parties
9.9.1 Purpose of Interconnection Facilities
9.9.2 Third Party Users
9.10 Data Exchange

Article 10. Maintenance

10.1 Transmission Provider Obligations
10.2 Generator Obligations
10.3 Coordination
10.4 Secondary Systems
10.5 Operating and Maintenance Expenses

Article 11. Performance Obligation

11.1 Generator Interconnection Facilities
11.2 Transmission Provider Interconnection Facilities
11.3 Network Upgrades
11.4 Transmission Credits
11.4.1 Refund of Amounts Advanced for Network Upgrades
11.4.2
11.5 Financial Security Arrangements
11.5.1 Provision of Security
11.5.1.1
11.5.1.2
11.5.1.3
11.6 Generator Compensation
11.6.1 Generator Compensation for Actions During Emergency Condition

Article 12. Invoice

12.1 General
12.2 Final Invoice
12.3 Payment
12.4 Disputes

Article 13. Emergencies

13.1 Definition
13.2 Obligations
13.3 Notice
13.4 Immediate Action
13.5 Transmission Provider Authority
13.5.1 General
13.5.2 Curtailment, Reduction, and Disconnection
13.6 Generator Authority
13.7 Limited Liability

Article 14. Governing Law and Applicable Tariffs

14.1 Regulatory Requirements
14.2 Governing Law and Applicable Tariffs
14.2.1
14.2.2
14.2.3

Article 15. Notices

15.1 General
15.2 Billings and Payments
15.3 Alternative Forms of Notice
15.4 Operations and Maintenance Notice

Article 16. Force Majeure

16.1 Force Majeure

Article 17. Default

17.1 Default
17.1.1 General
17.1.2 Right to Terminate

Article 18. Indemnity

18.1 Indemnity

Article 19. Assignment

19.1 Assignment

Article 20. Severability

20.1 Severability

Article 21. Comparability

21.1 Comparability

Article 22. Confidentiality

22.1 Confidentiality
22.1.1 Term
22.1.2 Scope
22.1.3 Release of Confidential Information
22.1.4 Rights
22.1.5 No Warranties
22.1.6 Standard of Care
22.1.7 Order of Disclosure
22.1.8 Termination of Agreement
22.1.9 Remedies
22.1.10 Disclosure to FERC or its Staff
22.1.11
2.1.12

Article 23. Environmental Releases

23.1

Article 24. Information Requirements

24.1 Information Acquisition
24.2 Information Submission by Transmission Provider
24.3 Updated Information Submission by Generator
24.4 Information Supplementation

Article 25. Information Access and Audit Rights

25.1 Information Access
25.2 Reporting of Non-Force Majeure Events
25.3 Audit Rights
25.4 Audit Rights Periods
25.4.1 Audit Rights Period for Construction-Related Accounts and Records
25.4.2 Audit Rights Period for All Other Accounts and Records
25.5 Audit Results

Article 26. Subcontractors

26.1 General
26.2 Responsibility of Principal
26.3 No Limitation by Insurance

Article 27. Disputes

27.1 Submission
27.2 External Arbitration Procedures
27.3 Arbitration Decisions
27.4 Costs

Article 28. Representations, Warranties and Covenants

28.1 General
28.1.1 Good Standing
28.1.2 Authority
28.1.3 No Conflict
28.1.4 Consent and Approval

Article 29. Operating Committee

29.1 Operating Committee
29.1.1
29.1.2
29.1.3
29.1.4
29.1.5
29.1.6
29.1.7

Article 30. Miscellaneous

30.1 Binding Effect
30.2 Conflicts
30.3 Rules of Interpretation
30.4 Entire Agreement
30.5 No Third Party Beneficiaries
30.6 Waiver
30.7 Headings
30.8 Multiple Counterparts
30.9 Amendment
30.10 Modification by the Parties
30.11 Reservation of Rights
30.12 No Partnership
Appendix A—Interconnection Facilities and Network Upgrades
Appendix B—Time Schedule
Appendix C—Interconnection Details
Appendix D—Standard Generator Interconnection Agreement
Appendix E—Security Arrangement Details
Appendix F—Commercial Operation Date
Appendix G—Interconnection Guidelines

Standard Generator Interconnection and Operating Agreement

This Standard Generator Interconnection and Operating Agreement (''Agreement'') is made and entered into this_____day of _____ 20____, by and between_____, a_____ organized and existing under the laws of the State/Commonwealth of _____(''Generator''), and _____, a [corporation] organized and existing under the laws of the State/Commonwealth of _____ (''Transmission Provider and/or Transmission Owner''). Generator and Transmission Provider each may be referred to as a ''Party'' or collectively as the ''Parties.''

Recitals

Whereas, Transmission Provider operates the Transmission System; and

Whereas, Generator intends to own, lease and/or control and operate the Facility identified in Appendix C; and,

Whereas, Generator and Transmission Provider have agreed to enter into this Agreement for the purpose of interconnecting the Facility with the Transmission System;

NOW, therefore, in consideration of and subject to the mutual covenants contained herein, it is agreed:

Article 1. Definitions

When used in this Agreement with initial capitalization, the following terms shall have the meanings specified or referred to in this Article 1. Terms used in this Agreement with initial capitalization that are not defined in this Article 1 shall have the meanings specified in the section in which it is used or as specified in the Transmission Provider Tariff, as may be amended from time to time.

1.1 ''Affiliate'' shall mean, with respect to a corporation, partnership or other entity, each such other corporation, partnership or other entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such corporation, partnership or other entity.

1.2 Agreement'' shall mean this Standard Generator Interconnection and Operating Agreement.

1.3 Ancillary and Other Services'' shall have the same meaning as defined in the Transmission Provider's Tariff, as may be amended from time to time, and shall in addition include such other services as Generator Balancing, Blackstart, Automatic Generation Control, and Capacity.

1.4 Applicable Laws and Regulations'' shall mean all duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority.

1.5 Applicable Reliability Council'' shall mean the reliability council(s) applicable to the Transmission System to which the Facility is directly interconnected.

1.6 Applicable Standards'' shall mean the requirements and guidelines of NERC, the Applicable Reliability Council, the Control Area of the Transmission System to which the Facility is directly interconnected and the Transmission Provider Interconnection Guidelines.

1.7 Breach'' shall mean the failure of a Party to perform or observe any material term or condition of this Agreement.

1.8 Breaching Party'' shall mean a Party that is in Breach of this Agreement.

1.9 Commercial Operation Date'' shall mean the date on which Generator commences commercial operation of a unit at the Facility after Trial Operation of such unit has been completed as confirmed in writing substantially in the form shown in Appendix F.

1.10 ''Confidential Information'' shall have the meaning set forth in Article 22.1.

1.11 ''Control Area'' shall mean an electrical system or systems, as certified by NERC or the applicable regional reliability council, as the case may be, and bounded by interconnection metering and telemetry, to which a common automatic generation control scheme is applied in order to (i) match, at all times, power output of the generator(s) within the electrical system and capacity and energy purchased from or sold to entities outside the electrical system to load within the electrical system; (ii) maintain scheduled interchange with other Control Areas within the limits of Good Utility Practice; (iii) maintain the frequency of the electrical system within reasonable limits in accordance with Good Utility Practice; and (iv) provide sufficient generating capacity and operating reserves in accordance with Good Utility Practice.

1.12 ''Default'' shall mean the failure of a Breaching Party to cure its Breach in accordance with Article 20.

1.13 ''Effective Date'' shall mean the date on which this Agreement becomes effective in accordance with Article 2.1.

1.14 ''Emergency Condition'' shall have the meaning set forth in Article 14.1.

1.15 ''Energy Resource Interconnection Service'' shall have the meaning set forth in Article 4.1.1.

1.16 ''Environmental Law'' shall mean Applicable Laws or Regulations relating to pollution or protection of the environment or natural resources.

1.17 ''Facility'' shall mean Generator's or Transmission Provider/Transmission Owner's electric generating facility, but shall not include the Generator Interconnection Facilities.

1.18 ''Facilities Study'' shall mean the Interconnection Facilities Study conducted by the Transmission Provider under the Interconnection Procedures.

1.19 ''Federal Power Act'' shall mean the Federal Power Act, as amended, 16 U.S.C. §§ 791a *et seq.*

1.20 ''FERC'' shall mean the Federal Energy Regulatory Commission or its successor.

1.21 ''Force Majeure'' shall have the meaning set forth in Article 16.1.

1.22 ''Generator'' as used herein applies to any Facility regardless of ownership.

1.23 ''Generator Interconnection Facilities'' shall mean all facilities and equipment, as identified in Appendix A, which are located between the Facility and the Point of Change of Ownership, including any modification, addition, or upgrades to such facilities and equipment necessary to physically and electrically connect to Facility to the Transmission System. Generator Interconnection Facilities are sole use facilities and shall not include Network Upgrades or facilities.

1.24 ''Good Utility Practice'' shall mean any of the practices, methods and acts

engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region. Good Utility Practice shall include, but not be limited to, compliance with Applicable Laws and Regulations, Applicable Standards, the National Electric Safety Code, and the National Electrical Code, as they may be amended from time to time, including the criteria, rules and standards of any successor organizations.

1.25 ''Governmental Authority'' shall mean any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that such term does not include Generator, Transmission Provider, or any Affliate thereof.

1.26 ''Hazardous Substances'' shall mean any chemicals, materials or substances defined as or included in the definition of ''hazardous substances,'' ''hazardous wastes,'' ''hazardous materials,'' ''hazardous constituents,'' ''restricted hazardous materials,'' ''extremely hazardous substances,'' ''toxic substances,'' ''radioactive substances,'' ''contaminants,'' ''pollutants,'' ''toxic pollutants'' or words of similar meaning and regulatory effect under any applicable Environmental Law, or any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law.

1.27 ''In-Service Date'' shall mean the date upon which the Generator reasonably expects it will be ready to begin use of the Transmission Provider Interconnection Facilities to obtain back feed power and upon which it reasonably expects to begin doing so.

1.28 ''Independent System Operator'' (''ISO'') shall mean any Independent System Operator to which a transmission provider has transferred operational control of its transmission facilities, or any portion thereof, within the meaning of Order No. 888.

1.29 ''Interconnection Facilities'' shall mean the Transmission Provider's Interconnection Facilities and the Generator Interconnection Facilities. Collectively, all facilities and equipment between the Facility and the Point of Interconnection, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Facility to the Transmission System. Interconnection Facilities are sole use facilities and shall not include Network upgrades or facilities.

1.30 ''Interconnection Guidelines'' shall mean the technical requirements set forth in Appendix G.

1.31 ''Interconnection Request'' shall mean a request, the form of Appendix 1 to the Standard Generator Interconnection Procedures, in accordance with the OATT, to interconnect a new Facility, or to increase the capacity or make a Material Modification to the operations characteristics of an existing Facility that is interconnected with the Transmission System.

1.32 ''Interconnection Service'' shall mean those services associated with interconnecting a Facility to the Transmission System as such services are set forth in Article 4 of this Agreement.

1.33 ''Initial Synchronization Date'' shall mean the date upon which the Facility is initially synchronized and upon which Trial Operation begins.

1.34 ''IRS'' shall mean the Internal Revenue Service.

1.35 ''Joint Operating Committee'' shall be comprised of the members of the individual Operating Committees. The role of this Committee is to address on a generic level any issues arising out of the duties, roles and responsibilities of the individual Operating Committees as described in Article 29. The Joint Operating Committee shall meet as necessary, but not less than once each calendar year to carry out those duties. Unless otherwise agreed to, the annual meeting will be held on the first Monday in June of each year.

1.36 ''Loss'' shall have the meaning set forth in Article 18.1.

1.37 ''Metering Equipment'' shall mean all metering equipment described in, and installed at the metering points designated in, Appendix C.

1.38 ''NERC'' shall mean the North American Electric Reliability Council or its successor agency assuming or charged with similar responsibilities related to the operation and reliability of the North American interconnected electric transmission grid.

1.39 ''Network Resource Interconnection Service'' shall have the meaning set forth in Article 4.1.2.

1.40 ''Network Upgrades'' shall mean the additions, modifications, and upgrades to the Transmission System required beyond the point at which the generator interconnects to the Transmission System to accommodate the interconnection of the Facility to the Transmission System as identified in Appendix A, including any modifications, additions or upgrades made to such facilities. The facilities and equipment are used by and benefit all users of the transmission grid, without distinction or regard as to the purpose of the upgrade (*e.g.*, to relieve overloads, to remedy stability and short circuit problems, to maintain reliability, or to provide protection and service restoration) including the fact that these facilities and equipment are being replaced or upgraded to accommodate the interconnection request.

1.41 ''Non-Breaching Party'' shall mean a Party that is not in Breach of this Agreement with regard to a specific event of Breach by another Party.

1.42 ''Notice of Dispute'' shall have the meaning set forth in Article 27.1.

1.43 Operating Committee'' shall mean the Operating Committee as described in Article 29.

1.44 ''Party'' or ''Parties'' shall have the meaning set forth in the introductory paragraph of this Agreement.

1.45 ''Point of Change of Ownership'' shall mean the point, set forth in Appendix A, at which the Generator Interconnection Facilities connect to the Transmission Provider's Transmission Interconnection Facilities.

1.46 ''Point of Interconnection''shall mean the point, set forth in Appendix A, where the Interconnection Facilities connect to the Transmission Provider's Transmission Interconnection System.

1.47 ''Reasonable Efforts'' shall mean, with respect to an action required to be attempted or taken by a Party under this Agreement, efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.

1.48 ''RTO/ISO'' shall mean any Regional Transmission Organization or Independent System Operator to which a Transmission Provider has transferred operational control of its transmission facilities, or any portion thereof, within the meaning of Order No. 2000.

1.49 ''Switching and Tagging Rules'' shall mean the switching and tagging procedures of Transmission Provider, and Generator, as they may be amended from time to time.

1.50 ''System Protection Facilities'' shall be described in Appendix A, and shall mean the equipment required to protect (i) the Transmission System from faults or other electrical disturbances occurring at the Facility, and (ii) the Facility from faults or other electrical system disturbances occurring on the Transmission System or on other delivery systems and/or other generating systems to which the Transmission System is directly connected.

1.51 ''Tariff'' shall mean the Transmission Provider tariff for which open access transmission service over, and transmission interconnection to the Transmission System is offered, as filed with FERC, and as amended or supplemented from time to time, or any successor tariff.

1.52 ''Transmission Owner'' shall mean an entity that owns, leases or otherwise possesses interest in the portion of the Transmission System at the Point of Interconnection may be a party to this Agreement to the extent necessary.

1.53 ''Transmission Provider'' shall mean the entity that provides Transmission Service under its Open Access Transmission Tariff.

1.54 ''Transmission Provider Interconnection Facilities'' shall mean all facilities owned and/or controlled or operated by the Transmission Provider from the Point of Change of Ownership to the Point of Interconnection as identified in Appendix A, including any modifications, additions or upgrades to such facilities and equipment. Transmission Provider Interconnection Facilities are sole use facilities and shall not include Network Upgrades or facilities as defined in Article 1.39 above.

1.55 ''Transmission System'' shall mean the facilities owned, controlled or operated

by the Transmission Provider that are used to provide transmission service under the Tariff, including any additions, modifications or upgrades made to such facilities.

1.56 ''Trial Operation'' shall mean the period during which Generator is engaged in on-site test operations and commissioning of the Facility prior to commercial operation.

Article 2. Effective Date, Term and Termination

2.1 Effective Date. This Agreement shall become effective upon execution by the Parties subject to acceptance by FERC (if applicable), or if filed unexecuted, upon the date specified by FERC. Transmission Provider shall promptly file this Agreement with FERC upon execution in accordance with Article 3.1.

2.2 Term of Agreement. Subject to the provisions of Article 2.3, this Agreement shall remain in effect for a period of ten (10) years from the Effective Date or such other longer period as the Generator may request (Term to be Specified in Individual Agreements) and shall be automatically renewed for each successive one-year period thereafter.

2.3 Termination Procedures. This Agreement may be terminated as follows:

2.3.1 Written Notice. The Generator may terminate this Agreement after giving the Transmission Provider thirty (30) Calendar Days advance written notice; or

2.3.2 No Commercial Operation. The Transmission Provider may terminate this Agreement on written notice to the Generator if (i) the Generator's Facility has not achieved commercial operation within five (5) years after the scheduled Commercial Operation Date reflected in Appendix B, Time Schedule, or (ii) fails to be available for operation for a consecutive period of five (5) years unless major Facility upgrades are in progress.

2.3.3 Default. Either Party may terminate this Agreement in accordance with Article 17.

Notwithstanding the foregoing, no termination shall become effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination, including the filing with FERC of a notice of termination of this Agreement, which notice has been accepted for filing by FERC.

2.4 Termination Costs. If a Party elects to terminate the Agreement pursuant to Article 2.3 above, each Party shall pay all costs incurred (including any cancellation costs relating to orders or contracts for interconnection facilities and equipment) or charges assessed by the other Party, as of the date of the other Party's receipt of such notice of termination, that are the responsibility of the Terminating Party under this Agreement. In the event of termination by either Party, both Parties shall use commercially Reasonable Efforts to mitigate the costs, damages and charges arising as a consequence of termination. Upon termination of this Agreement, unless otherwise ordered or approved by FERC:

2.4.1 With respect to any portion of the Transmission Provider Interconnection Facilities that have not yet been constructed or installed, the Transmission Provider shall to the extent possible and with Generator's authorization cancel any pending orders of, or return, any materials or equipment for, or contracts for construction of, such facilities; provided that in the event Generator elects not to authorize such cancellation, Generator shall assume all payment obligations with respect to such materials, equipment, and contracts, and the Transmission Provider shall deliver such material and equipment, and, if necessary, assign such contracts, to Generator as soon as practicable, at Generator's expense. To the extent that Generator has already paid Transmission Provider for any or all such costs of materials or equipment not taken by Generator, Transmission Provider shall promptly refund such amounts to Generator, less any costs, including penalties incurred by the Transmission Provider to cancel any pending orders of or return such materials, equipment, or contracts.

2.4.2 Transmission Provider may, at its option, retain any portion of such materials, equipment, or facilities that Generator chooses not to accept delivery of, in which case Transmission Provider shall be responsible for all costs associated with procuring such materials, equipment, or facilities.

2.4.3 With respect to any portion of the Interconnection Facilities, and any other facilities already installed or constructed pursuant to the terms of this Agreement, Generator shall be responsible for all costs associated with the removal, relocation or other disposition or retirement of such materials, equipment, or facilities.

2.5 Disconnection. Upon termination of this Agreement, the Parties will take all appropriate steps to disconnect the Facility from the Transmission System. All costs required to effectuate such disconnection shall be borne by the terminating Party, unless such termination resulted from the non-terminating Party's Default of this Agreement or such non-terminating Party otherwise is responsible for these costs under this Agreement.

2.6 Survival. This Agreement shall continue in effect after termination to the extent necessary to provide for final billings and payments and for costs incurred hereunder, including billings and payments pursuant to this Agreement; to permit the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect; and to permit each Party to have access to the lands of the other Party pursuant to this Agreement or other applicable agreements, to disconnect, remove or salvage its own facilities and equipment.

2.7 Reservation of Rights. Notwithstanding any other provision in this Agreement, each Party retains its rights to unilaterally seek modification of this Agreement pursuant to Sections 205 and 206 of the Federal Power Act and pursuant to FERC's rules and regulations promulgated thereunder.

Article 3. Regulatory Filings

3.1 Filing. The Transmission Provider shall file this Agreement (and any amendment hereto) with the appropriate Governmental Authority, if required. Any information related to studies for interconnection asserted by Generator to contain competitively sensitive commercial or financial information shall be maintained by the Transmission Provider and identified as ''confidential'' under seal stating that Generator asserts such information is Confidential Information and has requested such information be kept under seal. If requested by the Transmission Provider, Generator shall provide the Transmission Provider, in writing, with the Generator's basis for asserting that the information referred to in this Article 3.1 is competitively sensitive information, and the Transmission Provider may disclose such writing to the appropriate Governmental Authority. Generator shall be responsible for the costs associated with affording confidential treatment of such information. If the Generator has executed this Agreement, or any amendment thereto, the Generator shall reasonably cooperate with Transmission Provider with respect to such filing and to provide any information reasonably requested by Transmission Provider needed to comply with applicable regulatory requirements. If the Generator has executed this Agreement or any amendment thereto, unless the Parties agree otherwise, Generator shall not protest the filing of this Agreement or any amendment which Generator executed.

Article 4. Scope of Service

4.1 Interconnection Product Options. Generator has selected the following (checked) type of Interconnection Service:

4.1.1 Energy Resource Interconnection Service.

4.1.1.1 The Product. Energy Resource (''ER'') Interconnection Service allows Generator to connect the Facility to the Transmission System and be eligible to deliver the Facility's output using the existing firm or non-firm capacity of the Transmission System on an ''as available'' basis. To the extent Generator wants to receive ER Interconnection Service, the Transmission Provider shall construct facilities consistent with the studies identified in Attachment A. ER Interconnection Service does not in and of itself convey any transmission delivery service.

4.1.1.2 The Study. The study consists of short circuit/fault duty, steady state (thermal and voltage) and stability analyses. The short circuit/fault duty analysis would identify direct interconnection facilities required and the Network Upgrades necessary to address short circuit issues associated with the interconnection facilities. The stability and steady state studies would identify necessary upgrades to allow full output of the proposed Facility and would also identify the maximum allowed output, at the time the study is performed, of the interconnecting Facility without requiring additional Network Upgrades.

4.1.1.3 Delivery Service Implications. Under ER Interconnection Service, the interconnected Generator will be able to inject power from the Facility into and

deliver power across the interconnecting Transmission Provider's Transmission System on an ''as available'' basis up to the amount of MW's identified in the applicable stability and steady state studies to the extent the upgrades initially required to qualify for ER Interconnection Service have been constructed. Where eligible to do so (e.g., PJM, ISO–NE, NYISO), the interconnected Generator may place a bid to sell into the market up to the maximum identified Facility output, subject to any conditions specified in the interconnection service approval, and the Facility will be dispatched to the extent the Generator's bid clears. In all other instances, no transmission delivery service from the Facility is assured, but the Generator may obtain point-to-point transmission delivery service or be used for secondary network transmission service, pursuant to the Transmission Provider's Open Access Transmission Tariff (''OATT''), up to the maximum output identified in the stability and steady state studies. In those instances, in order for the Generator to obtain the right to deliver or inject energy beyond the Facility Point of Interconnection or to improve its ability to do so, transmission delivery service must be obtained pursuant to the provisions of the Transmission Provider's OATT. The Generator's ability to inject its Facility output beyond the Point of Interconnection, therefore, will depend on the existing capacity of the Transmission Provider's Transmission System at such time as a transmission service request is made that would accommodate such delivery.

4.1.2 Network Resource Interconnection Service.

4.1.2.1 The Product. The Transmission Provider must conduct the necessary studies and construct the Network Upgrades needed to integrate the Facility (1) in a manner comparable to that in which the Transmission Provider integrates its generating facilities to serve native load customers; or (2) in an ISO or RTO with market based congestion management, in the same manner as all other Network Resources. Network Resource (''NR'') Interconnection Service in and of itself does not convey any transmission delivery service.

4.1.2.2 The Study. The interconnection study for NR Interconnection Service shall assure that the Generator's Facility meets the requirements for ER Interconnection Service and as a general matter, that such Facility interconnection is also studied with the Transmission Provider's Transmission System at peak load, under a variety of severely stressed conditions, to determine whether, with the Generator Facility at full output, the aggregate of generation in the local area can be delivered to the aggregate of load on the Transmission Provider's Transmission System, consistent with the Transmission Provider's reliability criteria and procedures. This approach assumes that some portion of existing Network Resources are displaced by the output of the Generator's Facility. The Generator may request the studies associated with NR Interconnection Service at the time of its interconnection application, together with its request(s) for study of other levels of interconnection service, and, following the completion of the requested facilities studies and subject to the construction of all necessary upgrades, may elect to proceed with NR Interconnection Service or to proceed under a lower level of interconnection service to the extent that only certain upgrades will be completed.

There is no requirement either at the time of study or interconnection, or at any point in the future, that the Generator's Facility be designated as a Network Resource by a network transmission customer or that the Generator identify a specific buyer (or sink). To the extent a Network Generator does designate the Facility as a Network Resource, it must do so pursuant to the Transmission Provider's OATT.

4.1.2.3 Delivery Service Implications. NR Interconnection Service allows the Generator's Facility to be designated by any Network Generator on the Transmission Provider's Transmission System as a Network Resource, up to the Facility's full output, on the same basis as all other existing Network Resources interconnected to the Transmission Provider's Transmission System, and to be studied as a Network Resource on the assumption that such a designation will occur. Any Network Generator can utilize its network service to obtain delivery of energy from the interconnected Generator's Facility in the same manner as it accesses other Network Resources. A Facility receiving NR Interconnection Service may also be used to provide ancillary services after technical studies and/or periodic analyses are performed with respect to the Facility's ability to provide any applicable ancillary service, provided that such studies and analyses have been or would be required in connection with the provision of such ancillary services by any existing Network Resource. In addition, in the event of transmission constraints on the Transmission Provider's Transmission System, the Generator's Facility shall be subject to the applicable congestion management procedures in the Transmission Provider's Transmission System in the same manner as all other Network Resources.

Once a Generator satisfies the requirements for obtaining NR Interconnection Service, any future transmission service request for delivery from the Facility within the Transmission Provider's Transmission System of any amount of capacity and/or energy, up to the amount initially studied, will not require that any additional studies be performed or that any further upgrades associated with such Facility be undertaken, regardless of whether or not such Facility is ever designated by a Network Generator as a Network Resource and regardless of changes in ownership of the Facility. To the extent the Generator enters into an arrangement for long term transmission service for deliveries from the Facility outside the Transmission Provider's Transmission System, such request may require additional studies and upgrades in order for the Transmission Provider to grant such request.

Depending on how the cost allocation issue is resolved, the Generator may be allocated congestion rights based on the construction of upgrades.

4.2 Provision of Service. Transmission Provider shall provide Interconnection Service for the Facility at the Point of Interconnection.

4.3 Generator Balancing Service Arrangements. Generator must demonstrate, to the Transmission Provider's reasonable satisfaction, that it has satisfied the requirements of this Article 4.3 prior to the submission of any schedules for delivery service to such Transmission Provider identifying the Facility as the Point of Receipt for such scheduled delivery.

4.3.1 Generator is responsible for ensuring that its actual Facility output matches the scheduled delivery from the Facility, on an integrated clock hour basis, to the Transmission Provider's Transmission System, including ramping into and out of such scheduled delivery, as measured at the Point of Interconnection. Generator shall arrange for the supply of energy when there is a difference between the actual Facility output and the scheduled delivery from the Facility (the ''Generator Balancing Service''). Generator may satisfy its obligation for making such Generator Balancing Service arrangements by: (a) obtaining such service from another entity that (i) has generating resources deliverable within the applicable Control Area, (ii) agrees to assume responsibility for providing such Generator Balancing Service to the Generator, and (iii) has appropriate coordination service arrangements or agreements with the applicable Control Area that addresses Generator Balancing Service for all generating resources for which the entity is responsible within the applicable Control Area; (b) committing sufficient additional unscheduled generating resources to the control of and dispatch by the applicable Control Area operator that are capable of supplying energy not supplied by the Generator's scheduled Facility, and entering into an appropriate coordination services agreement with the applicable Control Area that addresses Generator Balancing Service obligations for the Facility; (c) entering into an arrangement with another Control Area to dynamically schedule the Generator's Facility out of the applicable Control Area and into such other Control Area; (d) entering into a Generator Balancing Service arrangement with the applicable Control Area; or (e) in the event the load/generation balancing function of the applicable Control Area is accomplished through the function of its market structures approved by FERC, by entering into an arrangement consistent with such FERC-approved market structure. In the event Generator fails to demonstrate to the Transmission Provider that it has otherwise complied with this Article, the Generator shall be deemed to have elected to enter into a Generator Balancing Service arrangement with the applicable Control Area. Nothing in this provision shall prejudice either Party from obtaining a FERC-approved tariff addressing its obligations and rights with respect to Generator Balancing Service.

4.4 Performance Standards. Each Party shall perform all of its obligations under this Agreement in accordance with Applicable Laws and Regulations, Applicable Standards, and Good Utility Practice, and to the extent a Party is required or prevented or limited in taking any action by such regulations and

standards, such Party shall not be deemed to be in breach of this Agreement for its compliance therewith.

4.5 No Transmission Delivery Service. The execution of this Agreement does not constitute a request for nor the provision of any transmission delivery service under the Transmission Provider's Tariff or any local distribution service.

4.6 Generator Provided Services. The services provided by Generator under this Agreement are set forth in Article 9.6 and Article 14.5.1. Generator shall be paid for such services in accordance with Article 11.6.

Article 5. Interconnection Facilities Engineering, Procurement, and Construction

5.1 Options. Unless otherwise mutually agreed to between the Parties, Generator shall select the In-Service Date, Initial Synchronization Date, and Commercial Operation Date; and one of the options set forth below (subparagraph A or subparagraph B) for completion of the Transmission Provider Interconnection Facilities/Network Upgrades and such dates and selected option shall be set forth in Appendix B, Time Schedule. The dates selected by Generator shall be dates upon which Generator reasonably expects it will be ready to begin use of the Transmission Provider Interconnection Facilities/Network Upgrades.

A. The Transmission Provider shall design, procure, and construct the Transmission Provider Interconnection Facilities/Network Upgrades, using Reasonable Efforts to complete the Transmission Provider Interconnection Facilities/Network Upgrades by the dates set forth in Appendix B, Time Schedule. The Transmission Provider shall not be required to undertake any action which is inconsistent with its standard safety practices, its material and equipment specifications, its design criteria and construction procedures, its labor agreements, and Applicable Laws and Regulations. In the event the Transmission Provider reasonably expects that it will not be able to complete the Transmission Provider Interconnection Facilities/Network Upgrades by the specified dates, the Transmission Provider will promptly provide written notice to the Generator and will undertake Reasonable Efforts to meet the earliest dates thereafter.

B. (i) The Transmission Provider shall design, procure, and construct the Transmission Provider Interconnection Facilities/Network Upgrades by the dates reflected in Appendix B, Time Schedule, pursuant to subparagraph 5.1.B(i)(a) or subparagraph 5.1.B(i)(b) as applicable.

(a) If the dates designated by Generator are acceptable to Transmission Provider, the Transmission Provider shall so notify Generator within thirty (30) Calendar Days, and shall assume responsibility for the design, procurement and construction of the Transmission Provider Interconnection Facilities/Network Upgrades by the designated dates. If Transmission Provider subsequently fails to complete Transmission Provider Interconnection Facilities by the In-Service Date, to the extent necessary to provide backfeed service, or fails to complete Network Upgrades by the Initial Synchronization Date to the extent necessary to allow for Trial Operation at full power output, unless other arrangements are made by the Parties for such Trial Operation, or fails to complete the Network Upgrades by the Commercial Operation Date, as such dates are reflected in Appendix B, Time Schedule, Transmission Provider shall pay the Generator liquidated damages in accordance with this subparagraph 5.1.B; provided, however, the dates designated by Generator shall be extended day for day for each day that the applicable ISO refuses to grant clearances to install equipment.

(b) If the dates designated by Generator are not acceptable to Transmission Provider, the Transmission Provider shall notify the Generator within thirty (30) Calendar Days, and, unless the Parties agree otherwise, Generator shall have the option to assume responsibility for the design, procurement and construction of: (1) The Transmission Provider Interconnection Facilities, if Transmission Provider has notified Generator that the dates designated by Generator associated therewith are not acceptable, or (2) stand-alone Network Upgrade projects specified in Appendix A, Interconnection Facilities and Network Upgrades, if Transmission Provider has notified Generator that the dates designated by Generator associated therewith are not acceptable. If the Generator elects not to exercise its option to assume such responsibility, Generator shall so notify Transmission Provider within thirty (30) Calendar Days, and the Parties shall in good faith attempt to negotiate terms and conditions (including revision of the specified dates and/or liquidated damages, the provision of incentives or the procurement and construction of a portion of the Transmission Provider Interconnection Facilities/Network Upgrades by Generator) pursuant to which Transmission Provider is willing to assume responsibility for the design, procurement and construction of the Transmission Provider Interconnection Facilities/Network Upgrades pursuant to subparagraph 5.1.B(i)(a), above. If the Parties are unable to reach agreement on such terms and conditions, Transmission Provider shall assume responsibility for the design, procurement and construction of the Transmission Provider Interconnection Facilities/Network Upgrades pursuant to the terms of subparagraph 5.1 A.

(ii) The Parties agree that actual damages to the Generator, in the event the TIF/NU are not completed by the dates designated by the Generator and accepted by the Transmission Provider pursuant to subparagraph 5.1.B(i)(a), above, may include Generator's fixed operation and maintenance costs and lost opportunity costs. Such actual damages are uncertain and impossible to determine at this time. The Parties agree that, because of such uncertainty, any liquidated damages paid by the Transmission Provider to the Generator shall be an amount equal to ½ of 1% per day of the actual cost of the Transmission Provider Interconnection Facilities/Network Upgrades, in the aggregate, for which the Transmission Provider has design, procurement, and construction responsibility, in the event that Transmission Provider does not complete any portion of the Transmission Provider Interconnection Facilities/Network Upgrades by the applicable dates, per day. However, in no event shall the total liquidated damages exceed 20% of the actual cost of the Transmission Provider Interconnection Facilities/Network Upgrades for which Transmission Provider has assumed responsibility to design, procure and construct. The Parties agree that the foregoing payments will be made by the Transmission Provider to the Generator as just compensation for the damages caused to the Generator, which actual damages are uncertain and impossible to determine at this time, and as reasonable liquidated damages, but not as a penalty or a method to secure performance of this Agreement.

(iii) No liquidated damages shall be paid to Generator if: (1) The Generator is not ready to commence use of the Transmission Provider Interconnection Facilities/Network Upgrades for the delivery of power to the Facility for Trial Operation or export of power from the Facility on the specified dates, unless the Generator would have been able to commence use of the Transmission Provider Interconnection Facilities/Network Upgrades for the delivery of power to the Facility for Trial Operation or export of power from the Facility but for Transmission Provider's delay; (2) the Transmission Provider's failure to meet the specified dates is the result of the action or inaction of the Generator; (3) the Generator has assumed responsibility for the design, procurement and construction of the Transmission Provider Interconnection Facilities/Network Upgrades or has elected not to assume such responsibility pursuant to subparagraph 5.1 B.(i)(b), above, unless the Parties agree otherwise pursuant to Subparagraph 5.1 B.(i)(b); or (4) the Parties have otherwise agreed.

(iv) If Generator has assumed responsibility for the design, procurement and construction of the Transmission Provider Interconnection Facilities/Network Upgrades pursuant to Subparagraph 5.1.B(i)(b): (1) The Generator shall engineer, procure equipment, and construct the Transmission Provider Interconnection Facilities/Network Upgrades (or portions thereof) using Good Utility Practice and using standards and specifications provided in advance by the Transmission Provider; (2) Generator's engineering, procurement and construction of the Transmission Provider Interconnection Facilities/Network Upgrades shall comply with all requirements of law to which Transmission Provider would be subject in the engineering, procurement or construction of the Transmission Provider Interconnection Facilities/Network Upgrades; (3) Transmission Provider shall review and approve the engineering design, acceptance tests of equipment, and the construction of the Transmission Provider Interconnection Facilities/Network Upgrades; (4) Transmission Provider shall approve and accept for operation the Transmission Provider Interconnection Facilities/Network Upgrades to the extent engineered, procured, and constructed in accordance with this Subparagraph 5.1.B.v; (5) Should any phase

of the engineering, equipment procurement, or construction of the Transmission Provider Interconnection Facilities/Network Upgrades, including selection of subcontractors, not meet the standards and specifications provided by Transmission Provider, and therefore not be approved and accepted for operation, then Generator shall be obligated to remedy deficiencies in that portion of the Transmission Provider Interconnection Facilities/Network Upgrades.

5.2 Power System Stabilizers. The Generator shall procure, install, maintain and operate power system stabilizers, if and as required the System Impact Study. Transmission Provider reserves the right to reasonably establish minimal acceptable settings for any installed power system stabilizers, subject to the design and operating limitations of the Facility.

5.3 Equipment Procurement. If responsibility for construction of the Transmission Provider Interconnection Facilities/Network Upgrades is to be borne by the Transmission Provider, then the Transmission Provider shall commence design of the Transmission Provider Interconnection Facilities/Network Upgrades and procure necessary equipment as soon as practicable after all of the following conditions are satisfied, unless the Parties otherwise agree in writing:

5.3.1 The Transmission Provider has completed the Facilities Study pursuant to the Facilities Study Agreement;

5.3.2 The Transmission Provider has received written authorization to proceed with design and procurement from the Generator by the date specified in Appendix B, Time Schedule; and

5.3.3 The Generator has provided security to the Transmission Provider in accordance with Article 11.5 by the dates specified in Appendix B, Time Schedule.

5.4 Construction Commencement. The Transmission Provider shall commence construction of the Transmission Provider Interconnection Facilities/Network Upgrades for which it is responsible as soon as practicable after the following additional conditions are satisfied:

5.4.1 Approval of the appropriate Governmental Authority has been obtained for any facilities requiring regulatory approval;

5.4.2 Necessary real property rights and rights-of-way have been obtained, to the extent required for the construction of a discrete aspect of the Transmission Provider Interconnection Facilities/Network Upgrades;

5.4.3 The Transmission Provider has received written authorization to proceed with construction from the Generator by the date specified in Appendix B, Time Schedule; and

5.4.4 The Generator has provided security to the Transmission Provider in accordance with Article 11.5 by the dates specified in Appendix B, Time Schedule.

5.5 Work Progress. The Parties will keep each other advised periodically as to the progress of their respective design, procurement and construction efforts. Either Party may, at any time, request a progress report from the other Party. If, at any time, the Generator determines that the completion of the Transmission Provider Interconnection Facilities will not be required until after the specified In-Service Date, the Generator will provide written notice to the Transmission Provider of such later date upon which the completion of the Transmission Provider Interconnection Facilities will be required.

5.6 Information Exchange. As soon as reasonably practicable after the Effective Date, the Parties shall exchange information regarding the design and compatibility of the Parties' Interconnection Facilities and compatibility of the Interconnection Facilities with the Transmission Provider's Transmission System, and shall work diligently and in good faith to make any necessary design changes.

5.7 Limited Operation. If any of the Transmission Provider Interconnection Facilities/Network Upgrades are not reasonably expected to be completed prior to the Commercial Operation Date of the Facility, Transmission Provider shall, upon the request and at the expense of Generator, perform operating studies on a timely basis to determine the extent to which the Facility and the Generator Interconnection Facilities may operate prior to the completion of the Transmission Provider Interconnection Facilities/Network Upgrades consistent with Applicable Laws and Regulations, Applicable Standards, Good Utility Practice, and this Agreement. Transmission Provider shall permit Generator to operate the Facility and the Generator Interconnection Facilities in accordance with the results of such studies.

5.8 Generator Interconnection Facilities (''GIF''). Generator shall, at its expense, design, procure, construct, own and install the GIF, as set forth in Appendix A, Interconnection Facilities and Network Upgrades.

5.8.1 Generator Specifications. Generator shall submit final specifications for the GIF, including System Protection Facilities, to Transmission Provider for review and comment at least ninety (90) Calendar Days prior to the Initial Synchronization Date. Transmission Provider shall review such specifications to ensure that the GIF are compatible with the technical specifications, operational control, and safety requirements of the Transmission Provider and comment on such specifications within thirty (30) Calendar Days of Generator's submission. All specifications provided hereunder shall be deemed confidential.

5.8.2 Transmission Provider's Review. Transmission Provider's review of Generator's final specifications shall not be construed as confirming, endorsing, or providing a warranty as to the design, fitness, safety, durability or reliability of the Facility, or the GIF. Generator shall make such changes to the GIF as may reasonably be required [by Transmission Provider] to ensure that the GIF are compatible with the telemetry, communications, and safety requirements of the Transmission Provider.

5.8.3 GIF Construction. The GIF shall be designed and constructed in accordance with Good Utility Practice. Within one hundred twenty (120) Calendar Days after the Commercial Operation Date, unless the Parties agree on another mutually acceptable deadline, the Generator shall deliver to the Transmission Provider the following ''as-built'' drawings, information and documents for the GIF: a one-line diagram, a site plan showing the Facility and the GIF, plan and elevation drawings showing the layout of the GIF, a relay functional diagram, relaying AC and DC schematic wiring diagrams and relay settings for all facilities associated with the Generator's step-up transformers, the facilities connecting the Generator to the step-up transformers and the GIF, and the impedances (determined by factory tests) for the associated step-up transformers and the generators.

5.9 Transmission Provider Interconnection Facilities Construction. The Transmission Provider Interconnection Facilities shall be designed and constructed in accordance with Good Utility Practice. Upon request, within one hundred twenty (120) Calendar Days after the Commercial Operation Date, unless the Parties agree on another mutually acceptable deadline, the Transmission Provider shall deliver to the Generator the following ''as-built'' drawings, information and documents for the Transmission Provider Interconnection Facilities: [include appropriate drawings and relay diagrams]

5.10 Access Rights. Upon reasonable notice and supervision by a Party, and subject to any required or necessary regulatory approvals, a Party (''Granting Party'') shall furnish [at no cost] to the other Party (''Access Party'') any rights of use, licenses, rights of way and easements with respect to lands owned or controlled by the Granting Party and its agents that are necessary to enable the Access Party to obtain ingress and egress to construct, operate, maintain, repair, test (or witness testing), inspect, replace or remove facilities and equipment to: (i) interconnect the Facility with the Transmission System; (ii) operate and maintain the Facility, the Interconnection Facilities and the Transmission System; and (iii) disconnect or remove the Access Party's facilities and equipment upon termination of this Agreement. In exercising such licenses, rights of way and easements, the Access Party shall not unreasonably disrupt or interfere with normal operation of the Granting Party's business and shall adhere to the safety rules and procedures established in advance, as may be changed from time to time, by the Granting Party and provided to the Access Party.

5.11 Lands of Other Property Owners. If any part of the Transmission Provider/Transmission Owner Interconnection Facilities and/or Network Upgrades is to be installed on property owned by persons other than Generator or Transmission Provider/Transmission Owner, the Transmission Provider/Transmission Owner shall at Generator's expense use reasonable efforts to procure from such persons any rights of use, licenses, rights of way and easements that are necessary to construct, operate, maintain, test, inspect, replace or remove the Transmission Provider/Transmission Owner Interconnection Facilities and/or Network Upgrades upon such property. Provided, however, where such property is owned by an affiliate of Transmission Provider/

Transmission Owner, Generator's expense for such procured property right shall be limited to the fair market value of the procured property right or such other price as required by applicable inter-affiliate transaction requirements. The Transmission Provider/Transmission Owner shall use its eminent domain authority to facilitate the exercise of the Parties' rights and obligations under this Agreement, where and to the extent that it is permitted to do so.

5.12 Early Construction of Base Case Facilities. Generator may request Transmission Provider to construct, and Transmission Provider shall construct, on a schedule that will accommodate Generator's In-Service Date, all or any portion of any Network Upgrades required for Generator to be interconnected to the Transmission System which are included in the base case of the Facilities Study for the Generator, and which also are required to be constructed for another interconnecting generator, but where such construction is not scheduled to be completed in time to achieve Generator's In-Service Date.

5.13 Suspension. Generator reserves the right, upon written notice to Transmission Provider, to suspend at any time all work by Transmission Provider associated with the construction and installation of Transmission Provider Interconnection Facilities and/or Network Upgrades required under this Agreement. In such event, Generator shall be responsible for all reasonable and necessary costs which Transmission Provider (i) has incurred pursuant to this Agreement prior to the suspension and (ii) incurs in suspending such work, including any costs incurred to perform such work as may be necessary to ensure the safety of persons and property and the integrity of the Transmission System during such suspension and, if applicable, any costs incurred in connection with the cancellation or suspension of material, equipment and labor contracts which Transmission Provider cannot reasonably avoid; provided, however, that prior to canceling or suspending any such material, equipment or labor contract, Transmission Provider shall obtain Generator's authorization to do so. Transmission Provider shall invoice Generator for such costs pursuant to Article 12 and shall use due diligence to minimize its costs. In the event Generator suspends work by Transmission Provider required under this Agreement pursuant to this Article 5.13, and has not requested Transmission Provider to recommence the work required under this Agreement on or before the expiration of three (3) years following commencement of such suspension, this Agreement shall be deemed terminated.

5.14 Taxes.

5.14.1 Generator Payments Not Taxable. The Parties intend that all payments or property transfers made by Generator to Transmission Provider for the installation of the Transmission Provider Interconnection Facilities and the Network Upgrades shall be non-taxable, either as contributions to capital, or as an advance, in accordance with the Internal Revenue Code and any applicable state income tax laws and shall not be taxable as contributions in aid of construction or otherwise under the Internal Revenue Code and any applicable state income tax laws.

5.14.2 Representations And Covenants. In accordance with IRS Notice 2001–82 and IRS Notice 88–129, Generator represents and covenants that (i) ownership of the electricity generated at the Facility will pass to another party prior to the transmission of the electricity on the Transmission System, (ii) for income tax purposes, the amount of any payments and the cost of any property transferred to the Transmission Provider for the Transmission Provider Interconnection Facilities will be capitalized by Generator as an intangible asset and recovered using the straight-line method over a useful life of twenty (20) years, and (iii) any portion of the Transmission Provider Interconnection Facilities that is a ''dual-use intertie,'' within the meaning of IRS Notice 88–129, is reasonably expected to carry only a de minimis amount of electricity in the direction of the Facility. For this purpose, ''de minimis amount'' means no more than 5% of the total power flows in both directions, calculated in accordance with the ''5% test'' set forth in IRS Notice 88–129. At Transmission Provider's request, Generator shall provide Transmission Provider with a report from an independent engineer confirming its representation in clause (iii), above. Transmission Provider represents and covenants that the cost of the Transmission Provider Interconnection Facilities paid for by Generator will have no net effect on the base upon which rates are determined.

5.14.3 Indemnification for Taxes Imposed Upon Transmission Provider. Notwithstanding Article 5.14.1, Generator shall protect, indemnify and hold harmless Transmission Provider from income taxes imposed against Transmission Provider as the result of payments or property transfers made by Generator to Transmission Provider under this Agreement, as well as any interest and penalties, other than interest and penalties attributable to any delay caused by Transmission Provider. Transmission Provider shall not include a gross-up for income taxes in the amounts it charges Generator under this Agreement unless (i) Transmission Provider has determined, in good faith, that the payments or property transfers made by Generator to Transmission Provider should be reported as income subject to taxation or (ii) any Governmental Authority directs Transmission Provider to report payments or property as income subject to taxation; *provided, however,* that Transmission Provider may require Generator to provide security, in a form reasonably acceptable to Transmission Provider (such as a parental guarantee or a letter of credit), in an amount equal to Generator's estimated tax liability under this Article 5.14. Generator shall reimburse Transmission Provider for such taxes on a fully grossed-up basis, in accordance with Article 5.14.4, within thirty (30) Calendar Days of receiving written notification from Transmission Provider of the amount due, including detail about how the amount was calculated.

5.14.4 Tax Gross-Up Amount. Generator's liability for taxes under this Article 5.14 shall be calculated on a fully grossed-up basis. Except as may otherwise be agreed to by the parties, this means that Generator will pay Transmission Provider, in addition to the amount paid for the Interconnection Facilities and Network Upgrades, an amount equal to (1) the current taxes imposed on Transmission Provider (''Current Taxes'') on the excess of (a) the gross income realized by Transmission Provider as a result of payments or property transfers made by Generator to Transmission Provider under this Agreement (without regard to any payments under this Article 5.14) (the ''Gross Income Amount'') over (b) the present value of future tax deductions for depreciation that will be available as a result of such payments or property transfers (the ''Present Value Depreciation Amount''), plus (2) an additional amount sufficient to permit the Transmission Provider to receive and retain, after the payment of all Current Taxes, an amount equal to the net amount described in clause (1). For this purpose, (i) Current Taxes shall be computed based on Transmission Provider's composite federal and state tax rates at the time the payments or property transfers are received and Transmission Provider will be treated as being subject to tax at the highest marginal rates in effect at that time (the ''Current Tax Rate''), and (ii) the Present Value Depreciation Amount shall be computed by discounting Transmission Provider's anticipated tax depreciation deductions as a result of such payments or property transfers by Transmission Provider's current weighted average cost of capital. Thus, the formula for calculating Generator's liability to Transmission Owner pursuant to this Article 5.14.4 can be expressed as follows: (Current Tax Rate × (Gross Income Amount − Present Value of Tax Depreciation))/(1–Current Tax Rate). Generator's estimated tax liability in the event taxes are imposed shall be stated in Appendix A, Interconnection Facilities and Network Upgrades.

5.14.5 Private Letter Ruling or Change or Clarification of Law. At Generator's request and expense, Transmission Provider shall file with the IRS a request for a private letter ruling as to whether any property transferred or sums paid, or to be paid, by Generator to Transmission Provider under this Agreement are subject to federal income taxation. Generator will prepare the initial draft of the request for a private letter ruling, and will certify under penalties of perjury that all facts represented in such request are true and accurate to the best of Generator's knowledge. Transmission Provider and Generator shall cooperate in good faith with respect to the submission of such request. Transmission Provider shall keep Generator fully informed of the status of such request for a private letter ruling and shall execute either a privacy act waiver or a limited power of attorney, in a form acceptable to the IRS, that authorizes Generator to participate in all discussions with the IRS regarding such request for a private letter ruling. Transmission Provider shall allow Generator to attend all meetings with IRS officials about the request and shall permit Generator to prepare the initial drafts of any follow-up letters in connection with the request. If the private letter ruling concludes that such

transfers or sums are not subject to federal income taxation, or a clarification of or change in law results in Transmission Provider determining in good faith that such transfers or sums are not subject to federal income taxation, Generator's obligations under this Article 5.14 shall be reduced accordingly.

5.14.6 Contests. In the event any Governmental Authority determines that Transmission Provider's receipt of payments or property constitutes income that is subject to taxation, Transmission Provider shall notify Generator, in writing, within thirty (30) Calendar Days of receiving notification of such determination by a Governmental Authority. Upon the timely written request by Generator and at Generator's sole expense, Transmission Provider shall appeal, protest, seek abatement of, or otherwise oppose such determination. Upon Generator's written request and sole expense, Transmission Provider shall file a claim for refund with respect to any taxes paid under this Article 5.14, whether or not it has received such a determination. Transmission Provider reserves the right to make all decisions with regard to the prosecution of such appeal, protest, abatement or other contest, including the selection of counsel and compromise or settlement of the claim, but Transmission Provider shall keep Generator informed, shall consider in good faith suggestions from Generator about the conduct of the contest, and shall reasonably permit Generator or a Generator representative to attend contest proceedings. Generator shall pay to Transmission Provider on a periodic basis, as invoiced by Transmission Provider, Transmission Provider's documented reasonable costs of prosecuting such appeal, protest, abatement or other contest. Transmission Provider will not be required to appeal or seek further review beyond one level of judicial review. At any time during the contest, Transmission Provider may agree to a settlement either with Generator's consent or after obtaining written advice from nationally-recognized tax counsel, selected by Transmission Provider, but reasonably acceptable to Generator, that the proposed settlement represents a reasonable settlement given the hazards of litigation. Generator's obligation shall be based on the amount of the settlement agreed to by Generator, or if a higher amount, so much of the settlement that is supported by the written advice from nationally-recognized tax counsel selected under the terms of the preceding sentence. Any settlement without Generator's consent or such written advice will relieve Generator from any obligation to indemnify Transmission Provider for the tax at issue in the contest.

5.14.7 Refund. In the event that (a) a private letter ruling is issued to Transmission Provider which holds that any amount paid or the value of any property transferred by Generator to Transmission Provider under the terms of this Agreement is not subject to federal income taxation, (b) any legislative change or administrative announcement, notice, ruling or other determination makes it reasonably clear to Transmission Provider in good faith that any amount paid or the value of any property transferred by Generator to Transmission Provider under the terms of this Agreement is not taxable to Transmission Provider, (c) any abatement, appeal, protest, or other contest results in a determination that any payments or transfers made by Generator to Transmission Provider are not subject to federal income tax, or (d) if Transmission Provider receives a refund from any taxing authority for any overpayment of tax attributable to any payment or property transfer made by Generator to Transmission Provider pursuant to this Agreement, Transmission Provider shall promptly refund to Generator the following: (i) any payment made by Generator under this Article 5.14 for taxes that is attributable to the amount determined to be non-taxable, together with interest thereon (ii) on any amounts paid by Generator to Transmission Provider for such taxes which Transmission Provider did not submit to the taxing authority, calculated in accordance with the methodology set forth in FERC's regulations at 18 CFR § 35.19a(a)(2)(ii) from the date payment was made by Generator to the date Transmission Provider refunds such payment to Generator, and (iii) with respect to any such taxes paid by Transmission Provider, any refund or credit Transmission Provider receives or to which it may be entitled from any Governmental Authority, interest (or that portion thereof attributable to the payment described in clause (i), above) owed to the Transmission Provider for such overpayment of taxes (including any reduction in interest otherwise payable by Transmission Provider to any Governmental Authority resulting from an offset or credit); *provided, however,* that Transmission Provider will remit such amount promptly to Generator only after and to the extent that Transmission Provider has received a tax refund, credit or offset from any Governmental Authority for any applicable overpayment of income tax related to the Transmission Provider Interconnection Facilities. The intent of this provision is to leave both parties, to the extent practicable, in the event that no taxes are due with respect to any payment for Interconnection Facilities and Network Upgrades hereunder, in the same position they would have been in had no such tax payments been made.

5.14.8 Taxes Other Than Income Taxes. Upon the timely request by Generator, and at Generator's sole expense, Transmission Provider shall appeal, protest, seek abatement of, or otherwise contest any tax (other than federal or state income tax) asserted or assessed against Transmission Provider for which Generator may be required to reimburse Transmission Provider under the terms of this Agreement. Generator and Transmission Provider shall cooperate in good faith with respect to any such contest. Unless the payment of such taxes is a prerequisite to an appeal or abatement or cannot be deferred, no amount shall be payable by Generator to Transmission Provider for such taxes until they are assessed by a final, non-appealable order by any court or agency of competent jurisdiction. In the event that a tax payment is withheld and ultimately due and payable after appeal, Generator will be responsible for all taxes, interest and penalties, other than penalties attributable to any delay caused by Transmission Provider.

5.14.9 Transmission Owners Who Are Not Transmission Providers. If the Transmission Provider is not the same entity as the Transmission Owner, then (i) all references in this Article 5.14 to Transmission Provider shall be deemed also to refer to and to include the Transmission Owner, as appropriate, and (ii) this Agreement shall not become effective until such Transmission Owner shall have agreed in writing to assume all of the duties and obligations of the Transmission Provider under this Article 5.14 of this Agreement.

5.15 Tax Status. Each Party shall cooperate with the other to maintain the other Party's tax status. Nothing in this Agreement is intended to adversely affect any Transmission Provider's tax exempt status with respect to the issuance of bonds including, but not limited to, Local Furnishing Bonds.

5.16 Modification.

5.16.1 General. Either Party may undertake modifications to its facilities. If a Party plans to undertake a modification that reasonably may be expected to affect the other Party's facilities, that Party shall provide to the other Party sufficient information regarding such modification so that the other Party may evaluate the potential impact of such modification prior to commencement of the work. Such information shall be deemed to be confidential hereunder and shall include information concerning the timing of such modifications and whether such modifications are expected to interrupt the flow of electricity from the Facility. The Party desiring to perform such work shall provide the relevant drawings, plans, and specifications to the other Party at least ninety (90) Calendar Days in advance of the commencement of the work or such shorter period upon which the Parties may agree, which agreement shall not unreasonably be withheld, conditioned or delayed. In the case of Generator modifications that do not require Generator to submit an Interconnection Request, Transmission Provider shall provide, within thirty (30) Calendar Days (or such other time as the Parties may agree), an estimate of any additional modifications to the Transmission System, Transmission Provider Interconnection Facilities or Network Upgrades necessitated by such Generator modification and a good faith estimate of the costs thereof.

5.16.2 Standards. Any additions, modifications, or replacements made to a Party's facilities shall be designed, constructed and operated in accordance with this Agreement, Good Utility Practice and the National Electric Safety Code in effect at the time.

5.16.3 Modification Costs. Generator shall not be responsible for the costs of any additions, modifications, or replacements that Transmission Provider makes to the Transmission Provider Interconnection Facilities or the Transmission System to facilitate the interconnection of a third party to the Transmission Provider Interconnection Facilities or the Transmission System, or to

provide transmission service under the Transmission Provider Tariff. Generator shall be responsible for the costs of any additions, modifications, or replacements to the Generator Interconnection Facilities that may be necessary to maintain or upgrade such Generator Interconnection Facilities consistent with Applicable Laws and Regulations, Applicable Standards or Good Utility Practice.

Article 6. Testing and Inspection

6.1 Pre-Commercial Operation Date Testing and Modifications. Prior to the Commercial Operation Date, the Transmission Provider shall test the Transmission Provider Interconnection Facilities and Network Upgrades and Generator shall test the Facility and the Generator Interconnection Facilities to ensure their safe and reliable operation. Similar testing may be required after initial operation. Each Party shall make any modifications to its facilities that are found to be necessary as a result of such testing. Generator shall bear the cost of all such testing and modifications. Generator shall generate test energy at the Facility only if it has arranged for the delivery of such test energy.

6.2 Post-Commercial Operation Date Testing and Modifications. Each Party shall at its own expense perform routine inspection and testing of its facilities and equipment in accordance with Good Utility Practice as may be necessary to ensure the continued interconnection of the Facility with the Transmission System in a safe and reliable manner. Each Party shall have the right, upon advance written notice, to require reasonable additional testing of the other Party's facilities, at the requesting Party's expense, as may be in accordance with Good Utility Practice.

6.3 Right to Observe Testing. Each Party shall notify the other Party in advance of its performance of tests of its Interconnection Facilities. The other Party has the right, at its own expense, to observe such testing.

6.4 Right to Inspect. Each Party shall have the right, but shall have no obligation to: (i) Observe the other Party's tests and/or inspection of any of its System Protection Facilities and other protective equipment, including power system stabilizers; (ii) review the settings of the other Party's System Protection Facilities and other protective equipment; and (iii) review the other Party's maintenance records relative to the Interconnection Facilities, the System Protection Facilities and other protective equipment. A Party may exercise these rights from time to time as it deems necessary upon reasonable notice to the other Party. The exercise or non-exercise by a Party of any such rights shall not be construed as an endorsement or confirmation of any element or condition of the Interconnection Facilities or the System Protection Facilities or other protective equipment or the operation thereof, or as a warranty as to the fitness, safety, desirability, or reliability of same. Any information that Transmission Provider obtains through the exercise of any of its rights under this Article 6.4 shall be deemed to be confidential hereunder.

Article 7. Metering

7.1 General. Unless otherwise agreed by the Parties, Transmission Provider shall install Metering Equipment at the Point of Interconnection prior to any operation of the Facility and shall own, operate, test and maintain such Metering Equipment. Power flows to and from the Facility shall be measured at or, at Transmission Provider's option, compensated to, the Point of Interconnection. Transmission Provider shall provide metering quantities, in analog and/or digital form, to Generator upon request. Generator shall bear all reasonable documented costs associated with the purchase, installation, operation, testing and maintenance of the Metering Equipment.

7.2 Check Meters. Generator, at its option and expense, may install and operate, on its premises and on its side of the Point of Interconnection, one or more check meters to check Transmission Provider's meters. Such check meters shall be for check purposes only and shall not be used for the measurement of power flows for purposes of this Agreement, except as provided in Article 7.3 below. The check meters shall be subject at all reasonable times to inspection and examination by Transmission Provider or its designee. The installation, operation and maintenance thereof, however, shall be performed entirely by Generator in accordance with Good Utility Practice.

7.3 Standards. Transmission Provider shall install, calibrate, and test revenue quality Metering Equipment in accordance with applicable ANSI standards. To the extent this Article 7 conflicts with the manuals, standards or guidelines of the Applicable Reliability Council regarding interchange metering and transactions, the manuals, standards and guidelines of such Applicable Reliability Council shall control.

7.4 Testing of Metering Equipment. Transmission Provider shall inspect and test all Transmission Provider-owned Metering Equipment upon installation and at least once every two (2) years thereafter. If requested to do so by Generator, Transmission Provider shall, at Generator's expense, inspect or test Metering Equipment more frequently than every two (2) years. Transmission Provider shall give reasonable notice of the time when any inspection or test shall take place, and Generator may have representatives present at the test or inspection. If at any time Metering Equipment is found to be inaccurate or defective, it shall be adjusted, repaired or replaced at Generator's expense, in order to provide accurate metering, unless the inaccuracy or defect is due to owner failure to maintain, then owner shall pay. If Metering Equipment fails to register, or if the measurement made by Metering Equipment during a test varies by more than [one percent] from the measurement made by the standard meter used in the test, Transmission Provider shall adjust the data by correcting all measurements made by the inaccurate meter for the period during which the inaccurate measurements were made, if the period can be determined. If the period cannot be determined, the adjustment shall be for the period immediately preceding the test of the Metering Equipment equal to one-half the time from the date of the last previous test of the Metering Equipment.

7.5 Metering Data. At Generator's expense, the metered data shall be telemetered to one or more locations designated by Transmission Provider and one or more locations designated by Generator. The metered data provided by Generator shall be used, under normal operating conditions, as the official measurement of the amount of energy delivered from the Facility to the Point of Interconnection.

Article 8. Communications

8.1 Generator Obligations. Generator shall maintain satisfactory operating communications with Transmission Provider's system dispatcher or representative designated by Transmission Provider. Generator shall provide standard voice line, dedicated voice line and facsimile communications at its Facility control room or central dispatch facility through use of the public telephone system. Generator shall also provide the dedicated data circuit(s) necessary to provide Generator data to Transmission Provider as set forth in Appendix E, Security Arrangement Details. The data circuit(s) shall extend from the Facility to the location(s) specified by Transmission Provider. Any required maintenance of such communications equipment shall be performed by Generator. Operational communications shall be activated and maintained under, but not be limited to, the following events: system paralleling or separation, scheduled and unscheduled shutdowns, equipment clearances, and hourly and daily load data.

8.2 Remote Terminal Unit. Prior to any operation of the Facility, a Remote Terminal Unit, or equivalent data collection and transfer equipment acceptable to both Parties, shall be installed by Generator, or by Transmission Provider at Generator's expense, to gather accumulated and instantaneous data to be telemetered to the location(s) designated by Transmission Provider through use of a dedicated point-to-point data circuit(s) as indicated in Article 8.1. The communication protocol for the data circuit(s) shall be specified by Transmission Provider. Instantaneous bi-directional analog real power and reactive power flow information must be telemetered directly to the location(s) specified by Transmission Provider.

Each Party will promptly advise the other Party if it detects or otherwise learns of any metering, telemetry or communications equipment errors or malfunctions that require the attention and/or correction by the other Party. The Party owning such equipment shall correct such error or malfunction as soon as reasonably feasible.

8.3 No Annexation. Any and all equipment placed on the premises of a Party shall be and remain the property of the Party providing such equipment regardless of the mode and manner of annexation or attachment to real property, unless otherwise mutually agreed by the Parties.

Article 9. Operations

9.1 General. Each Party shall comply with the Interconnection Guidelines set out in

Appendix G, Interconnection Guidelines, to this Agreement. Each Party shall provide to the other Party all information that may reasonably be required by the other Party to comply with Applicable Laws and Regulations and Applicable Standards.

9.2 Control Area Notification. At least three months before Initial Synchronization Date, the Generator shall notify the Transmission Provider in writing of the Control Area in which it will be located. After the Initial Synchronization Date, Generator has the right to designate a different Control Area. In either event, Transmission Provider shall use Reasonable Efforts to accommodate such request as soon as practicable, but shall do so no later than six months from the date the Generator provided notification. If the Generator elects to be located in a Control Area other than the Control Area in which the Transmission Provider is located, all necessary arrangements, including but not limited to those set forth in Article 7 and Article 8 of this Agreement, and remote control area generator interchange agreements, if applicable, and the appropriate measures under such agreements, shall be executed and implemented prior to the placement of the Facility in the other Control Area. The Parties will diligently cooperate with one another to enable such agreements and arrangements to be executed and implemented on a schedule necessary to meet the Generator's request ''at Generator's expense''. If the Facility is not operated as part of Transmission Provider's Control Area, in no event shall this Agreement prohibit, prevent, or otherwise limit the ability of Generator to operate the Facility in accordance with the requirements of the Control Area of which it is part, and the Parties shall negotiate in good faith to amend this Agreement as necessary or appropriate.

9.3 Transmission Provider Obligations. Transmission Provider shall cause the Transmission System and the Transmission Provider Interconnection Facilities to be operated, maintained and controlled in a safe and reliable manner and in accordance with this Agreement. Transmission Provider may provide operating instructions to Generator consistent with this Agreement and Transmission Provider's operating protocols and procedures as they may change from time to time. Transmission Provider will consider changes to its operating protocols and procedures proposed by Generator. Generator shall not be obligated to follow Transmission Provider's instructions to the extent the instructions would have a material adverse impact on the safe and reliable operation of Generator's facilities. Upon request, Generator shall provide Transmission Provider with documentation of any such alleged material adverse impact.

9.4 Generator Obligations. Generator shall at its own expense operate, maintain and control the Facility and the Generator Interconnection Facilities in a safe and reliable manner and in accordance with this Agreement. Generator shall operate the Facility and the Generation Interconnection Facilities in accordance with all applicable requirements of the Control Area of which it is part, as such requirements are set forth in Appendix C, Interconnection Details, of this Agreement. Appendix C, Interconnection Details, will be modified to reflect changes to the requirements as they may change from time to time. Either Party may request that the other Party provide copies of the requirements set forth in Appendix C, Interconnection Details, of this Agreement.

9.5 Start-Up and Synchronization. Consistent with Transmission Provider Interconnection Guidelines and the Parties' mutually acceptable procedures, the Generator is responsible for the proper synchronization of the Facility to the Transmission Provider System.

9.6 Reactive Power.

9.6.1 Power Factor Design Criteria. Generator shall design the Facility to maintain a composite power delivery at continuous rated power output at the Point of Interconnection at a power factor within the range of 0.97 leading to 0.95 lagging, unless Transmission Provider has established different requirements that apply to all generators in the Control Area on a comparable basis.

9.6.2 Voltage Schedules. Once the Generator has synchronized the Facility with the Transmission System, Transmission Provider shall require Generator to operate the Facility to produce or absorb reactive power within the design limitations of the Facility set forth in Article 24 pursuant to voltage schedules, reactive power schedules or power factor schedules. Transmission Provider's schedules shall treat all sources of reactive power in the Control Area in an equitable and not unduly discriminatory manner. Transmission Provider shall exercise Reasonable Efforts to provide Generator with such schedules at least one (1) day in advance, and may make changes to such schedules as necessary to maintain the reliability of the Transmission System. Generator shall operate the Generating Facility to maintain the specified output voltage or power factor at the Point of Interconnection within the design limitations of the Facility set forth in Article 24. If Generator is unable to maintain the specified voltage or power factor, it shall promptly notify the System Operator.

9.6.2.1 Governors and Regulators. Whenever the Facility is operated in parallel with the Transmission System and the speed governors (if installed on the generating unit pursuant to Good Utility Practice) and voltage regulators are capable of operation, Generator shall operate the Facility with its speed governors and voltage regulators in automatic operation. If the Facility's speed governors and voltage regulators are not capable of such automatic operation, the Generator shall immediately notify Transmission Provider's system operator, or its designated representative, and ensure that such Facility's reactive power production or absorption (measured in MVARs) are within the design capability of the Facility's generating unit(s) and steady state stability limits. Generator shall not cause its Facility to disconnect automatically or instantaneously from the Transmission System or trip any generating unit comprising the Facility for an under or over frequency condition unless the abnormal frequency condition persists for a time period beyond the limits set forth in ANSI/IEEE Standard C37.106, or such other standard as applied to other generators in the Control Area on a comparable basis.

9.6.3 Payment for Reactive Power. Any obligation of Transmission Provider to pay Generator for reactive power that Generator provides or absorbs from the Facility shall be pursuant to Article 11.6 or such other agreement to which the Parties have otherwise agreed. To the extent that no rate schedule is in effect at the time the Generator is required to provide or absorb any Reactive Power under this Agreement, the Transmission Provider agrees to compensate the Generator in such amount as would have been due the Generator had the rate schedule been in effect at the time service commenced; provided, however, that such rate schedule must be filed at FERC or other appropriate Governmental Authority within sixty (60) Calendar Days of the commencement of service.]

9.7 Outages, Interruptions, and Disconnection.

9.7.1 Outages.

9.7.1.1 Outage Authority and Coordination. Each Party may in accordance with Good Utility Practice in coordination with the other Party remove from service any of its respective Interconnection Facilities or Network Upgrades that may impact the other Party's facilities as necessary to perform maintenance or testing or to install or replace equipment. Absent an Emergency Condition, the Party scheduling a removal of such facility(ies) from service will use [Reasonable Efforts] to schedule such removal on a date and time mutually acceptable to both Parties. In all circumstances any Party planning to remove such facility(ies) from service shall use Reasonable Efforts to minimize the effect on the other Party of such removal.

9.7.1.2 Outage Schedules. The Transmission Provider shall post scheduled outages of its transmission facilities on the OASIS. Generator shall submit its planned maintenance schedules for the Facility to Transmission Provider for a minimum of a rolling twenty-four month period. Generator shall update its planned maintenance schedules as necessary. Transmission Provider may request Generator to reschedule its maintenance as necessary to maintain the reliability of the Transmission System; provided, however, adequacy of generation supply shall not be a criterion in determining Transmission System reliability. Transmission Provider shall compensate Generator for any costs of rescheduling such maintenance.

9.7.1.3 Outage Restoration. If an outage on a Party Interconnection Facilities or Network Upgrades adversely affects the other Party's facilities, the Party that owns or controls the facility that is out of service shall use Reasonable Efforts to promptly restore such facility(ies) to a normal operating condition consistent with the nature of the outage.

9.7.2 Continuity of Service. If required by Good Utility Practice to do so, Transmission Provider may require Generator to curtail, interrupt or reduce deliveries of electricity if such delivery of electricity would adversely

affect Transmission Provider's ability to perform such activities as are necessary to safely and reliably operate and maintain the Transmission System. The following provisions shall apply to any curtailment, interruption or reduction permitted under this Article 9.7.2:

9.7.2.1 The curtailment, interruption, or reduction shall continue only for so long as reasonably necessary under Good Utility Practice;

9.7.2.2 Any such curtailment, interruption, or reduction shall be made on an equitable, non-discriminatory basis with respect to all generators directly connected to the Transmission System;

9.7.2.3 When the curtailment, interruption, or reduction must be made under circumstances which do not allow for advance notice, Transmission Provider shall notify Generator by telephone as soon as practicable of the reasons for the curtailment, interruption, or reduction, and, if known, its expected duration. Telephone notification shall be followed by written notification as soon as practicable;

9.7.2.4 Except during the existence of an Emergency Condition, when the curtailment, interruption, or reduction can be scheduled, Transmission Provider shall notify Generator in advance regarding the timing of such scheduling and further notify Generator of the expected duration. Transmission Provider shall schedule the curtailment or interruption to coincide with the scheduled outages of the Facility, and if not possible, Transmission Provider shall use Good Utility Practices to schedule the curtailment or interruption during periods of low demand;

9.7.2.5 The Parties shall cooperate and coordinate with each other to the extent necessary in order to restore the Facility, Interconnection Facilities, and the Transmission System to their normal operating state, consistent with system conditions and Good Utility Practice; and,

9.7.3 Under-Frequency Load Shed Event. The Transmission System is designed to automatically activate a load-shed program as described in the Interconnection Guidelines in the event of an under-frequency system disturbance. Generator shall implement an under-frequency relay set point for the Facility as described in the Interconnection Guidelines to ensure ''ride through'' capability of the Transmission System, to the extent allowed by equipment limitations or warranties.

9.7.4 System Protection and Other Controls Requirements.

9.7.4.1 Protection and System Quality. Generator shall, at its expense, install, operate and maintain System Protection Facilities as a part of the Facility and/or the Generator Interconnection Facilities. Transmission Provider shall install at Generator's expense any System Protection Facilities that may be required on the Transmission Provider Interconnection Facilities or the Transmission System as a result of the interconnection of the Facility and the Generator Interconnection Facilities.

9.7.4.2 Each Party's facilities shall be designed to isolate any fault or abnormality on those facilities that would negatively affect the other Party's system or the other entities connected to the Transmission Provider's Transmission System.

9.7.4.3 Each Party shall be responsible for protection of its facilities consistent with Good Utility Practice.

9.7.4.4 Each Party's protective relay design shall incorporate the necessary test switches to perform the tests required in Article 6. The required test switches will be placed such that they allow operation of lockout relays while preventing breaker failure schemes from operating and causing unnecessary breaker operations and/or the tripping of the Generator's units.

9.7.4.5 Each Party will test, operate and maintain System Protection Facilities in accordance with Good Utility Practice.

9.7.4.6 Prior to the In-Service Date, and again prior to the Commercial Operation Date, each Party or its agent shall perform a complete calibration test and functional trip test of the System Protection Facilities. At intervals suggested by Good Utility Practice and following any apparent malfunction of the System Protection Facilities, each Party shall perform both calibration and functional trip tests of its System Protection Facilities. These tests do not require the tripping of any in-service generation unit. These tests do, however, require that all protective relays and lockout contacts be activated.

9.7.5 Requirements for Protection. In compliance with the Interconnection Guidelines and Applicable Standards, Generator shall provide, install, own, and maintain relays, circuit breakers and all other devices necessary to promptly remove any fault contribution of the Facility to any short circuit occurring on the Transmission System not otherwise isolated by Transmission Provider equipment. Such protective equipment shall include, without limitation, a disconnecting device or switch with load-interrupting capability located between the Facility and the Transmission System at a site selected upon mutual agreement (not to be unreasonably withheld, conditioned or delayed) of the Parties. Generator shall be responsible for protection of the Facility and Generator's other equipment from such conditions as negative sequence currents, over-or under-frequency, sudden load rejection, over-or under-voltage, and generator loss-of-field. Generator shall be solely responsible to disconnect the Facility and Generator's other equipment if conditions on the Transmission System could adversely affect the Facility.

9.7.6 Power Quality. Neither Party's facilities shall cause excessive voltage flicker nor introduce excessive distortion to the sinusoidal voltage or current waves as defined by ANSI Standard C84.1–1989, in accordance with IEEE Standard 519, or any applicable superseding electric industry standard including the Interconnection Guidelines. In the event of a conflict between ANSI Standard C84.1–1989, or any applicable superseding electric industry standard, and the Interconnection Guidelines, ANSI Standard C84.1–1989, or the applicable superseding electric industry standard, shall control.

9.8 Switching and Tagging Rules. Each Party shall provide the other Party a copy of its Switching and Tagging Rules that are applicable to the other Party's activities. Such Switching and Tagging Rules shall be developed on a non-discriminatory basis. The Parties shall comply with applicable Switching and Tagging Rules, as amended from time to time, in obtaining clearances for work or for switching operations on equipment.

9.9 Use of Interconnection Facilities by Third Parties.

9.9.1 Purpose of Interconnection Facilities. Except as may be required by Applicable Laws or Regulations, or as otherwise agreed to among the Parties, the Interconnection Facilities shall be constructed for the sole purpose of interconnecting the Facility to the Transmission System and shall be used for no other purpose.

9.9.2 Third Party Users. If required by Applicable Laws or Regulations or if the Parties mutually agree, such agreement not to be unreasonably withheld, to allow one or more third parties to use the Transmission Provider Interconnection Facilities, or any part thereof, Generator will be entitled to compensation for the capital expenses it incurred in connection with the Interconnection Facilities based upon the pro rata use of the Interconnection Facilities by Transmission Provider, all third party users, and Generator, in accordance with Applicable Laws and Regulations or upon some other mutually-agreed upon methodology. In addition, cost responsibility for ongoing costs, including operation and maintenance costs associated with the Interconnection Facilities, will be allocated between Generator and any third party users based upon the pro rata use of the Interconnection Facilities by Transmission Provider, all third party users, and Generator, in accordance with Applicable Laws and Regulations or upon some other mutually agreed upon methodology. If the issue of such compensation or allocation cannot be resolved through such negotiations, it shall be submitted to FERC for resolution.

9.10 Data Exchange. The Parties will cooperate with one another in the analysis of disturbances to either the Facility or the Transmission Provider's Transmission System by gathering and providing access to any information relating to any disturbance, including information from oscillography, protective relay targets, breaker operations and sequence of events records.

Article 10. Maintenance

10.1 Transmission Provider Obligations. Transmission Provider shall maintain the Transmission System and the Transmission Provider Interconnection Facilities in a safe and reliable manner and in accordance with this Agreement.

10.2 Generator Obligations. Generator shall maintain the Facility and the Generator Interconnection Facilities in a safe and reliable manner and in accordance with this Agreement.

10.3 Coordination. The Parties shall confer regularly to coordinate the planning, scheduling and performance of preventive and corrective maintenance on the Facility and the Interconnection Facilities.

10.4 Secondary Systems. Each Party shall cooperate with the other in the inspection,

maintenance, and testing of control or power circuits that operate below 600 volts, AC or DC, including, but not limited to, any hardware, control or protective devices, cables, conductors, electric raceways, secondary equipment panels, transducers, batteries, chargers, and voltage and current transformers that directly affect the operation of a Party's facilities and equipment which may reasonably be expected to impact the other Party. Each Party shall provide advance notice to the other Party before undertaking any work on such circuits, especially on electrical circuits involving circuit breaker trip and close contacts, current transformers, or potential transformers.

10.5 Operating and Maintenance Expenses. Subject to the provisions herein addressing the use of facilities by others, and except for operations and maintenance expenses associated with modifications made for providing interconnection or transmission service to a third party and such third party pays for such expenses, Generator shall be responsible for all reasonable expenses including overheads, associated with: (1) owning, operating, maintaining, repairing, and replacing Generator Interconnection Facilities; and (2) operation, maintenance, repair and replacement of Transmission Provider Interconnection Facilities.

Article 11. Performance Obligation

11.1 Generator Interconnection Facilities. Generator shall design, procure, construct, install, own and/or control the Generator Interconnection Facilities described in Appendix A, Interconnection Facilities and Network Upgrades, at its sole expense.

11.2 Transmission Provider Interconnection Facilities. Transmission Owner shall design, procure, construct, install, own and/or control the Transmission Owner Interconnection Facilities described in Appendix A, Interconnection Facilities and Network Upgrades, at the sole expense of the Generator.

11.3 Network Upgrades. Transmission Owner shall design, procure, construct, install, and own the Network Upgrades described in Appendix A, Interconnection Facilities and Network Upgrades. Unless the Transmission Provider elects to fund the capital for such facilities, they shall be solely funded by the Generator. In either case, the Generator shall be responsible for all costs related to Network Upgrades, subject to Article 11.4.

11.4 Transmission Credits.

11.4.1 Refund of Amounts Advanced for Network Upgrades. Generator shall be entitled to a cash refund, equal to the total amount paid to Transmission Provider for the Network Upgrades, including any tax gross-up or other tax-related payments, and not refunded to Generator pursuant to Article 5.14.7 or otherwise, to be paid to Generator on a dollar-for-dollar basis, as payments are made under the Transmission Provider Tariff for transmission services with respect to the Facility. Notwithstanding the foregoing, Transmission Provider shall refund all amounts paid by Generator for the Network Upgrades, together with interest, within five (5) years from the date the Network Upgrades are placed in service, so long as Transmission Provider continues to receive payments for transmission service with respect to the Facility during such period. Any refund shall include interest calculated in accordance with the methodology set forth in FERC's regulations at 18 CFR § 35.19a(a)(2)(ii) from the date of any payment for Network Upgrades through the date on which the Generator receives a refund of such payment pursuant to this subparagraph. Generator may assign such refund rights to any person.

11.4.2 Notwithstanding any other provision of this Agreement, nothing herein shall be construed as relinquishing or foreclosing any rights, including but not limited to firm transmission rights, capacity rights, transmission congestion rights, or transmission credits, that the Generator, shall be entitled to, now or in the future under any other agreement or tariff as a result of, or otherwise associated with, the transmission capacity, if any, created by the Network Upgrades, including the right to obtain refunds or transmission credits for transmission service that is not associated with the Facility.

11.5 Financial Security Arrangements. At least ninety (90) Calendar Days prior to the commencement of the procurement, installation, or construction of discrete Transmission Provider Interconnection Facilities/Network Upgrade projects, Generator shall provide Transmission Provider, at Generator's option, a guarantee, a surety bond, letter of credit or other form of security that is reasonably acceptable to Transmission Provider and is consistent with the Uniform Commercial Code of the jurisdiction identified in Article 15.2.1. Such security for payment shall be in an amount sufficient to cover the costs for constructing, procuring and installing the applicable Transmission Provider Interconnection Facilities/Network Upgrade projects and shall be reduced on a dollar-for-dollar basis for payments made to Transmission Provider under this Agreement during its term.

11.5.1 Provision of Security. At least thirty (30) Calendar Days prior to the commencement of the procurement, installation, or construction of discrete Transmission Provider Interconnection Facilities/Network Upgrade projects, Generator shall provide Transmission Provider, at Generator's option, a guarantee, a surety bond, letter of credit or other form of security that is reasonably acceptable to Transmission Provider and is consistent with the Uniform Commercial Code of the jurisdiction identified in Article 15.2.1. Such security for payment shall be in an amount sufficient to cover the costs for constructing, procuring and installing the applicable Transmission Provider Interconnection Facilities/Network Upgrade projects and shall be reduced on a dollar-for-dollar basis for payments made to Transmission Provider under this Agreement during its term. In addition:

11.5.1.1 The guarantee must be made by an entity that meets the creditworthiness requirements of Transmission Provider, and contain terms and conditions that guarantee payment of any amount that may be due from Generator, up to an agreed-to maximum amount.

11.5.1.2 The letter of credit must be issued by a financial institution reasonably acceptable to Transmission Provider and must specify a reasonable expiration date.

11.5.1.3 The surety bond must be issued by an insurer reasonably acceptable to Transmission Provider and must specify a reasonable expiration date.

11.6 Generator Compensation. If Transmission Provider requests or directs Generator to provide a service pursuant to Articles 9.6.2 (Voltage Schedules), or 13.5.1 of this Agreement, Transmission Provider shall compensate Generator in accordance with Generator's applicable rate schedule then in effect unless the provision of such service(s) is subject to an ISO/RTO FERC-approved rate schedule. Generator shall serve Transmission Provider or ISO/RTO with any filing of a proposed rate schedule at the time of such filing with FERC.

11.6.1 Generator Compensation for Actions During Emergency Condition. Transmission Provider [or ISO/RTO] shall compensate Generator for its provision of real and reactive power and other Emergency Condition services that Generator provides to support the Transmission System during an Emergency Condition in accordance with Article 11.6.

Article 12. Invoice

12.1 General. Each Party shall submit to the other Party, on a monthly basis, invoices of amounts due for the preceding month. Each invoice shall state the month to which the invoice applies and fully describe the services and equipment provided. The Parties may discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts a Party owes to the other Party under this Agreement, including interest payments or credits, shall be netted so that only the net amount remaining due shall be paid by the owing Party.

12.2 Final Invoice. Within six months after completion of the construction of the Transmission Provider Interconnection Facilities and the Network Upgrades, Transmission Provider shall provide an invoice of the final cost of the construction of the Transmission Provider Interconnection Facilities and the Network Upgrades and shall set forth such costs in sufficient detail to enable Generator to compare the actual costs with the estimates and to ascertain deviations, if any, from the cost estimates. Transmission Provider shall refund to Generator any amount by which the actual payment by Generator for estimated costs exceeds the actual costs of construction within thirty (30) Calendar Days of the issuance of such final construction invoice.

12.3 Payment. Invoices shall be rendered to the paying Party at the address specified in Article 16. The Party receiving the invoice shall pay the invoice within thirty (30) Calendar Days of receipt. All payments shall be made in immediately available funds payable to the other Party, or by wire transfer to a bank named and account designated by the invoicing Party. Payment of invoices by Generator will not constitute a waiver of any rights or claims Generator may have under this Agreement.

12.4 Disputes. In the event of a billing dispute between Transmission Provider and Generator, Transmission Provider shall continue to provide Interconnection Service under this Agreement as long as Generator: (i) continues to make all payments not in dispute; and (ii) pays to Transmission Provider or into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If Generator fails to meet these two requirements for continuation of service, then Transmission Provider may provide notice to Generator of a Breach pursuant to Article 17. Within thirty (30) Calendar Days after the resolution of the dispute, the Party that owes money to the other Party shall pay the amount due with interest calculated in accord with the methodology set forth in FERC's Regulations at 18 CFR § 35.19a(a)(2)(ii).

Article 13. Emergencies

13.1 Definition. ''Emergency Condition'' shall mean a condition or situation: (i) that in the judgment of the Party making the claim is imminently likely to endanger life or property; or (ii) that, in the case of Transmission Provider, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to the Transmission System, the Transmission Provider Interconnection Facilities or the Transmission Systems of others to which the Transmission System is directly connected; or (iii) that, in the case of Generator, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the Facility or the Generator Interconnection Facilities. System restoration and black start shall be considered Emergency Conditions; provided, that Generator is not obligated by this Agreement to possess black start capability. Any condition or situation that results from a lack of sufficient generating capacity to meet load requirements that results solely from economic conditions shall not, on its own, constitute an Emergency Condition.

13.2 Obligations. Each Party shall comply with the Emergency Condition procedures of the applicable ISO/RTO, NERC, the Applicable Reliability Council, Applicable Laws and Regulations, and any emergency procedures agreed to by the Operating Committee.

13.3 Notice. Transmission Provider shall notify Generator promptly when it becomes aware of an Emergency Condition that affects the Transmission Provider Interconnection Facilities or the Transmission System that may reasonably be expected to affect Generator's operation of the Facility or the Generator Interconnection Facilities. Generator shall notify Transmission Provider promptly when it becomes aware of an Emergency Condition that affects the Facility or the Generator Interconnection Facilities that may reasonably be expected to affect the Transmission System or the Transmission Provider Interconnection Facilities. To the extent information is known, the notification shall describe the Emergency Condition, the extent of the damage or deficiency, the expected effect on the operation of Generator's or Transmission Provider's facilities and operations, its anticipated duration and the corrective action taken and/or to be taken. The initial notice shall be followed as soon as practicable with written notice.

13.4 Immediate Action. Unless, in Generator's reasonable judgment, immediate action is required, Generator shall obtain the consent of Transmission Provider, such consent to not be unreasonably withheld, prior to performing any manual switching operations at the Facility or the Generation Interconnection Facilities in response to an Emergency Condition either declared by the Transmission Provider or otherwise regarding the Transmission System.

13.5 Transmission Provider Authority.

13.5.1 General. Transmission Provider may take whatever actions or inactions with regard to the Transmission System or the Transmission Provider Interconnection Facilities it deems necessary during an Emergency Condition in order to (i) preserve public health and safety, (ii) preserve the reliability of the Transmission System or the Transmission Provider Interconnection Facilities, (iii) limit or prevent damage, and (iv) expedite restoration of service. Transmission Provider shall use Reasonable Efforts to minimize the effect of such actions or inactions on the Facility or the Generation Interconnection Facilities. [Transmission Provider may, on the basis of technical considerations, require the Facility to mitigate an Emergency Condition by taking actions necessary and limited in scope to remedy the Emergency Condition, including, but not limited to, directing Generator to shut-down, start-up, increase or decrease the real or reactive power output of the Facility; implementing a curtailment, reduction or disconnection pursuant to Article 14.5.2; directing the Generator to assist with blackstart (if available) or restoration efforts; or altering the outage schedules of the Facility and the Generator Interconnection Facilities. Generator shall comply with all of Transmission Provider's operating instructions concerning Facility real power and/or reactive power output within the manufacturer's design limitations of the Facility's equipment that is in service and physically available for operation at the time, in compliance with applicable laws and regulations.]

13.5.2 Curtailment, Reduction, and Disconnection. Transmission Provider may curtail or reduce Interconnection Service or disconnect the Facility or the Generation Interconnection Facilities, when such curtailment, reduction or disconnection is necessary under Good Utility Practice due to Emergency Conditions. These rights are separate and distinct from any right of curtailment of the Transmission Provider pursuant to the Transmission Provider Tariff. When the Transmission Provider can schedule the curtailment, reduction or disconnection in advance, Transmission Provider shall notify Generator of the reasons, timing and expected duration of the curtailment, reduction or disconnection. Transmission Provider shall attempt to schedule such curtailment, reduction or disconnection to coincide with the scheduled outages of the Facility or, if that is not possible, to schedule such curtailment, reduction or disconnection during non-peak load periods. Any curtailment, reduction or disconnection shall continue only for so long as reasonably necessary under Good Utility Practice. The Parties shall cooperate with each other to restore the Facility, the Interconnection Facilities, and the Transmission System to their normal operating state as soon as practicable consistent with Good Utility Practice.

13.6 Generator Authority. Generator may take whatever actions or inactions with regard to the Facility or the Generator Interconnection Facilities it deems necessary during an Emergency Condition in order to (i) preserve public health and safety, (ii) preserve the reliability of the Facility or the Generator Interconnection Facilities, (iii) limit or prevent damage, and (iv) expedite restoration of service. Generator shall use Reasonable Efforts to minimize the effect of such actions or inactions on the Transmission System and the Transmission Provider Interconnection Facilities. Transmission Provider shall use Reasonable Efforts to assist Generator in such actions.

13.7 Limited Liability. Except as otherwise provided in Article 14.7 of this Agreement, neither Party shall be liable to the other for any action it takes in responding to an Emergency Condition so long as such action is made in good faith and is consistent with Good Utility Practice.

Article 14. Governing Law and Applicable Tariffs

14.1 Regulatory Requirements. Each Party's obligations under this Agreement shall be subject to its receipt of any required approval or certificate from one or more Governmental Authorities in the form and substance satisfactory to the applying Party, or the Party making any required filings with, or providing notice to, such Governmental Authorities, and the expiration of any time period associated therewith. Each Party shall in good faith seek and use its Reasonable Efforts to obtain such other approvals. Nothing in this Agreement shall require Generator to take any action that could result in its inability to obtain, or its loss of, status or exemption under the Federal Power Act or the Public Utility Holding Company Act of 1935, as amended.

14.2 Governing Law and Applicable Tariffs.

14.2.1 The validity, interpretation and performance of this Agreement and each of its provisions shall be governed by the laws of the State where the Point of Interconnection is located, without regard to its conflicts of law principles.

14.2.2 This Agreement is subject to all Applicable Laws and Regulations.

14.2.3 Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, rules, or regulations of a Governmental Authority.

Article 15. Notices

15.1 General. Unless otherwise provided in this Agreement, any notice, demand or request required or permitted to be given by

either Party to the other and any instrument required or permitted to be tendered or delivered by either Party in writing to the other shall be effective when delivered and may be so given, tendered or delivered, by recognized national courier, or by depositing the same with the United States Postal Service with postage prepaid, for delivery by certified or registered mail, addressed to the Party, or personally delivered to the Party, at the address set out below:

Transmission Provider:

[To be supplied.]

Generator:

[To be supplied.]

Either Party may change the notice information in Appendix D, Standard Generator Interconnection Agreement, by giving five (5) Business Days written notice prior to the effective date of the change.

15.2 Billings and Payments. Billings and payments shall be sent to the addresses set out below:

Transmission Provider:

[To be supplied.]

Generator:

15.3 Alternative Forms of Notice. Any notice or request required or permitted to be given by either Party to the other and not required by this Agreement to be given in writing may be so given by telephone, facsimile or email to the telephone numbers and email addresses set out below:

Transmission Provider:

Generator:

15.4 Operations and Maintenance Notice. Each Party shall notify the other Party in writing of the identity of the person(s) that it designates as the point(s) of contact with respect to the implementation of Articles 9 and 10.

Article 16. Force Majeure

16.1 Force Majeure. An event of Force Majeure means any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any Curtailment, order, regulation or restriction imposed by governmental military or lawfully established civilian authorities, or any other caused beyond a Party's control. A Force Majeure event does not include an act of negligence or intentional wrongdoing. Neither Party will be considered in default as to any obligation hereunder if prevented from fulfilling the obligation due to an event of Force Majeure. However, a Party whose performance under this is hindered by an event of Force Majeure shall make all reasonable efforts to perform its obligations hereunder.

Article 17. Default

17.1 Default

17.1.1 General. The term ''Default'' shall mean the failure of either Party to perform any obligation in the time or manner provided in this Agreement. No Default shall exist where such failure to discharge an obligation (other than the payment of money) is the result of Force Majeure as defined in this Agreement or the result of an act or omission of the other Party. Upon a Default, the non-defaulting Party shall give written notice of such Default to the defaulting Party. Except as provided in Article 17.1.2, the defaulting Party shall have thirty (30) Calendar Days from receipt of the Default notice within which to cure such Default; provided however, if such Default is not capable of cure within thirty (30) Calendar Days, the defaulting Party shall commence such cure within thirty (30) Calendar Days after notice and continuously and diligently complete such cure within ninety (90) Calendar Days from receipt of the Default notice; and, if cured within such time, the Default specified in such notice shall cease to exist.

17.1.2 Right to Terminate. If a Default is not cured as provided in this Article, or if a Default is not capable of being cured within the period provided for herein, the non-defaulting Party shall have the right to terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder and, whether or not that Party terminates this Agreement, to recover from the defaulting Party all amounts due hereunder, plus all other damages and remedies to which it is entitled at law or in equity. The provisions of this Article will survive termination of this Agreement.

Article 18. Indemnity

18.1 Indemnity. The Parties shall at all times indemnify, defend, and save the other Party harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's performance of obligations under this Agreement on behalf of the indemnifying Party, except in cases of negligence or intentional wrongdoing by the indemnifying Party.

Article 19. Assignment

19.1 Assignment. This Agreement may be assigned by either Party only with the written consent of the other; provided that either Party may assign this Agreement without the consent of the other Party to any affiliate of the assigning Party with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this Agreement; and provided further that the Generator shall have the right to assign this Agreement, without the consent of the Transmission Provider, for collateral security purposes to aid in providing financing for the Facility, provided that the Generator will require any secured party, trustee or mortgagee to notify the Transmission Provider of any such assignment. Any financing arrangement entered into by the Generator pursuant to this Article will provide that prior to or upon the exercise of the secured party's, trustee's or mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify the Transmission Provider of the date and particulars of any such exercise of assignment right(s). Any attempted assignment that violates this Article is void and ineffective. Any assignment under this Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

Article 20. Severability

20.1 Severability. If any provision in this Agreement is finally determined to be invalid, void or unenforceable by any court or other Governmental Authority having jurisdiction, such determination shall not invalidate, void or make unenforceable any other provision, agreement or covenant of this Agreement; [provided that if the Generator (or any third-party, but only if such third-party is not acting at the direction of the Transmission Provider) seeks and obtains such a final determination with respect to any provision of Article 5.1.B, then none of the provisions of Article 5.1.B shall thereafter have any force or effect and the Parties' rights and obligations shall be governed solely by Article 5.1.A].

Article 21. Comparability

21.1 Comparability. The Parties will comply with all applicable comparability and code of conduct laws, rules and regulations, as amended from time to time.

Article 22. Confidentiality

22.1 Confidentiality. ''Confidential Information'' shall mean any confidential, proprietary or trade secret information of a plan, specification, pattern, procedure, design, device, list, concept, policy or compilation relating to the present or planned business of a Party, which is designated as confidential by the Party supplying the information, whether conveyed orally, electronically, in writing, through inspection, or otherwise. Confidential Information shall include, without limitation, all information relating to a Party's technology, research and development, business affairs, and pricing, and any information supplied by either of the Parties to the other prior to the execution of this Agreement. Information is Confidential Information only if it is clearly designated or marked in writing as confidential on the face of the document, or, if the information is conveyed orally or by inspection, if the Party providing the information orally informs the Party receiving the information that the information is confidential.

22.1.1 Term. During the term of this Agreement, and for a period of three (3) years after the expiration or termination of this Agreement, except as otherwise provided in this Article 22, each Party shall hold in confidence and shall not disclose to any person Confidential Information.

22.1.2 Scope. Confidential Information shall not include information that the receiving Party can demonstrate: (1) Is generally available to the public other than as a result of a disclosure by the receiving Party; (2) was in the lawful possession of the receiving Party on a non-confidential basis before receiving it from the of the receiving Party, after due inquiry, was under no obligation to the other Party to keep disclosing Party; (3) was supplied to the receiving Party without restriction by a third

party, who, to the knowledge such information confidential; (4) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party; (5) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or Breach of this Agreement; or (6) is required, in accordance with Article 22.1.7, Order of Disclosure, to be disclosed by any Governmental Authority or is otherwise required to be disclosed by law or subpoena, or is necessary in any legal proceeding establishing rights and obligations under this Agreement. Information designated as Confidential Information will no longer be deemed confidential if the Party that designated the information as confidential notifies the other Party that it no longer is confidential.

22.1.3 Release of Confidential Information. Neither Party shall release or disclose Confidential Information to any other person, except to its employees, consultants, or to parties who may be or considering providing financing to or equity participation with Generator, or to potential purchasers or assignees of Generator, on a need-to-know basis in connection with this Agreement, unless such person has first been advised of the confidentiality provisions of this Article 22 and has agreed to comply with such provisions. Notwithstanding the foregoing, a Party providing Confidential Information to any person shall remain primarily responsible for any release of Confidential Information in contravention of this Article 22.

22.1.4 Rights. Each Party retains all rights, title, and interest in the Confidential Information that each Party discloses to the other Party. The disclosure by each Party to the other Party of Confidential Information shall not be deemed a waiver by either Party or any other person or entity of the right to protect the Confidential Information from public disclosure.

22.1.5 No Warranties. By providing Confidential Information, neither Party makes any warranties or representations as to its accuracy or completeness. In addition, by supplying Confidential Information, neither Party obligates itself to provide any particular information or Confidential Information to the other Party nor to enter into any further agreements or proceed with any other relationship or joint venture.

22.1.6 Standard of Care. Each Party shall use at least the same standard of care to protect Confidential Information it receives as it uses to protect its own Confidential Information from unauthorized disclosure, publication or dissemination. Each Party may use Confidential Information solely to fulfill its obligations to the other Party under this Agreement or its regulatory requirements.

22.1.7 Order of Disclosure. If a court or a Government Authority or entity with the right, power, and apparent authority to do so requests or requires either Party, by subpoena, oral deposition, interrogatories, requests for production of documents, administrative order, or otherwise, to disclose Confidential Information, that Party shall provide the other Party with prompt notice of such request(s) or requirement(s) so that the other Party may seek an appropriate protective order or waive compliance with the terms of this Agreement. Notwithstanding the absence of a protective order or waiver, the Party may disclose such Confidential Information which, in the opinion of its counsel, the Party is legally compelled to disclose. Each Party will use reasonable efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished.

22.1.8 Termination of Agreement. Upon termination of this Agreement for any reason, each Party shall, within ten (10) Calendar Days of receipt of a written request from the other Party, use reasonable efforts to destroy, erase, or delete (with such destruction, erasure, and deletion certified in writing to the other Party) or return to the other Party, without retaining copies thereof, any and all written or electronic Confidential Information received from the other Party.

22.1.9 Remedies. The Parties agree that monetary damages would be inadequate to compensate a Party for the other Party's breach of its obligations under this Article 22. Each Party accordingly agrees that the other Party shall be entitled to equitable relief, by way of injunction or otherwise, if the first Party breaches or threatens to breach its obligations under this Article 22, which equitable relief shall be granted without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed an exclusive remedy for the breach of this Article 22, but shall be in addition to all other remedies available at law or in equity. The Parties further acknowledge and agree that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope. No Party, however, shall be liable for indirect, incidental, or consequential or punitive damages of any nature or kind resulting from or arising in connection with this Article 22.

22.1.10 Disclosure to FERC or its Staff. Notwithstanding anything in this Article 22 to the contrary, if FERC or its staff, during the course of an investigation or otherwise, requests information from one of the Parties that is otherwise required to be maintained in confidence pursuant to this Agreement, the Party shall provide the requested information to FERC or its staff, within the time provided for in the request for information. In providing the information to FERC or its staff, the Party may, consistent with 18 CFR Section 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclose. The Party shall notify the other Party to the Agreement when it is notified by FERC or its staff that a request has been received, at which time either of the Parties may respond before such information would be made public, pursuant to 18 CFR Section 388.112.

22.1.11 Subject to the exception in Article 22.1.10, any information that a Party claims is competitively sensitive, commercial or financial information under this Agreement (''Confidential Information'') shall not be disclosed by the other Party to any person not employed or retained by the other Party, except to the extent disclosure is (i) required by law; (ii) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between or among the Parties, or the defense of litigation or dispute; (iii) otherwise permitted by consent of the other Party, such consent not to be unreasonably withheld; or (iv) necessary to fulfill its obligations under this Agreement or as a transmission service provider or a Control Area operator including disclosing the Confidential Information to the ISO. The Party asserting confidentiality shall notify the other Party in writing of the information it claims is confidential. Prior to any disclosures of the other Party's Confidential Information under this subparagraph, or if any third party or Governmental Authority makes any request or demand for any of the information described in this subparagraph, the disclosing Party agrees to promptly notify the other Party in writing and agrees to assert confidentiality and cooperate with the other Party in seeking to protect the Confidential Information from public disclosure by confidentiality agreement, protective order or other reasonable measures.

22.1.12 This provision shall not apply to any information that was or is hereafter in the public domain (except as a result of a breach of this provision).

Article 23. Environmental Releases

23.1 Each Party shall notify the other Party, first orally and then in writing, of the release of any Hazardous Substances, any asbestos or lead abatement activities, or any type of remediation activities related to the Facility or the Interconnection Facilities, each of which may reasonably be expected to affect the other Party. The notifying Party shall: (i) Provide the notice as soon as practicable, provided such Party makes a good faith effort to provide the notice no later than twenty-four hours after such Party becomes aware of the occurrence; and (ii) promptly furnish to the other Party copies of any publicly available reports filed with any Governmental Authorities addressing such events.

Article 24. Information Requirements

24.1 Information Acquisition. Transmission Provider and the Generator shall submit specific information regarding the electrical characteristics of their respective facilities to each other as described below and in accordance with Applicable Standards.

24.2 Information Submission by Transmission Provider. The initial information submission by Transmission Provider shall occur no later than one hundred eighty (180) Calendar Days prior to Trial Operation and shall include Transmission System information necessary to allow the Generator to select equipment and meet any system protection and stability requirements, unless otherwise mutually agreed to by both Parties. On a monthly basis Transmission Provider shall provide Generator a status report on the construction and installation of Transmission Provider Interconnection Facilities and Network

Upgrades, including, but not limited to, the following information: progress to date: (1) A description of the activities since the last report; (2) a description of the action items for the next period; and (3) the delivery status of equipment ordered.

24.3 Updated Information Submission by Generator. The updated information submission by the Generator, including manufacturer information, shall occur no later than one hundred eighty (180) Calendar Days prior to the Trial Operation. Generator shall submit a completed copy of the generator data requirements contained in Transmission Provider's GIS request procedure. It shall also include any additional information provided to Transmission Provider for the Feasibility and Facilities Study [Conform with Interconnection Procedures]. Information in this submission shall be the most current Facility design or expected performance data. Information submitted for stability models shall be compatible with Transmission Provider standard models. If there is no compatible model, the Generator will work with a consultant mutually agreed to by the Parties to develop and supply a standard model and associated information.

If the Generator's data is materially different from what was originally provided to Transmission Provider pursuant to the Interconnection Study Agreement between Transmission Provider and Generator, then Transmission Provider will conduct appropriate studies to determine the impact on the Transmission Provider Transmission System based on the actual data submitted pursuant to this Article 24.3. The Generator shall not begin Trial Operation until such studies are completed.

24.4 Information Supplementation. Prior to the Operation Date, the Parties shall supplement their information submissions described above in this Article 24 with any and all ''as-built'' Facility information or ''as-tested'' performance information that differs from the initial submissions or, alternatively, written confirmation that no such differences exist. The Generator shall conduct open circuit ''step voltage'' tests on the generator to verify proper operation of the generator's automatic voltage regulator. Unless otherwise agreed, the test conditions shall include: (1) Generator at synchronous speed; (2) automatic voltage regulator on and in voltage control mode; and (3) a five percent (5%) change in generator terminal voltage initiated by a change in the voltage regulators reference voltage. Recordings showing the responses of generator terminal and field voltages shall be provided to Transmission Provider. In the event that direct recordings of these voltages is impractical, recordings of other voltages or currents that mirror the response of the generator's terminal or field voltage are acceptable if information necessary to translate these alternate quantities to actual generator terminal or field voltages is provided. The Generator may elect to provide recordings for only one generator when the other generators at the site are found to have identical design and response characteristics. Subsequent to the Operation Date, the Generator shall provide Transmission Provider any information changes due to equipment replacement, repair, or adjustment. Transmission Provider shall provide the Generator any information changes due to equipment replacement, repair or adjustment in the directly connected substation or any adjacent Transmission Provider-owned substation that may affect the Generator Interconnection Facilities equipment ratings, protection or operating requirements. The Parties shall provide such information no later than thirty (30) Calendar Days after the date of the equipment replacement, repair or adjustment.

Article 25. Information Access and Audit Rights

25.1 Information access. Each Party (the ''disclosing Party'') shall make available to the other Party information that is in the possession of the disclosing Party and is necessary in order for the other Party to: (i) verify the costs incurred by the disclosing Party for which the other Party is responsible under this Agreement; and (ii) carry out its obligations and responsibilities under this Agreement. The Parties shall not use such information for purposes other than those set forth in this Article 25.1 and to enforce their rights under this Agreement.

25.2 Reporting of Non-Force Majeure Events. Each Party (the ''notifying Party'') shall notify the other Party when the notifying Party becomes aware of its inability to comply with the provisions of this Agreement for a reason other than a Force Majeure event. The Parties agree to cooperate with each other and provide necessary information regarding such inability to comply, including the date, duration, reason for the inability to comply, and corrective actions taken or planned to be taken with respect to such inability to comply. Notwithstanding the foregoing, notification, cooperation or information provided under this Article shall not entitle the Party receiving such notification to allege a cause for anticipatory breach of this Agreement.

25.3 Audit Rights. Subject to the requirements of confidentiality under Article 22 of this Agreement, each Party shall have the right, during normal business hours, and upon prior reasonable notice to the other Party, to audit at its own expense the other Party's accounts and records pertaining to either Party's performance or either Party's satisfaction of obligations under this Agreement. Such audit rights shall include audits of the other Party's costs, calculation of invoiced amounts, the Transmission Provider's efforts to allocate responsibility for the provision of reactive support to the Transmission System, the Transmission Provider's efforts to allocate responsibility for curtailment or reduction of generation on the Transmission System, and each Party's actions in an Emergency Condition. Any audit authorized by this Article shall be performed at the offices where such accounts and records are maintained and shall be limited to those portions of such accounts and records that relate to each Party's performance and satisfaction of obligations under this Agreement. Each Party shall keep such accounts and records for a period equivalent to the audit rights periods described in Article 25.4.

25.4 Audit Rights Periods.

25.4.1 Audit Rights Period for Construction-Related Accounts and Records. Accounts and records related to the design, engineering, procurement, and construction of Transmission Provider Interconnection Facilities and Network Upgrades shall be subject to audit for a period of twenty-four months following Transmission Provider's issuance of a final invoice in accordance with Article 12.2.

25.4.2 Audit Rights Period for All Other Accounts and Records. Accounts and records related to either Party's performance or satisfaction of all obligations under this Agreement other than those described in Article 25.4.1 shall be subject to audit as follows: (i) for an audit relating to cost obligations, the applicable audit rights period shall be twenty-four months after the auditing Party's receipt of an invoice giving rise to such cost obligations; and (ii) for an audit relating to all other obligations, the applicable audit rights period shall be twenty-four months after the event for which the audit is sought.

25.5 Audit Results. If an audit by a Party determines that an overpayment or an underpayment has occurred, a notice of such overpayment or underpayment shall be given to the other Party together with those records from the audit which support such determination.

Article 26. Subcontractors

26.1 General. Nothing in this Agreement shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this Agreement; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.

26.2 Responsibility of Principal. The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided, however, that in no event shall the Transmission Provider be liable for the actions or inactions of the Generator or its subcontractors with respect to obligations of the Generator under Article 5 of this Agreement. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

26.3 No Limitation by Insurance. The obligations under this Article 26 will not be limited in any way by any limitation of subcontractor's insurance.

Article 27. Disputes

27.1 Submission. In the event either Party has a dispute, or asserts a claim, that arises out of or in connection with this Agreement or its performance, such Party (the ''disputing Party'') shall provide the other Party with written notice of the dispute or

claim (''Notice of Dispute''). Such dispute or claim shall be referred to a designated senior representative of each Party for resolution on an informal basis as promptly as practicable after receipt of the Notice of Dispute by the other Party. In the event the designated representatives are unable to resolve the claim or dispute within thirty (30) Calendar Days of the other Party's receipt of the Notice of Dispute, such claim or dispute may, upon mutual agreement of the Parties, be submitted to arbitration and resolved in accordance with the arbitration procedures set forth below. In the event the Parties do not agree to submit such claim or dispute to arbitration, each Party may exercise whatever rights and remedies it may have in equity or at law consistent with the terms of this Agreement.

27.2 External Arbitration Procedures. Any arbitration initiated under this Agreement shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) Calendar Days of the submission of the dispute to arbitration, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within twenty (20) Calendar Days select a third arbitrator to chair the arbitration panel. In either case, the arbitrators shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (''Arbitration Rules'') and any applicable FERC regulations or RTO rules; provided, however, in the event of a conflict between the Arbitration Rules and the terms of this Article 27, the terms of this Article 27 shall prevail.

27.3 Arbitration Decisions. Unless otherwise agreed by the Parties, the arbitrator(s) shall render a decision within ninety (90) Calendar Days of appointment and shall notify the Parties in writing of such decision and the reasons therefor. The arbitrator(s) shall be authorized only to interpret and apply the provisions of the Agreement and shall have no power to modify or change any provision of the Agreement in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act or the Administrative Dispute Resolution Act. The final decision of the arbitrator must also be filed with FERC if it affects jurisdictional rates, terms and conditions of service, Interconnection Facilities, or Network Upgrades.

27.4 Costs. Each Party shall be responsible for its own costs incurred during the arbitration process and for the following costs, if applicable: (1) The cost of the arbitrator chosen by the Party to sit on the three member panel and one half of the cost of the third arbitrator chosen; or (2) one half the cost of the single arbitrator jointly chosen by the Parties.

Article 28. Representations, Warranties and Covenants

28.1 General. Each Party makes the following representations, warranties and covenants:

28.1.1 Good Standing. Such Party is duly organized, validly existing and in good standing under the laws of the state in which it is organized, formed, or incorporated, as applicable; that it is qualified to do business in the state or states in which the Facility, Interconnection Facilities and Network Upgrades owned by such Party, as applicable, are located; and that it has the corporate power and authority to own its properties, to carry on its business as now being conducted and to enter into this Agreement and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

28.1.2 Authority. Such Party has the right, power and authority to enter into this Agreement, to become a party hereto and to perform its obligations hereunder. This Agreement is a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally and by general equitable principles (regardless of whether enforceability is sought in a proceeding in equity or at law).

28.1.3 No Conflict. The execution, delivery and performance of this Agreement does not violate or conflict with the organizational or formation documents, or bylaws or operating agreement, of such Party, or any judgment, license, permit, order, material agreement or instrument applicable to or binding upon such Party or any of its assets.

28.1.4 Consent and Approval. Such Party has sought or obtained, or, in accordance with this Agreement will seek or obtain, each consent, approval, authorization, order, or acceptance by any Governmental Authority in connection with the execution, delivery and performance of this Agreement, and it will provide to any Governmental Authority notice of any actions under this Agreement that are required by Applicable Laws and Regulations.

Article 29. Operating Committee

29.1 Operating Committee. At least six (6) months prior to the estimated Initial Synchronization Date, Generator and Transmission Provider shall each appoint one representative and one alternate to the Operating Committee who will also be members of the Joint Operating Committee. Each Party shall notify the other party of its appointment in writing. Such appointments may be changed at any time by similar notice. The Operating Committee shall meet as necessary, but not less than once each calendar year, to carry out the duties set forth herein. The Operating Committee shall hold a meeting at the request of either Party, at a time and place agreed upon by the representatives. The Operating Committee shall perform all of its duties consistent with the provisions of this Agreement. Each Party shall cooperate in providing to the Operating Committee all information required in the performance of the Operating Committee's duties. All decisions and agreements, if any, made by the Operating Committee shall be evidenced in writing. The duties of the Operating Committee shall include the following:

29.1.1 Establish and maintain control and operating procedures, including those pertaining to information transfers between the Facility and Transmission Provider.

29.1.2 Establish data requirements and operating record requirements.

29.1.3 Review the requirements, standards, and procedures data acquisition equipment, protective equipment, and any other equipment or software.

29.1.4 Annually review of the one (1) year forecast of maintenance and planned outage schedules of Transmission Provider's and Generator's facilities at the Point of Interconnection.

29.1.5 Coordinate the scheduling of maintenance and planned outages on the Interconnection Facilities, the Facility and other facilities that impact the normal operation of the interconnection of the Facility to the Transmission System.

29.1.6 Ensure that information is being provided by each Party regarding equipment availability.

29.1.7 Perform such other duties as may be conferred upon it by mutual agreement of the Parties.

Article 30. Miscellaneous

30.1 Binding Effect. This Agreement and the rights and obligations hereof, shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties hereto.

30.2 Conflicts. In the event of a conflict between the body of this Agreement and any attachment, appendices or exhibits hereto, the terms and provisions of the body of this Agreement shall prevail and be deemed the final intent of the Parties.

30.3 Rules of Interpretation. This Agreement, unless a clear contrary intention appears, shall be construed and interpreted as follows: (1) The singular number includes the plural number and vice versa; (2) reference to any person includes such person's successors and assigns but, in the case of a Party, only if such successors and assigns are permitted by this Agreement, and reference to a person in a particular capacity excludes such person in any other capacity or individually; (3) reference to any agreement (including this Agreement), document, instrument or tariff means such agreement, document, instrument, or tariff as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof; (4) reference to any applicable laws and

regulations means such applicable laws and regulations as amended, modified, codified, or reenacted, in whole or in part, and in effect from time to time, including, if applicable, rules and regulations promulgated thereunder; (5) unless expressly stated otherwise, reference to any Article, Section or Appendix means such Article or Section of this Agreement or such Appendix to this Agreement, as the case may be; (6) ''hereunder'', ''hereof'', ''herein'', ''hereto'' and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article or other provision hereof or thereof; (7) ''including'' (and with correlative meaning ''include'') means including without limiting the generality of any description preceding such term; and (8) relative to the determination of any period of time, ''from'' means ''from and including'', ''to'' means ''to but excluding'' and ''through'' means ''through and including'.

30.4 Entire Agreement. This Agreement, including all Appendices and Schedules attached hereto, constitutes the entire agreement between the Parties with reference to the subject matter hereof, and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of this Agreement. There are no other agreements, representations, warranties, or covenants which constitute any part of the consideration for, or any condition to, either Party's compliance with its obligations under this Agreement.

30.5 No Third Party Beneficiaries. This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and, where permitted, their assigns.

30.6 Waiver. The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party.

Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, duty of this Agreement. Termination or Default of this Agreement for any reason by the Generator shall not constitute a waiver of the Generator's legal rights to obtain an interconnection from the Transmission Provider. Any waiver of this Agreement shall, if requested, be provided in writing.

30.7 Headings. The descriptive headings of the various articles of this Agreement have been inserted for convenience of reference only and are of no significance in the interpretation or construction of this Agreement.

30.8 Multiple Counterparts. This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

30.9 Amendment. The Parties may by mutual agreement amend this Agreement by a written instrument duly executed by both of the Parties.

30.10 Modification by the Parties. The Parties may by mutual agreement amend the Appendices to this Agreement by a written instrument duly executed by both of the Parties. Such amendment shall become effective and a part of this Agreement upon satisfaction of all Applicable Laws and Regulations.

30.11 Reservation of Rights. Transmission Provider shall have the right to make a unilateral filing with FERC to modify this Agreement with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation under Section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, and Generator shall have the right to make a unilateral filing with FERC to modify this Agreement pursuant to Section 206 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder; provided that each Party shall have the right to protest any such filing by the other Party and to participate fully in any proceeding before FERC in which such modifications may be considered. Nothing in this Agreement shall limit the rights of the Parties or of FERC under Sections 205 or 206 of the Federal Power Act and FERC's rules and regulations thereunder, except to the extent that the Parties otherwise mutually agree as provided herein.

Notwithstanding any other provision in this Agreement, each Party retains its rights to unilaterally seek modification of this Agreement pursuant to Sections 205 and 206 of the Federal Power Act and pursuant to FERC's rules and regulations promulgated thereunder.

30.12 No Partnership. This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

In witness whereof, the Parties have executed this Agreement in duplicate originals, each of which shall constitute and be an original effective Agreement between the Parties.

[Insert name of Transmission Provider]

By: _____

Title: _____

Date: _____

[Insert name of Generator]

By: _____

Title: _____

Date: _____

Appendix A

Interconnection Facilities and Network Upgrades

Appendix B

Time Schedule

Appendix C

Interconnection Details

Appendix D

Standard Generator Interconnection Agreement

Appendix E

Security Arrangement Details

Infrastructure security of grid equipment and operations and control hardware and software is essential to ensure day-to-day grid reliability and operational security. The Commission will expect all Transmission Providers, market participants, and generators interconnected to the grid to comply with the recommendations offered by the President's Critical Infrastructure Protection Board and, eventually, best practice recommendations from the electric reliability authority. All public utilities will be expected to meet basic standards for system infrastructure and operational security, including physical, operational, and cyber-security practices.

Appendix F

Commercial Operation Date

This Appendix F is a part of the Generator Interconnection & Operating Agreement between Transmission Provider and [Generator].

[Date]

[Transmission Provider Address]

Re: _____ Generating Facility

Dear _____:

On [Date] [Generator] has completed Trial Operation of Unit No. ____. This letter confirms that [Generator] commenced commercial operation of Unit No. ____ at the Facility, effective as of [Date plus one day].

Thank you.

[Signature]

[Generator Representative]

Appendix G

Interconnection Guidelines

Standard Generator Interconnection Procedures

Table of Contents

1. Definitions

1.1 Affected System
1.2 Affected System Operator
1.3 Base Case
1.4 Business Day
1.5 Commercial Operation Date
1.6 Facility
1.7 FERC
1.8 Generator
1.9 Generator Interconnection Facilities
1.10 In-Service Date
1.11 Interconnection and Operating Agreement
1.12 Interconnection Facilities
1.13 Interconnection Facilities Study

1.14 Interconnection Facilities Study Agreement
1.15 Interconnection Feasibility Study
1.16 Interconnection Feasibility Study Agreement
1.17 Interconnection Request
1.18 Interconnection Service
1.19 Interconnection Study(ies)
1.20 Interconnection System Impact Study
1.21 Interconnection System Impact Study Agreement
1.22 Network Upgrades
1.23 Material Modification
1.24 Optional Study
1.26 Point of Interconnection
1.27 Reasonable Efforts
1.28 RTO/ISO
1.29 Site Control
1.30 Small Generators
1.31 Tariff
1.32 Transmission Owner
1.33 Transmission Provider
1.34 Transmission Provider Interconnection Facilities
1.35 Transmission System

2. Scope and Application

2.1 Application of Interconnection Procedures
2.2 Comparability
2.3 Base Case Data
2.4 No Applicability to Transmission Service

3. Interconnection Requests

3.1 General
3.2 Identification of Types of Interconnection Services
3.3 Valid Interconnection Request
3.3.1 Initiating an Interconnection Request
3.3.2 Acknowledgement of Interconnection Request
3.3.3 Deficiencies in Interconnection Request
3.3.4 Initial Scoping Meeting
3.4 OASIS Posting
3.5 Coordination with Affected Systems
3.6 Withdrawal

4. Queue Position

4.1 General
4.2 Clustering
4.3 Transferability of Queue Position
4.4 Modifications
4.4.1
4.4.2
4.4.3
4.4.4
4.4.5

5. Procedures for Interconnection Requests Submitted Prior to Effective Date of Interconnection Procedures

5.1 Queue Position for Pending Requests
5.1.1
5.1.1.1
5.1.1.2
5.1.1.3
5.1.2 Transition Period
5.2 New Transmission Provider

6. Interconnection Feasibility Study

6.1 Interconnection Feasibility Study Agreement
6.2 Scope of Interconnection Feasibility Study
6.3 Interconnection Feasibility Study Procedures
6.3.1 Meeting with Transmission Provider
6.4 Re-Study

7. Interconnection System Impact Study

7.1 Interconnection System Impact Study Agreement
7.2 Execution of Interconnection System Impact Study Agreement
7.3 Scope of Interconnection System Impact Study
7.4 Interconnection System Impact Study Procedures
7.5 Meeting with Transmission Provider
7.6 Re-Study

8. Interconnection Facilities Study

8.1 Interconnection Facilities Study Agreement
8.1.1
8.2 Scope of Interconnection Facilities Study
8.3 Interconnection Facilities Study Procedures
8.4 Meeting with Transmission Provider
8.5 Re-Study

9. Agreements

9.1 Engineering & Procurement (''E&P'') Agreement

10. Optional Study

10.1 Optional Study Agreement
10.2 Scope of Optional Study
10.3 Optional Study Procedures

11. Interconnection and Operating Agreement

11.1 Tender
11.2 Negotiation
11.3 Execution and Filing
11.4 Commencement of Interconnection Activities

12. Construction of Transmission Provider Interconnection Facilities and Network Upgrades

12.1 Schedule
12.2 Permits
12.3 Construction Sequencing

13. Miscellaneous

13.1 Confidentiality
13.2 Delegation of Responsibility
13.3 Obligation for Study Costs
13.4 Third Parties Conducting Studies
13.5 Performance Liquidated Damages
13.6 Disputes
13.6.1 Submission
13.6.2 External Arbitration Procedures
13.6.3 Arbitration Decisions
13.6.4 Costs

14. Small Generator Interconnection Requests

14.1 Applicability
14.2 Modified Interconnection Procedure
14.2.1 Interconnection Study Deposits
14.2.2 Interconnection Study Costs
14.2.3 Expedited Procedures
14.3 Queue
14.4 Interconnection Scoping Meeting and Studies

Appendices

Appendix 1—Interconnection Request
Appendix 2—Interconnection Feasibility Study Agreement
Appendix 3—Interconnection System Impact Study Agreement
Appendix 4—Interconnection Facilities Study Agreement
Appendix 5—Optional Study Agreement

1. Definitions

1.1 Affected System

shall mean a system other than that of Transmission Provider that may be affected by the proposed interconnection to the Transmission System.

1.2 Affected System Operator

shall mean the entity that operates the Affected System.

1.3 Base Case

shall be as defined in Section 2.3 of these Interconnection Procedures.

1.4 Business Day

shall mean any day on which the Federal Reserve Bank of New York is open.

1.5 Commercial Operation Date

shall mean the date on which Generator commences commercial operation of a unit at the Facility after Trial Operation of such unit has been completed as confirmed in writing substantially in the form shown in Appendix F to the Interconnection and Operating Agreement.

1.6 Facility

shall mean Generator's electric generating facility (Facility) identified in the Interconnection Request, but shall not include the Generator Interconnection Facilities.

1.7 FERC

shall mean the Federal Energy Regulatory Commission or its successor.

1.8 Generator

as used herein applies to any Facility regardless of ownership.

1.9 Generator Interconnection Facilities

shall mean all facilities and equipment, as identified in Appendix A to the Interconnection and Operating Agreement, which are located between the Facility and the Point of Change of Ownership, including any modification, addition, or upgrades to such facilities and equipment necessary to physically and electrically connect the Facility to the Transmission System. Generator Interconnection Facilities are sole use facilities and shall not include Network Upgrades or facilities.

1.10 In-Service Date

shall mean the date upon which the Generator reasonably expects it will begin to use the Transmission Provider's Interconnection Facilities to obtain back feed power.

1.11 Interconnection and Operating Agreement

shall mean an agreement in the form of the Interconnection and Operating Agreement included in the Transmission Provider's Open Access Transmission Tariff (OATT).

1.12 Interconnection Facilities

shall mean the Transmission Provider's Interconnection Facilities and the Generator Interconnection Facilities. Collectively, all facilities and equipment between the Facility and the Point of Interconnection, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Facility to the Transmission System. Interconnection Facilities are sole use facilities and shall not include Network Upgrades or facilities.

1.13 Interconnection Facilities Study

shall mean a study of the facilities necessary to accommodate the Interconnection Request the scope of which is described in Section 8.2 of these Interconnection Procedures.

1.14 Interconnection Facilities Study Agreement

shall mean the Agreement described in Section 8.1 of these Interconnection Procedures.

1.15 Interconnection Feasibility Study

shall mean a study to evaluate the feasibility of the Generator's interconnection to the Transmission System, the scope of which is described in Section 6.2 of these Interconnection Procedures.

1.16 Interconnection Feasibility Study Agreement

shall mean the Agreement described in Section 6.1 of these Interconnection Procedures.

1.17 Interconnection Request

shall mean a request, in the form of Appendix 1, in accordance with the OATT, to interconnect a new Facility, or to increase the capacity or make a Material Modification to the operating characteristics of an existing Facility that is interconnected with the Transmission System.

1.18 Interconnection Service

Interconnection Service is defined in Article 4 of the Standard Generator Interconnection and Operating Agreement.

1.19 Interconnection Study(ies)

shall mean any and all of the following studies: the Interconnection Feasibility Study, the Interconnection System Impact Study and the Interconnection Facilities Study described in these Interconnection Procedures.

1.20 Interconnection System Impact Study

shall mean a study of the impact of the Interconnection Request, the scope of which is described in Section 7.3 of these Interconnection Procedures.

1.21 Interconnection System Impact Study Agreement

shall mean the Agreement described in Section 7.1 of these Interconnection Procedures.

1.22 Network Upgrades

shall mean the additions, modifications, and upgrades to the Transmission System required beyond the Point of Interconnection to the Transmission System to accommodate the interconnection of the Facility to the Transmission System, as identified in Appendix A to the Interconnection and Operating Agreement, including any modifications, additions or upgrades made to such facilities. The facilities and equipment are used by and benefit all users of the transmission grid, without distinction or regard as to the purpose of the upgrade (e.g., to relieve overloads, to remedy stability and short circuit problems, to maintain reliability, or to provide protection and service restoration) including the fact that these facilities and equipment are being replaced or upgraded to accommodate the Interconnection Request.

1.23 Material Modification

shall have the meaning set forth in Section 4.4 of these Interconnection Procedures.

1.24 Optional Study

shall mean a study in addition to the Interconnection Studies as described in Section 10 of these Interconnection Procedures.

1.25 Point of Change of Ownership

shall mean the point, set forth in Appendix A to the Interconnection and Operating Agreement, at which the Generator Interconnection Facilities connect to the Transmission Provider's Transmission Interconnection Facilities.

1.26 Point of Interconnection

shall mean the point or points, as set forth in Appendix A to the Interconnection and Operating Agreement, where the Interconnection Facilities connect to the Transmission Provider's Transmission System.

1.27 Reasonable Efforts

shall mean, with respect to an action required to be attempted or taken by a party under this agreement, actions that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.

1.28 RTO/ISO

shall mean any Regional Transmission Organization or Independent System Operator to which a Transmission Provider/Transmission Owner has transferred operational control of its transmission facilities, or any portion thereof, within the meaning of Order No. 2000.

1.29 Site Control

shall mean documentation reasonably demonstrating: (i) ownership of, a leasehold interest in, or a right to develop a site for the purpose of constructing a Facility; (ii) an option to purchase or acquire a leasehold site for such purpose; or (iii) an exclusivity or other business relationship between Generator and the entity having the right to sell, lease or grant Generator the right to possess or occupy a site for such purpose.

1.30 Small Generators

shall mean those Generators described in Section 14 of these Interconnection Procedures.

1.31 Tariff

shall mean the Transmission Provider's tariff(s) under which open access transmission and interconnection service are offered, as filed with FERC, and as amended or supplemented from time to time, or any successor tariff(s).

1.32 Transmission Owner

shall mean an entity that owns, leases, or otherwise possesses an interest in the portion of the Transmission System at the Point of Interconnection and may be a party to this Agreement to the extent necessary.

1.33 Transmission Provider

shall mean the entity that provides Transmission Service under its Open Access Transmission Tariff.

1.34 Transmission Provider Interconnection Facilities

shall mean all facilities owned and/or controlled or operated by the Transmission Provider from the Point of Change of Ownership to the Point of Interconnection, as identified in Appendix A to the Interconnection and Operating Agreement, including any modifications, additions or upgrades to such facilities and equipment. Transmission Provider Facilities are sole use facilities and shall not include Network Upgrades or facilities as defined in Section 1.21 above.

1.35 Transmission System

shall mean the facilities owned, controlled or operated by the Transmission Provider and/or Transmission Owner that are used to provide transmission service under the Tariff, including any additions, modifications or upgrades made to such facilities.

2. Scope and Application

2.1 Application of Interconnection Procedures

Sections 2 through 13 apply to any Interconnection Request. Section 14 establishes the modified procedures for interconnecting Small Generators' Facilities.

2.2 Comparability

The Transmission Provider shall receive, process and analyze all Interconnection Requests in a timely manner as set forth in these Interconnection Procedures. The Transmission Provider will use the same Reasonable Efforts in processing and analyzing Interconnection Requests from all Generators, whether the generating facilities are owned by Transmission Provider, its subsidiaries or affiliates or others.

2.3 Base Case Data

Transmission Provider shall provide base power flow, short circuit and stability databases.

2.4 No Applicability to Transmission Service

Nothing in these Interconnection Procedures shall constitute a request for transmission service or confer upon a Generator any right to receive transmission service.

3. Interconnection Requests

3.1 General

A Generator shall submit to the Transmission Provider an Interconnection Request in the form of Appendix 1 to these Interconnection Procedures and a refundable deposit of $10,000. The Transmission Provider shall apply the deposit toward the cost of an Interconnection Feasibility Study. The Generator shall submit a separate Interconnection Request for each site and may submit multiple Interconnection Requests for a single site.

At Generator's option, Transmission Provider and Generator will identify alternative Point(s) of Interconnection and configurations at the initial scoping meeting to evaluate in this process and attempt to eliminate alternatives in a reasonable fashion given resources and information available. Generator will select the definitive Point(s) of Interconnection no later than the execution of the Interconnection Feasibility Study Agreement.

3.2 Identification of Types of Interconnection Services

At the time the Interconnection Request is submitted, Generator must identify the types of interconnection services requested; provided, however, any Generator requesting Network Resource Interconnection Service may also request that it be concurrently studied as an Energy Resource Interconnection Service, up to the point when an Interconnection Facility Study Agreement is executed.

3.3 Valid Interconnection Request

3.3.1 Initiating an Interconnection Request

To initiate an Interconnection Request, Generator must submit all of the following: (i) A $10,000 deposit, (ii) A completed application in the form of Appendix 1, and (iii) demonstration of Site Control or a posting of an additional deposit of $10,000. Such deposits shall be applied toward any Interconnection Studies pursuant to the Interconnection Request. If Generator demonstrates Site Control within the cure period specified in Section 3.3.3 after submitting its Interconnection Request, the deposit(s) shall be refundable; otherwise, such deposit(s) become non-refundable. The expected In-Service Date of the new Facility or increase in capacity of the existing Facility shall be no more than the process window for the regional expansion planning period not to exceed seven years from the date the Interconnection Request is received by the Transmission Provider, unless the Interconnection Customer demonstrates that engineering, permitting and construction of the new Facility or increase in capacity of the existing Facility will take longer than the regional expansion planning period. In no event shall the In-Service Date exceed ten years from the date the Interconnection Request is received by the Transmission Provider.

3.3.2 Acknowledgement of Interconnection Request

Transmission Provider shall acknowledge receipt of the Interconnection Request within five (5) Business Days of receipt of the request and attach a copy of the received Interconnection Request to the acknowledgement.

3.3.3 Deficiencies in Interconnection Request

An Interconnection Request will not be considered to be a valid request until all of the above items have been received by the Transmission Provider. If an Interconnection Request fails to meet the requirements set forth in this Section, the Transmission Provider shall notify the Generator within five (5) Business Days of receipt of the initial Interconnection Request of the reasons for such failure and that the Interconnection Request does not constitute a valid request. Generator shall provide the Transmission Provider the additional requested information needed to constitute a valid request within ten (10) Business Days after receipt of such notice. Failure by Generator to comply with this Section 3.3.3 shall be treated in accordance with Section 3.6.

3.3.4 Initial Scoping Meeting

Within ten (10) Business Days after receipt of a valid Interconnection Request, Transmission Provider shall establish a date agreeable to Generator for the initial scoping meeting, and such date shall be no later than thirty (30) Calendar Days from receipt of the Interconnection Request.

The purpose of the initial scoping meeting shall be to discuss alternative interconnection options, to exchange information including any transmission data that would reasonably be expected to impact such interconnection options, to analyze such information and to determine the potential feasible Points of Interconnection. Transmission Provider and Generator will bring to the meeting such technical data, including, but not limited to: (i) General facility loadings, (ii) general instability issues, (iii) general short circuit issues, (iv) general voltage issues, and (v) general reliability issues as may be reasonably required to accomplish the purpose of the meeting. Transmission Provider and Generator will also bring to the meeting personnel and other resources as may be reasonably required to accomplish the purpose of the meeting in the time allocated for the meeting. On the basis of the meeting, Generator shall designate its Point of Interconnection, pursuant to Section 6.1, and one or more available alternative Point(s) of Interconnection. The duration of the meeting shall allocate sufficient time to accomplish its purpose.

Within five (5) Business Days after the scoping meeting is held, Generator may elect not to have an Interconnection Feasibility Study conducted for the Interconnection Request. If Generator so elects, Generator will notify the Transmission Provider in writing within such period. In that event, the Transmission Provider will initiate an Interconnection System Impact Study in accordance with Section 7 of these Interconnection Procedures and apply the $10,000 deposit towards the Interconnection System Impact Study.

3.4 OASIS Posting

The Transmission Provider will maintain on its OASIS a list of all Interconnection Requests. The list will identify, for each Interconnection Request: (i) The maximum summer and winter megawatt electrical output; (ii) the location by county and state; (iii) the station or transmission line or lines where the interconnection will be made; (iv) the projected In-Service Date; (v) the status of the Interconnection Request, including queue position; (vi) the type of interconnection service being requested; and (vii) the availability of any studies related to the Interconnection Request. The list will not disclose the identity of the Generator until the Generator executes an Interconnection and Operating Agreement or requests that the Transmission Provider file an unexecuted Interconnection and Operating Agreement with FERC. The Transmission Provider shall post to its OASIS site any deviations from the study timelines set forth herein. Interconnection Study reports and Optional Study reports shall be posted to the Transmission Provider's OASIS site subsequent to the meeting between the Generator and the Transmission Provider to discuss the applicable study results.

3.5 Coordination With Affected Systems

The Transmission Provider will coordinate the conduct of any studies required to determine the impact of the Interconnection Request on Affected Systems with Affected System Operators and include those results in its applicable Interconnection Study within the time frame specified in these Interconnection Procedures. The Transmission Provider will include such Affected System Operators in all meetings held with the Generator as required by these Interconnection Procedures. The Generator will cooperate with the Transmission Provider in all matters related to the conduct of studies and the determination of modifications to Affected Systems. A transmission provider which may be an Affected System shall cooperate with the Transmission Provider with whom interconnection has been requested in all matters related to the conduct of studies and the determination of modifications to Affected Systems.

3.6 Withdrawal

The Generator may withdraw its Interconnection Request at any time by written notice of such withdrawal to the Transmission Provider. In addition, if the Generator fails to adhere to all requirements of these Interconnection Procedures, except as provided in Section 13.6, the Transmission Provider shall deem the Interconnection Request to be withdrawn and shall provide written notice to the Generator of the deemed withdrawal and an explanation of the reasons for such deemed withdrawal. Withdrawal shall result in the loss of the Generator's queue position. A Generator that withdraws or is deemed to have withdrawn its Interconnection Request shall pay to the Transmission Provider all costs that the Transmission Provider prudently incurs with respect to that Interconnection Request prior to the Transmission Provider's receipt of notice described above. The Transmission Provider shall (i) update the OASIS queue posting and

(ii) refund to the Generator any portion of the Generator's deposit or study payments that exceeds the costs that the Transmission Provider has incurred, including interest calculated in accordance with Section 35.19a(a)(2) of FERC's regulations. In the event of such withdrawal, the Transmission Provider, subject to the confidentiality provisions of Section 13.1, shall provide, at Generator's request, all information that the Transmission Provider developed for any completed study conducted up to the date of withdrawal of the Interconnection Request.

4. Queue Position

4.1 General

The Transmission Provider shall assign a queue position based upon the date and time of receipt of the valid Interconnection Request; provided that, if the sole reason an Interconnection Request is not valid is the lack of required information on the application form, and the Generator provides such information in accordance with Section 3.3.3, then the Transmission Provider shall assign the Generator a queue position based on the date the application form was originally filed. The queue position of each Interconnection Request will be used to determine the order of performing the Interconnection Studies and determination of cost responsibility for the facilities necessary to accommodate the Interconnection Request.

4.2 Clustering

At Transmission Provider's option, Interconnection Requests may be studied serially or in clusters for the purpose of the Interconnection System Impact Study.

If Transmission Provider elects to study Interconnection Requests in clusters, all Interconnection Requests received within a period not to exceed ninety (90) Calendar Days, hereinafter referred to as the ''queue cluster window,'' shall be studied together, as appropriate, except for Energy Resource Interconnection Service, which will be studied serially. Transmission Provider may study an Interconnection Request separately to the extent warranted by Good Utility Practice based upon the electrical remoteness of the proposed Facility.

4.3 Transferability of Queue Position

A Generator may transfer its queue position to another entity only if such entity acquires the specific facility identified in the Interconnection Request and the Point of Interconnection does not change.

4.4 Modifications

The Generator may submit to the Transmission Provider, in writing, modifications to any information provided in the Interconnection Request. The Generator shall retain its queue position if the modifications are in accordance with Sections 4.4.1, 4.4.2 or 4.4.5, or are determined not to be Material Modifications pursuant to Sections 4.4.3 and 4.4.4.

Notwithstanding the above, during the course of the Interconnection Studies, either the Generator or Transmission Provider may identify changes to the planned interconnection that may improve the costs and benefits (including reliability) of the interconnection, and the ability of the proposed change to accommodate the Interconnection Request. To the extent the identified changes are acceptable to the Transmission Provider and Generator, such acceptance not to be unreasonably withheld, Transmission Provider shall modify the Point of Interconnection and/or configuration in accordance with such changes and proceed with any re-studies necessary to do so in accordance with Section 6.4, Section 7.6 and Section 8.6 as applicable and Generator shall retain its queue position.

4.4.1 Prior to the return of the executed Interconnection System Impact Study Agreement to the Transmission Provider, modifications permitted under this Section shall include specifically: (a) A reduction up to 60% (MW) of electrical output of the proposed project; (b) modifying the technical parameters associated with the generator technology or the generator step-up transformer impedance characteristics; (c) modifying the interconnection configuration; and/or (d) any other change except to the Point of Interconnection. For plant increases, the incremental increase in plant output will go to the end of the queue for the purposes of cost allocation and study analysis.

4.4.2 Prior to the return of the executed Interconnection Facility Study Agreement to the Transmission Provider, the modifications permitted under this Section shall include specifically: (a) Additional 15% decrease in plant size (MW), and (b) generator technical parameters associated with modifications to generator technology and transformer impedances; provided, however, the incremental costs associated with those modifications are the responsibility of the requesting Generator.

4.4.3 Prior to making any modification other than those specifically permitted by Sections 4.4.1, 4.4.2, and 4.4.5, Generator may first request that the Transmission Provider evaluate whether such modification is a Material Modification. Material Modifications are those modifications that have a material impact on the cost or timing of any Interconnection Request with a later queue priority date. In response to Generator's request, the Transmission Provider shall evaluate the proposed modifications prior to making them and inform the Generator in writing of whether the modifications would constitute a Material Modification. The Generator may then withdraw the proposed modification or proceed with a new Interconnection Request for such modification.

4.4.4 Upon receipt of Generator's request for modification permitted under this Section 4.4, the Transmission Provider shall commence and perform any necessary additional studies as soon as practicable, but in no event shall the Transmission Provider commence such studies later than thirty (30) Calendar Days after receiving notice of Generator's request. Any additional studies resulting from such modification shall be done at Generator's cost.

4.4.5 Extensions of less than three (3) cumulative years in the Commercial Operation Date of the Facility to which the Interconnection Request relates are not material and should be handled through construction sequencing.

5. Procedures for Interconnection Requests Submitted Prior to Effective Date of Interconnection Procedures

5.1 Queue Position for Pending Requests

5.1.1 Any generator assigned a queue position prior to the effective date of these Interconnection Procedures shall retain that queue position.

5.1.1.1 If an Interconnection Study Agreement has not been executed as of the effective date of these Interconnection Procedures, then such Interconnection Study, and any subsequent Interconnection Studies, shall be processed in accordance with these Interconnection Procedures.

5.1.1.2 If an Interconnection Study Agreement has been executed prior to the effective date of these Interconnection Procedures, such Interconnection Study shall be completed in accordance with the terms of such agreement.

5.1.1.3 If an Interconnection and Operating Agreement has been tendered as of the effective date of these Interconnection Procedures, then the Transmission Provider and Generator shall finalize its terms.

5.1.2 Transition Period

To the extent necessary, the Transmission Provider and Generators with an outstanding request shall transition to these Interconnection Procedures within a reasonable period of time not to exceed sixty (60) Calendar Days. Any Generator with an outstanding request as of the effective date of these Interconnection Procedures may request a reasonable extension of any deadline, otherwise applicable, if necessary to avoid undue hardship or prejudice to its Interconnection Request. A reasonable extension shall be granted by the Transmission Provider to the extent consistent with the intent and process provided for under these Interconnection Procedures.

5.2 New Transmission Provider

If the Transmission Provider transfers control of its Transmission System to a successor Transmission Provider during the period when an Interconnection Request is pending, the original Transmission Provider shall transfer to the successor Transmission Provider any amount of the deposit or payment that exceeds the cost that it incurred to evaluate the request for interconnection. Any difference between such net amount and the deposit or payment required by these Interconnection Procedures shall be paid by or refunded to the Generator, as appropriate. The original Transmission Provider shall coordinate with the successor Transmission Provider to complete any Interconnection Study, as appropriate, that the original Transmission Provider has begun but has not completed. If the Transmission Provider has tendered a draft Interconnection and Operating Agreement to the Generator but the Generator has not either executed the Interconnection and Operating Agreement or requested the filing of an unexecuted Interconnection and Operating Agreement with FERC, unless otherwise provided, the Generator may elect to complete negotiations with the Transmission Provider or the successor Transmission Provider.

6. Interconnection Feasibility Study

6.1 Interconnection Feasibility Study Agreement

Simultaneously with the acknowledgement of a valid Interconnection Request the Transmission Provider shall provide to Generator an Interconnection Feasibility Study Agreement in the form of Appendix 2. The Interconnection Feasibility Study Agreement shall specify that Generator is responsible for the actual cost of the Interconnection Feasibility Study. Within five (5) Business Days following the initial scoping meeting Generator shall specify for inclusion in the attachment to the Interconnection Feasibility Study Agreement the Point(s) of Interconnection and any reasonable alternative Point(s) of Interconnection. Within five (5) Business Days following the Transmission Provider's receipt of such designation, Transmission Provider shall tender to Generator the Interconnection Feasibility Study Agreement signed by Transmission Provider, which includes a good faith estimate of the cost for completing the Interconnection Feasibility Study.

On or before the return of the executed Interconnection Feasibility Study Agreement to the Transmission Provider, the Generator shall provide the technical data called for in Appendix 2.

If the Interconnection Feasibility Study uncovers any unexpected result(s) not contemplated during the Initial Scoping Meeting, a substitute Point of Interconnection identified by either Generator or Transmission Provider, and acceptable to the other, such acceptance not to be unreasonably withheld, will be substituted for the designated Point of Interconnection specified above without loss of queue position, and re-studies shall be completed pursuant to Section 6.4 as applicable. For the purpose of this Section 6.1, if the Transmission Provider and Generator cannot agree on the substituted Point of Interconnection, then Generator may direct that one of the alternatives as specified in the Interconnection Feasibility Study Agreement, as specified pursuant to Section 3.3.4, shall be the substitute.

6.2 Scope of Interconnection Feasibility Study

The Interconnection Feasibility Study shall preliminarily evaluate the feasibility of the proposed interconnection to the Transmission System.

The Interconnection Feasibility Study will consider the Base Case as well as all generating facilities (and with respect to (iii), any identified Network Upgrades) that, on the date the Interconnection Feasibility Study is commenced: (i) Are directly interconnected to the Transmission System; (ii) are interconnected to Affected Systems and may have an impact on the Interconnection Request; (iii) have a pending higher queued Interconnection Request to interconnect to the Transmission System; and (iv) have no queue position but have executed an Interconnection and Operating Agreement or requested that an unexecuted Interconnection and Operating Agreement be filed with FERC. The Interconnection Feasibility Study will consist of a power flow and short circuit analysis. The Interconnection Feasibility Study will provide a list of facilities and a non-binding good faith estimate of cost responsibility and a non-binding good faith estimated time to construct.

6.3 Interconnection Feasibility Study Procedures

The Transmission Provider shall utilize existing studies to the extent practicable when it performs the study. The Transmission Provider shall use Reasonable Efforts to complete the Interconnection Feasibility Study no later than forty-five (45) Calendar Days after the Transmission Provider receives the fully executed Interconnection Feasibility Study Agreement. At the request of the Generator or at any time the Transmission Provider determines that it will not meet the required time frame for completing the Interconnection Feasibility Study, Transmission Provider shall notify the Generator as to the schedule status of the Interconnection Feasibility Study. If the Transmission Provider is unable to complete the Interconnection Feasibility Study within that time period, it shall notify the Generator and provide an estimated completion date with an explanation of the reasons why additional time is required. Upon request, the Transmission Provider shall provide the Generator supporting documentation, workpapers and relevant power flow, short circuit and stability databases for the Interconnection Feasibility Study, subject to confidentiality arrangements consistent with Section 13.1.

6.3.1 Meeting with Transmission Provider

Within ten (10) Business Days of providing an Interconnection Feasibility Study report to Generator, Transmission Provider and Generator shall meet to discuss the results of the Interconnection Feasibility Study.

6.4 Re-Study

If re-study of the Interconnection Feasibility Study is required due to a higher queued project dropping out of the queue, or a modification of a higher queued project subject to Section 4.4, or re-designation of the Point of Interconnection pursuant to Section 6.1 Transmission Provider shall notify Generator in writing. Such re-study shall take not longer than forty-five (45) Calendar Days from the date of the notice. Any cost of re-study shall be borne by the Generator being re-studied.

7. Interconnection System Impact Study

7.1 Interconnection System Impact Study Agreement

Unless otherwise provided in Section 3.3.4, simultaneously with the delivery of the Interconnection Feasibility Study to the Generator, the Transmission Provider shall provide to the Generator an Interconnection System Impact Study Agreement in the form of Appendix 3 to these Interconnection Procedures. The Interconnection System Impact Study Agreement shall provide that the Generator shall compensate the Transmission Provider for the actual cost of the Interconnection System Impact Study. Within three (3) Business Days following the Interconnection Feasibility Study results meeting, the Transmission Provider shall provide to Generator a non-binding good faith estimate of the cost and timeframe for completing the Interconnection System Impact Study.

7.2 Execution of Interconnection System Impact Study Agreement

The Generator shall execute the Interconnection System Impact Study Agreement and deliver the executed Interconnection System Impact Study Agreement to the Transmission Provider no later than thirty (30) Calendar Days after its receipt along with demonstration of Site Control, and a $50,000 deposit.

If the Generator does not provide all such technical data when it delivers the Interconnection System Impact Study Agreement, the Transmission Provider shall notify the Generator of the deficiency within five (5) Business Days of the receipt of the executed Interconnection System Impact Study Agreement and the Generator shall cure the deficiency within ten (10) Business Days of receipt of the notice, provided, however, such deficiency does not include failure to deliver the executed Interconnection System Impact Study Agreement or deposit.

If the Interconnection System Impact Study uncovers any unexpected result(s) not contemplated during the Initial Scoping Meeting and the Interconnection Feasibility Study, a substitute Point of Interconnection identified by either Generator or Transmission Provider, and acceptable to the other, such acceptance not to be unreasonably withheld, will be substituted for the designated Point of Interconnection specified above without loss of queue position, and restudies shall be completed pursuant to Section 7.6 as applicable. For the purpose of this Section 7.6, if the Transmission Provider and Generator cannot agree on the substituted Point of Interconnection, then Generator may direct that one of the alternatives as specified in the Interconnection Feasibility Study Agreement, as specified pursuant to Section 3.3.4, shall be the substitute.

7.3 Scope of Interconnection System Impact Study

The Interconnection System Impact Study shall evaluate the impact of the proposed interconnection on the reliability of the Transmission System. The Interconnection System Impact Study will consider the Base Case as well as all generating facilities (and with respect to (iii) below, any identified Network Upgrades associated with such higher queued interconnection) that, on the date the Interconnection System Impact Study is commenced: (i) Are directly interconnected to the Transmission System; (ii) are interconnected to Affected Systems and may have an impact on the Interconnection Request; (iii) have a pending higher queued Interconnection Request to interconnect to the Transmission System; and (iv) have no queue position but have executed an Interconnection and Operating

Agreement or requested that an unexecuted Interconnection and Operating Agreement be filed with FERC. The Interconnection System Impact Study will consist of a short circuit analysis, a stability analysis, and a power flow analysis. The Interconnection System Impact Study will state the assumptions upon which it is based; state the results of the analyses; and provide the requirements or potential impediments to providing the requested interconnection service, including a preliminary indication of the cost and length of time that would be necessary to correct any problems identified in those analyses and implement the interconnection. The Interconnection System Impact Study will provide a list of facilities that are required as a result of the Interconnection Request and a non-binding good faith estimate of cost responsibility and a non-binding good faith estimated time to construct.

7.4 Interconnection System Impact Study Procedures

The Transmission Provider shall coordinate the Interconnection System Impact Study with any Affected System that is affected by the Interconnection Request pursuant to Section 3.5 above. The Transmission Provider shall utilize existing studies to the extent practicable when it performs the study. The Transmission Provider shall use Reasonable Efforts to complete the Interconnection System Impact Study within ninety (90) Calendar Days after the receipt of the Interconnection System Impact Study Agreement or notification to proceed, study payment, and technical data. If Transmission Provider uses clustering, the Transmission Provider shall use Reasonable Efforts to deliver a completed Interconnection System Impact Study within ninety (90) Calendar Days after the close of the queue cluster window. At the request of the Generator or at any time the Transmission Provider determines that it will not meet the required time frame for completing the Interconnection System Impact Study, Transmission Provider shall notify the Generator as to the schedule status of the Interconnection System Impact Study. If the Transmission Provider is unable to complete the Interconnection System Impact Study within the time period, it shall notify the Generator and provide an estimated completion date with an explanation of the reasons why additional time is required. Upon request, the Transmission Provider shall provide the Generator all supporting documentation, workpapers and relevant pre-Interconnection Request and post-Interconnection Request power flow, short circuit and stability databases for the Interconnection System Impact Study, subject to confidentiality arrangements consistent with Section 13.1.

7.5 Meeting With Transmission Provider

Within ten (10) Business Days of providing an Interconnection System Impact Study report to Generator, Transmission Provider and Generator shall meet to discuss the results of the Interconnection System Impact Study.

7.6 Re-Study

If re-study of the Interconnection System Impact Study is required due to a higher queued project dropping out of the queue, a modification of a higher queued project subject to 4.4, or re-designation of the Point of Interconnection pursuant to Section 6.1 Transmission Provider shall notify Generator in writing. Such re-study shall take no longer than sixty (60)Calendar Days from the date of notice.

Any cost of re-study shall be borne by the Generator being re-studied.

8. Interconnection Facilities Study

8.1 Interconnection Facilities Study Agreement

Simultaneously with the delivery of the Interconnection System Impact Study to the Generator, the Transmission Provider shall provide to the Generator an Interconnection Facilities Study Agreement in the form of Appendix 4 to these Interconnection Procedures. The Interconnection Facilities Study Agreement shall provide that the Generator shall compensate the Transmission Provider for the actual cost of the Interconnection Facilities Study. Within three (3) Business Days following the Interconnection System Impact Study results meeting, the Transmission Provider shall provide to Generator a non-binding good faith estimate of the cost and timeframe for completing the Interconnection Facilities Study. The Generator shall execute the Interconnection Facilities Study Agreement and deliver the executed Interconnection Facilities Study Agreement to the Transmission Provider within thirty (30) Calendar Days after its receipt, together with the required technical data and the greater of $100,000 or Generator's portion of the estimated monthly cost of conducting the Interconnection Facilities Study.

8.1.1 Transmission Provider shall invoice Generator on a monthly basis for the work to be conducted on the Interconnection Facilities Study each month. Generator shall pay invoiced amounts within thirty (30) Calendar Days of receipt of invoice. Transmission Provider shall continue to hold the amounts on deposit until settlement of the final invoice.

8.2 Scope of Interconnection Facilities Study

The Interconnection Facilities Study shall specify and estimate the cost of the equipment, engineering, procurement and construction work needed to implement the conclusions of the Interconnection System Impact Study in accordance with Good Utility Practice to physically and electrically connect the Interconnection Facility to the Transmission System. The Interconnection Facilities Study shall also identify the electrical switching configuration of the connection equipment, including, without limitation: The transformer, switchgear, meters, and other station equipment; the nature and estimated cost of any Transmission Provider Interconnection Facilities and Network Upgrades necessary to accomplish the interconnection; and an estimate of the time required to complete the construction and installation of such facilities.

8.3 Interconnection Facilities Study Procedures

The Transmission Provider shall coordinate the Interconnection Facilities Study with any Affected System pursuant to Section 3.5 above. The Transmission Provider shall utilize existing studies to the extent practicable in performing the Interconnection Facilities Study. The Transmission Provider shall use Reasonable Efforts to complete the study and issue a draft Interconnection Facilities Study report to the Generator within the following number of days after receipt of an executed Interconnection Facilities Study Agreement: ninety (90) Calendar Days, with no more than a ±20% cost estimate contained in the report; or one hundred eighty (180) Calendar Days, if the Generator requests a ±10% cost estimate. At the request of the Generator or at any time the Transmission Provider determines that it will not meet the required time frame for completing the Interconnection Facilities Study, Transmission Provider shall notify the Generator as to the schedule status of the Interconnection Facilities Study. If the Transmission Provider is unable to complete the Interconnection Facilities Study and issue a draft Interconnection Facilities Study report within the time required, it shall notify the Generator and provide an estimated completion date and an explanation of the reasons why additional time is required. The Generator may, within thirty (30) Calendar Days after receipt of the draft report, provide written comments to the Transmission Provider, which the Transmission Provider shall include in the final report. The Transmission Provider shall issue the final Interconnection Facilities Study report within fifteen (15) Business Days of receiving the Generator's comments or promptly upon receiving Generator's statement that it will not provide comments. The Transmission Provider may reasonably extend such fifteen-day period upon notice to the Generator if the Generator's comments require the Transmission Provider to perform additional analyses or make other significant modifications prior to the issuance of the final Interconnection Facilities Report. Upon request, the Transmission Provider shall provide the Generator supporting documentation, workpapers, and databases or data developed in the preparation of the Interconnection Facilities Study, subject to confidentiality arrangements consistent with Section 13.1.

8.4 Meeting With Transmission Provider

Within ten (10) Business Days of providing a draft Interconnection Facilities Study report to Generator, Transmission Provider and Generator shall meet to discuss the results of the Interconnection Facilities Study.

8.5 Re-Study

If re-study of the Interconnection Facilities Study is required due to a higher queued project dropping out of the queue or a modification of a higher queued project pursuant to Section 4.4, Transmission

Provider shall so notify Generator in writing. Such re-study shall take no longer than sixty (60) Calendar Days from the date of notice.

Any cost of re-study shall be borne by the Generator being re-studied.

9. Agreements

9.1 Engineering & Procurement (''E&P'') Agreement

Prior to executing an Interconnection and Operating Agreement, a Generator may, in order to advance the implementation of its interconnection, request and Transmission Provider shall offer the Generator, an agreement that authorizes the Transmission Provider to begin engineering and procurement of long lead-time items necessary for the establishment of the interconnection (''E&P Agreement''). However, the Transmission Provider shall not be obligated to offer an E&P Agreement if Generator is in dispute resolution as a result of an allegation that Generator has failed to meet any milestones or comply with any prerequisites specified in other parts of the Interconnection Procedures. The E&P Agreement is an optional procedure and it will not alter the Generator's queue position or In-Service Date. The E&P Agreement shall provide for the Generator to pay the cost of all activities authorized by the Generator and to make advance payments or provide other satisfactory security for such costs. The Generator shall pay the cost of such authorized activities and any cancellation costs for equipment that is already ordered for its interconnection, which cannot be mitigated as hereafter described, whether or not such items or equipment later become unnecessary. If Generator withdraws its application for interconnection or either party terminates the E&P Agreement, to the extent the equipment ordered can be canceled under reasonable terms, Generator shall be obligated to pay the associated cancellation costs. To the extent that the equipment cannot be reasonably canceled, Transmission Provider may elect: (i) to take title to the equipment, in which event Transmission Provider shall refund Generator any amounts paid by Generator for such equipment and shall pay the cost of delivery of such equipment, or (ii) to transfer title to and deliver such equipment to Generator, in which event Generator shall pay any unpaid balance and cost of delivery of such equipment.

10. Optional Study

10.1 Optional Study Agreement

On or after the date when the Generator receives Interconnection System Impact Study results, the Generator may request, and the Transmission Provider shall perform a reasonable number of Optional Studies. The request shall describe the assumptions that the Generator wishes the Transmission Provider to study within the scope described in Section 10.2. Within five (5) Business Days after receipt of a request for an Optional Study, the Transmission Provider shall provide to the Generator an Optional Study Agreement in the form of Appendix 5. The Optional Study Agreement shall: (i) specify the technical data that the Generator must provide for each phase of the Optional Study, (ii) specify Generator's assumptions as to which Interconnection Requests with earlier queue priority dates will be excluded from the optional study case and assumptions as to the type of interconnection service for Interconnection Requests remaining in the optional study case, and (iii) the Transmission Provider's estimate of the cost of the Optional Study. To the extent known by the Transmission Provider, such estimate shall include any costs expected to be incurred by any Affected System whose participation is necessary to complete the Optional Study. Notwithstanding the above, the Transmission Provider shall not be required as a result of an Optional Study request to conduct any additional Interconnection Studies with respect to any other Interconnection Request. The Generator shall execute the Optional Study Agreement within ten (10) Business Days of receipt and deliver the Optional Study Agreement, the technical data and a $10,000 deposit to the Transmission Provider.

10.2 Scope of Optional Study

The Optional Study will consist of a sensitivity analysis based on the assumptions specified by the Generator in the Optional Study Agreement. The Optional Study will also identify the Transmission Provider Interconnection Facilities and the Network Upgrades, and the estimated cost thereof, that may be required to provide transmission service or interconnection service based upon the results of the Optional Study. The Optional Study shall be performed solely for informational purposes. The Transmission Provider shall use Reasonable Efforts to coordinate the study with any Affected Systems that may be affected by the types of interconnection services that are being studied. The Transmission Provider shall utilize existing studies to the extent practicable in conducting the Optional Study.

10.3 Optional Study Procedures

The executed Optional Study Agreement, the prepayment, and technical and other data called for therein must be provided to the Transmission Provider within ten (10) Business Days of Generator's receipt of the Optional Study Agreement. The Transmission Provider shall use Reasonable Efforts to complete the Optional Study within a mutually agreed upon time period specified within the Optional Study Agreement. If the Transmission Provider is unable to complete the Optional Study within such time period, it shall notify the Generator and provide an estimated completion date and an explanation of the reasons why additional time is required. Any difference between the study payment and the actual cost of the study shall be paid to the Transmission Provider or refunded to the Generator, as appropriate. Upon request, the Transmission Provider shall provide the Generator supporting documentation and workpapers and databases or data developed in the preparation of the Optional Study, subject to confidentiality arrangements consistent with Section 13.1.

11. Interconnection and Operating Agreement

11.1 Tender

Simultaneously with the issuance of the draft Interconnection Facilities Study report to the Generator, the Transmission Provider shall tender to the Generator a draft Interconnection and Operating Agreement together with draft appendices completed to the extent practicable. The draft Interconnection and Operating Agreement shall be in the form of the pro forma Interconnection and Operating Agreement. Within thirty (30) Calendar Days after the issuance of the draft Interconnection Facilities Study Report, the Transmission Provider shall tender the completed draft Interconnection and Operating Agreement appendices.

11.2 Negotiation

Notwithstanding Section 11.1, at the request of the Generator the Transmission Provider shall begin negotiations with the Generator concerning the appendices to the Interconnection and Operating Agreement at any time after the Generator executes the Interconnection Facilities Study Agreement. The Transmission Provider and the Generator shall negotiate concerning any disputed provisions of the appendices to the draft Interconnection and Operating Agreement for not more than sixty (60) Calendar Days after tender of the final Interconnection Facilities Study Report. If the Generator determines that negotiations are at an impasse, it may request termination of the negotiations at any time after tender of the Interconnection and Operating Agreement pursuant to Section 11.1 and request submission of the unexecuted Interconnection and Operating Agreement with FERC or initiate dispute resolution procedures pursuant to Section 13.6. If the Generator requests termination of the negotiations, but within sixty (60) Calendar Days thereafter fails to request either the filing of the unexecuted Interconnection and Operating Agreement or initiate dispute resolution, it shall be deemed to have withdrawn its Interconnection Request. The Transmission Provider shall provide to the Generator a final Interconnection and Operating Agreement within fifteen (15) Business Days after the completion of the negotiation process.

11.3 Execution and Filing

Within fifteen (15) Business Days after receipt of the final Interconnection and Operating Agreement, the Generator shall provide the Transmission Provider reasonable evidence that continued Site Control and one or more of the following milestones in the development of the Facility, at the Generator's election, has been achieved: (i) the execution of a contract for the supply or transportation of fuel to the Facility; (ii) the execution of a contract for the supply of cooling water to the Facility; (iii) execution of a contract for the engineering for, procurement of major equipment for, or construction of, the Facility; (iv) execution of a contract for the sale of electric energy or capacity from the Facility; (v) application for an air, water, or land use permit; or (vi) posting of $250,000,

non-refundable additional security, which shall be applied toward future construction costs.

The Generator shall either: (i) execute two originals of the tendered Interconnection and Operating Agreement and return them to the Transmission Provider; or (ii) request in writing that the Transmission Provider file with FERC an Interconnection and Operating Agreement in unexecuted form. As soon as practicable, but not later than ten (10) Business Days after receiving either the two executed originals of the tendered Interconnection and Operating Agreement or the request to file an unexecuted Interconnection and Operating Agreement, the Transmission Provider shall file the Interconnection and Operating Agreement with FERC, together with its explanation of any matters as to which the Generator and the Transmission Provider disagree and support for the costs that the Transmission Provider proposes to charge to the Generator under the Interconnection and Operating Agreement.

11.4 Commencement of Interconnection Activities

If the Generator executes the final Interconnection and Operating Agreement, the Transmission Provider and the Generator shall perform their respective obligations in accordance with the terms of the Interconnection and Operating Agreement, subject to modification by FERC. Upon submission of an unexecuted Interconnection and Operating Agreement, both Generator and Transmission Provider shall promptly comply with the unexecuted Interconnection and Operating Agreement, subject to modification by FERC.

12. Construction of Transmission Provider Interconnection Facilities and Network Upgrades.

12.1 Schedule

The Transmission Provider and the Generator shall negotiate in good faith concerning a schedule for the construction of the Transmission Provider Interconnection Facilities and the Network Upgrades.

12.2 Permits

The Interconnection and Operating Agreement shall specify the allocation of the responsibilities of the Transmission Provider/Owner and the Generator to obtain all permits, licenses and authorizations that are necessary to accomplish the interconnection in compliance with applicable laws and regulations. The Transmission Provider/Owner and the Generator shall cooperate with each other in good faith in obtaining any such permits, licenses and authorizations. Nothing in this Section 12.2 shall be construed to waive any rights under applicable law.

12.3 Construction Sequencing

In general, the In-Service Date of generators seeking interconnection to the Transmission System will determine the sequence of construction of Network Upgrades. A Generator with an Interconnection and Operating Agreement, in order to maintain its In-Service Date, may request that the Transmission Provider advance to the extent necessary the completion of Network Upgrades that: (i) Were assumed in the Interconnection Studies for such Generator, (ii) are necessary to support such In-Service Date, and (iii) would otherwise not be completed, pursuant to a contractual obligation of an entity other than the Generator that is seeking interconnection to the Transmission System, in time to support such In-Service Date. Upon such request, Transmission Provider will use Reasonable Efforts to advance the construction of such Network Upgrades to accommodate such request; provided that the Generator commits to pay Transmission Provider: (i) any associated expediting costs and (ii) the cost of such Network Upgrades. The Transmission Provider will refund to the Generator the costs in clause (ii) of the prior sentence at such time as it receives payment from the entity with a contractual obligation to construct such Network Upgrades. Until such costs are refunded by the Transmission Provider, the Generator may utilize the transmission credits, if any, associated with the Network Upgrades the construction of which was advanced; thereafter the balance of such credits may be utilized by the entity that provided the Transmission Provider with the funds for such refund, to the extent of those funds. The Generator shall be entitled to transmission credits, if any, for any expediting costs paid. The inclusion of costs, recovery of costs and credits in this Section 12.3 is subject to FERC determination of cost responsibility.

A Generator with an Interconnection and Operating Agreement, in order to maintain its In-Service Date, may request that the Transmission Provider advance to the extent necessary the completion of Network Upgrades that: (i) Are necessary to support such In-Service Date and (ii) would otherwise not be completed, pursuant to an expansion plan of the Transmission Provider, in time to support such In-Service Date. Upon such request, Transmission Provider will use Reasonable Efforts to advance the construction of such Network Upgrades to accommodate such request; provided that the Generator commits to pay Transmission Provider any associated expediting costs. The Generator shall be entitled to transmission credits, if any, for any expediting costs paid. The inclusion of costs, recovery of costs and credits in this Section 12.3 is subject to FERC determination of cost responsibility.

An Interconnection System Impact Study will be amended to determine the facilities necessary to support the requested In-Service Date. This amended study will include those transmission and generator facilities that are expected to be in service on or before the requested In-Service Date.

13. Miscellaneous

13.1 Confidentiality

Transmission Provider, Transmission Owner(s), and such entities' officers, employees, and contractors shall keep confidential all information provided by Generator related to interconnection service required by Transmission Provider to process an Interconnection Request for network or similar type interconnection service as specified by FERC (other than the information contained in the Interconnection Request in Appendix 1) or that otherwise constitutes trade secrets or commercial or financial information, the disclosure of which would harm or prejudice the Generator or Generator's business.

Such Confidential Information shall exclude information to the extent that such information is or becomes generally available to the public without the violation of any obligation of secrecy relating to the information disclosed, including the posted Interconnection Studies on OASIS pursuant to the terms of Section 3.4. Transmission Provider shall use such information solely for the purpose of the Interconnection Study for which it was provided and no other purpose. Confidential Information should only be shared among individuals within the Transmission Provider; Transmission Owner; and any third party who need it to perform Interconnection Studies, to review Interconnection Study results, or to negotiate an Interconnection and Operating Agreement; provided that, under no circumstances shall data be shared with individuals that have responsibilities within the Transmission Providers/Owners and/or its affiliates' merchant generation and/or marketing functions and otherwise required pursuant to Order 889.

Further, Transmission Provider shall be liable to Generator for any breach of confidentiality caused by its agents or third party contractors.

The Transmission Provider shall, at Generator's election, destroy, in a confidential manner, or return the Confidential Information provided at the time the Confidential Information is no longer needed.

Other than any required disclosures of Interconnection Studies on OASIS, should Transmission Provider be required to disclose the Generator's confidential information with any regulatory body, Transmission Provider shall request confidential treatment of such information from such regulatory body. If Transmission Provider receives any request to disclose confidential information, Transmission Provider shall provide Generator with prompt written notice of any such request so that the Generator may contest disclosure.

Notwithstanding anything to the contrary herein, these provisions shall not require the Transmission Provider or the Generator to disclose information in violation of any confidentiality obligations to third parties.

13.2 Delegation of Responsibility

The Transmission Provider may use the services of subcontractors as it deems appropriate to perform its obligations under these Interconnection Procedures. Transmission Provider shall remain primarily liable to the Generator for the performance of such subcontractors and compliance with its obligations of these Interconnection Procedures. The subcontractor shall keep all information provided confidential and shall use such information solely for the performance of such obligation for which it was provided and no other purpose.

13.3 Obligation for Study Costs

Transmission Provider shall charge and Generator shall pay the actual costs of the Interconnection Studies. Any difference between the study deposit and the actual cost of the applicable Interconnection Study shall be paid by or refunded, except as otherwise provided herein, to Generator or offset against the cost of any future Interconnection Studies associated with the applicable Interconnection Request prior to beginning of any such future Interconnection Studies. Generator shall pay any such undisputed costs within thirty (30) Calendar Days of receipt of an invoice therefor. The Transmission Provider shall not be obligated to perform or continue to perform any studies unless Generator has paid all undisputed amounts in compliance herewith.

13.4 Third Parties Conducting Studies

If (i) at the time of the signing of an Interconnection Study Agreement there is disagreement as to the estimated time to complete an Interconnection Study, (ii) the Generator receives notice pursuant to Sections 6.3, 7.4 or 8.3 that the Transmission Provider will not complete an Interconnection Study within the applicable timeframe for such Interconnection Study, or (iii) Generator receives neither the Interconnection Study nor a notice under Sections 6.3, 7.4 or 8.3 within the applicable timeframe for such Interconnection Study, then the Generator may require the Transmission Provider to, within thirty (30) Calendar Days of notifying Transmission Provider, utilize a third party reasonably acceptable to Generator and Transmission Provider to perform such Interconnection Study under the direction of the Transmission Provider. Transmission Provider shall convey all workpapers, databases, study results and all other supporting documentation prepared to date with respect to the Interconnection Request as soon as practicable upon Generator's request subject to the confidentiality provision in Section 13.1. In any case, such third party contract may be entered into with either the Generator or the Transmission Provider at the Transmission Provider's discretion. In the case of (i), (ii) and (iii) such Interconnection Study will be at the Generator's expense and in the case of (iii) the Generator maintains its right to submit a claim to dispute resolution to recover the costs of such third party study. Such subcontractor shall be required to comply with these Interconnection Procedures and shall use the information provided to it solely for purposes of performing such services and for no other purposes. The Transmission Provider shall cooperate with such subcontractor and Generator to complete and issue the Interconnection Study in the shortest reasonable time.

13.5 Performance Liquidated Damages

In the event the Transmission Provider fails to meet any of its obligations under these Interconnection Procedures, and fails to remedy any failure within fifteen (15) Business Days, the Transmission Provider shall pay the Generator liquidated damages. Any liquidated damages paid by the Transmission Provider to the Generator shall be an amount equal to 1% of the actual cost of the applicable study cost (including any third party study costs), per day. However, in no event shall the total liquidated damages exceed 50% of the actual cost of the applicable study(ies). In addition to these liquidated damages, Transmission Provider shall refund any deposit amount for the applicable study previously paid by Generator in excess of actual reasonably incurred study costs immediately upon expiration of the remedy period noted above.

13.6 Disputes

13.6.1 Submission

In the event either Party has a dispute, or asserts a claim, that arises out of or in connection with the Interconnection and Operating Agreement or its performance, such Party (the ''disputing Party'') shall provide the other Party with written notice of the dispute or claim (''Notice of Dispute''). Such dispute or claim shall be referred to a designated senior representative of each Party for resolution on an informal basis as promptly as practicable after receipt of the Notice of Dispute by the other Party. In the event the designated representatives are unable to resolve the claim or dispute within thirty (30) Calendar Days of the other Party's receipt of the Notice of Dispute, such claim or dispute may, upon mutual agreement of the Parties, be submitted to arbitration and resolved in accordance with the arbitration procedures set forth below. In the event the Parties do not agree to submit such claim or dispute to arbitration, each Party may exercise whatever rights and remedies it may have in equity or at law consistent with the terms of this Agreement.

13.6.2 External Arbitration Procedures.

Any arbitration initiated under these procedures shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) Calendar Days of the submission of the dispute to arbitration, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within twenty (20) Calendar Days select a third arbitrator to chair the arbitration panel. In either case, the arbitrators shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (''Arbitration Rules'') and any applicable FERC regulations or RTO rules; provided, however, in the event of a conflict between the Arbitration Rules and the terms of this Section 13, the terms of this Section 13 shall prevail.

13.6.3 Arbitration Decisions

Unless otherwise agreed by the Parties, the arbitrator(s) shall render a decision within ninety (90) Calendar Days of appointment and shall notify the Parties in writing of such decision and the reasons therefor. The arbitrator(s) shall be authorized only to interpret and apply the provisions of the Agreement and shall have no power to modify or change any provision of the Agreement in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act or the Administrative Dispute Resolution Act. The final decision of the arbitrator must also be filed with FERC if it affects jurisdictional rates, terms and conditions of service, Interconnection Facilities, or Network Upgrades.

13.6.4 Costs

Each Party shall be responsible for its own costs incurred during the arbitration process and for the following costs, if applicable: (1) The cost of the arbitrator chosen by the Party to sit on the three member panel and one half of the cost of the third arbitrator chosen; or (2) one half the cost of the single arbitrator jointly chosen by the Parties.

14. Small Generator Interconnection Requests

14.1 Applicability

Small Generators are defined as units 20 MW and below or aggregations of interconnecting Facilities at a single Point of Interconnection totaling 20 MW and below, including those owned by Transmission Providers or their affiliates. Since Small Generators will generally have only a limited impact on a localized area of the Transmission Provider's Transmission System, all Interconnection Studies, upgrades and electric connections necessitated by the Interconnection Request will be conducted on an expedited basis. Because of the size limitation of Small Generators, any study will generally be limited only to the immediate vicinity of the Small Generator's interconnection and should use subsets of data from the Transmission Provider's larger system studies. If the Transmission Provider is able to use prior system studies to accommodate the Small Generator's request, there will be no charge assessed to the Small Generator. This Section 14 applies only to Small Generators that are located on the Transmission Provider's Transmission System or whose transaction(s) involve sales for resale.

14.2 Modified Interconnection Procedure

Requirements related to the application and interconnection for larger Generator resources are followed except as modified in this Section 14.

14.2.1 Interconnection Study Deposits

The deposit requirement for each of the Interconnection Studies is waived.

14.2.2 Interconnection Study Costs

While the deposit requirement for the Small Generator is waived, the Small

Generator is responsible for all costs associated with the processing of the Interconnection Request and the performance of Interconnection Studies, unless waived.

Small Generator will be billed for such costs following the completion of each Interconnection Study. Generator shall pay invoiced amounts within thirty (30) Calendar Days of receipt of invoice.

14.2.3 Expedited Procedures

Expedited analysis procedures will be utilized for all Interconnection Requests and studies.

14.3 Queue

Small Generators will be placed in the same queue as large Generators.

14.4 Interconnection Scoping Meeting and Studies

Immediately upon receipt of a valid Interconnection Request, the Transmission Provider shall establish a date agreeable to the Small Generator for an initial scoping meeting as discussed in Section 3.3.4 above and such meeting will be held no later than ten (10) Business Days from receipt of the Interconnection Request. Unless otherwise agreed, the Transmission Provider will conduct an Interconnection Feasibility Study to determine if transmission constraints or other contingencies within the immediate vicinity of the Small Generator interconnection will require Network Upgrades or facilities to be constructed and an Interconnection Facilities Study to specify and estimate the cost of the equipment, engineering, procurement and construction work needed to accomplish the interconnection. Each of the studies are to be completed by the Transmission Provider within fifteen (15) Calendar Days of the date of the applicable executed study request.

Appendices

Appendix 1—Interconnection Request
Appendix 2—Interconnection Feasibility Study Agreement
Appendix 3—Interconnection System Impact Study Agreement
Appendix 4—Interconnection Facilities Study Agreement
Appendix 5—Optional Study Agreement

Appendix 1

Interconnection Request

1. The undersigned Generator submits this request to its Facility with the Transmission Provider's Transmission System pursuant to a Tariff.

2. This Interconnection Request is for (check one):

__ A proposed new Facility.
__ An increase in the generating capacity or a Material Modification of an existing Facility.

3. Is the Generator requesting expedited procedures pursuant to Section 14 of the Interconnection Procedures?

__ Yes
__ No

4. The type of interconnection service requested (check one or both as appropriate):

__ [It is intended that the types of interconnection services specified in Article 4 of the Standard Generator and Interconnection Agreement be placed here.]

5. The Generator provides the following information:

a. Address or location or the proposed new Facility site (to the extent known) or, in the case of an existing Facility, the name and specific location of the Facility;

b. Maximum summer at _____ degrees C and winter at _____ degrees C megawatt electrical output of the proposed new Facility or the amount of megawatt increase in the generating capacity of an existing Facility;

c. General description of the equipment configuration;

d. Commercial Operation Date by day, month, and year;

e. Name, address, telephone number, and e-mail address of the Generator's contact person;

f. Approximate location of the proposed Point of Interconnection (optional); and

g. Generator Data (set forth in Attachment A)

6. Applicable deposit amount as specified in the Interconnection Procedures.

7. Evidence of Site Control as specified in the Interconnection Procedures (check one)

__ Is attached to this Interconnection Request
__ Will be provided at a later date in accordance with these Interconnection Procedures

8. This Interconnection Request shall be submitted to the representative indicated below:

[To be completed by Transmission Provider]

9. Representative of the Generator to contact:

[To be completed by Generator]

10. This Interconnection Request is submitted by:

Name of Generator: _____
By (signature): _____
Name (type or print): _____
Title: _____
Date: _____

Attachment A

Generator Data

Unit Ratings

kVA _____ °F _____ Voltage _____

Power Factor _____
Speed (RPM) _____ Connection (e.g. Wye) _____
Short Circuit Ratio _____ Frequency, Hertz _____
Stator Amperes at Rated kVA _____ Field Volts _____
Max Turbine MW _____ °F _____

Combined Turbine-Generator-Exciter Inertia Data

Inertia Constant, H = _____ kW sec/kVA
Moment-of-Inertia, WR2 = _____ lb. ft.2

	Direct Axis	Quadrature Axis
Reactance Data (Per Unit-Rated KVA):		
Synchronous—saturated	Xdv_____	Xqv_____
Synchronous—unsaturated	Xdi_____	Xqi_____
Transient—saturated	X'dv_____	X'qv_____
Transient—unsaturated	X'di_____	X'qi_____
Subtransient—saturated	X''dv_____	X''qv_____
Subtransient—unsaturated	X''di_____	X''qi_____
Negative Sequence—saturated	X2v_____	
Negative Sequence—unsaturated	X2i_____	
Zero Sequence—saturated	X0v_____	
Zero Sequence—unsaturated	X0i_____	
Leakage Reactance	Xlm_____	
Field Time Constant Data (SEC):		
Open Circuit	T'do_____	T'qo_____
Three-Phase Short Circuit Transient	T'd3_____	T'q_____
Line to Line Short Circuit Transient	T'd2_____	
Line to Neutral Short Circuit Transient	T'd1_____	
Short Circuit Subtransient	T''d_____	T''q_____
Open Circuit Subtransient	T''do_____	T''qo_____

Armature Time Constant Data (SEC)

Three Phase Short Circuit Ta3_____
Line to Line Short Circuit Ta2_____
Line to Neutral Short Circuit Ta1_____

MW Capability and Plant Configuration

Generator Data

Armature Winding Resistance Data (Per Unit)

Positive R1_____
Negative R2_____
Zero R0_____
Rotor Short Time Thermal Capacity I22t = _____
Field Current at Rated kVA, Armature Voltage and PF = _____ amps
Field Current at Rated kVA and Armature Voltage, 0 PF = _____ amps
Three Phase Armature Winding Capacitance = _____ microfarad
Field Winding Resistance = _____ ohms _____°C
Armature Winding Resistance (Per Phase) = _____ ohms _____ °C

Curves

Saturation, Vee, Reactive Capability, Capacity Temperature Correction

Designate normal and emergency Hydrogen Pressure operating range for multiple curves.

Generator Step-Up Transformer Data

Ratings

Capacity/Self-cooled/maximum nameplate _____/ _____kVA
Voltage Ratio/Generator side/System side _____/ _____kV
Winding Connections/Low V/High V (Delta or Wye) _____/ _____
Fixed Taps Available _____
Present Tap Setting _____

Impedance

Positive Z1 (on self-cooled kVA rating) _____% _____ X/R
Zero Z0 (on self-cooled kVA rating) _____% _____ X/R

Excitation System Data

Identify appropriate IEEE model block diagram of excitation system and power system stabilizer (PSS) for computer representation in power system stability simulations and the corresponding excitation system and PSS constants for use in the model.

Governor System Data

Identify appropriate IEEE model block diagram of governor system for computer representation in power system stability simulations and the corresponding governor system constants for use in the model.

Appendix 2

Interconnection Feasibility Study Agreement

This agreement is made and entered into this __ day of _____, 20__ by and between _____, a _____ organized and existing under the laws of the State of _____, (''Generator,'') and _____ a _____ existing under the laws of the State of _____, (''Transmission Provider ''). Generator and Transmission Provider each may be referred to as a ''Party,'' or collectively as the ''Parties.''

Recitals

Whereas, Generator is proposing to develop a Facility or generating capacity addition to an existing Facility consistent with the Interconnection Request submitted by the Generator dated _____; and

Whereas, Generator desires to interconnect the Facility with the Transmission System; and

Whereas, Generator has requested the Transmission Provider to perform an Interconnection Feasibility Study to assess the feasibility of interconnecting the proposed Facility to the Transmission System, and of any Affected Systems;

Now, therefore, in consideration of and subject to the mutual covenants contained herein the Parties agreed as follows:

1.0 When used in this agreement, with initial capitalization, the terms specified shall have the meanings indicated. Terms used in this agreement with initial capitalization but not defined in this Section 1 shall have the meanings specified in the Tariff.

2.0 Generator elects and Transmission Provider shall cause to be performed an Interconnection Feasibility Study consistent with Section 6.0 of these Interconnection Procedures in accordance with the Tariff.

3.0 The scope of the Interconnection Feasibility Study shall be subject to the assumptions set forth in Attachment A to this Agreement.

4.0 The Interconnection Feasibility Study shall be based on the technical information provided by Generator in the Interconnection Request, as may be modified as the result of the Initial Scoping Meeting. Transmission Provider reserves the right to request additional technical information from Generator as may reasonably become necessary consistent with Good Utility Practice during the course of the Interconnection Feasibility Study and as designated in accordance with Section 3.3.4 of the Interconnection Procedures. If, after the designation of the Point of Interconnection pursuant to Section 3.3.4 of the Interconnection Procedures, Generator modifies its Interconnection Request, the time to complete the Interconnection Feasibility Study may be extended.

5.0 The Interconnection Feasibility Study report shall provide the following information:

—Preliminary identification of any circuit breaker short circuit capability limits exceeded as a result of the interconnection;
—Preliminary identification of any thermal overload or voltage limit violations resulting from the interconnection; and
—Preliminary description and non-bonding estimated cost of facilities required to interconnect the Facility to the Transmission System and to address the identified short circuit and power flow issues.

6.0 The Transmission Provider's good faith estimated cost for performance of the Interconnection Feasibility Study is $10,000.

Upon receipt of the Interconnection Feasibility Study the Transmission Provider shall charge and Generator shall pay the actual costs of the Interconnection Feasibility Study.

Any difference between the deposit and the actual cost of the study shall be paid by or refunded to the Generator, as appropriate.

7.0 Miscellaneous. [The Interconnection Feasibility Study Agreement shall include standard miscellaneous terms including, but not limited to, indemnities, representations, disclaimers, warranties, governing law, amendment, execution, waiver, enforceability and assignment, that reflect best practices in the electric industry, and that are consistent with regional differences, applicable laws, and the organizational nature of each Party. All of these provisions, to the extent practicable, shall be consistent with the provisions of the Interconnection Procedures and the Interconnection and Operating Agreement.]

In witness whereof, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

[Insert Name of Transmission Provider]

By _____
Name (typed or printed): _____
Title _____

[Insert Name of Generator]

By _____
Name (typed or printed): _____
Title _____

Attachment A to Interconnection Feasibility Study Agreement

Assumptions Used in Conducting the Interconnection Feasibility Study

The Interconnection Feasibility Study will be based upon the information set forth in the Interconnection Request and agreed upon in the Initial Scoping Meeting held on _____:

Designation of Point of Interconnection and configuration to be studied.
Designation of alternative Point(s) of Interconnection and configuration.

[Above assumptions to be completed by Generator and other assumptions to be provided by Generator and Transmission Provider]

Appendix 3

Interconnection System Impact Study Agreement

This agreement is made and entered into this____ day of ____, 20____ by and between _____, a _____ organized and existing under the laws of the State of _____, (''Generator,'') and _____ a _____ existing under the laws of the State of _____, (''Transmission Provider''). Generator and Transmission Provider each may be referred to as a ''Party,'' or collectively as the ''Parties.''

Recitals

Whereas, Generator is proposing to develop a Facility or generating capacity addition to an existing Facility consistent with the Interconnection Request submitted by the Generator dated ; and

Whereas, Generator desires to interconnect the Facility with the Transmission System;

Whereas, the Transmission Provider has completed a Interconnection Feasibility Study (the ''Feasibility Study'') and provided the results of said study to the Generator; [1] and

Whereas, Generator has requested the Transmission Provider to perform an Interconnection System Impact Study to assess the impact of interconnecting the Facility to the Transmission System, and of any Affected Systems;

Now, therefore, in consideration of and subject to the mutual covenants contained herein the Parties agreed as follows:

1.0 When used in this agreement, with initial capitalization, the terms specified shall have the meanings indicated. Terms used in this agreement with initial capitalization but not defined in this Section 1 shall have the meanings specified in the Tariff.

2.0 Generator elects and Transmission Provider shall cause to be performed an Interconnection System Impact Study consistent with Section 7.0 of these Interconnection Procedures in accordance with the Tariff.

3.0 The scope of the Interconnection System Impact Study shall be subject to the assumptions set forth in Attachment A to this Agreement.

4.0 The Interconnection System Impact Study will be based upon the results of the Interconnection Feasibility Study and the technical information provided by Generator in the Interconnection Request, subject to any modifications in accordance with Section 4.4 of the Interconnection Procedures. Transmission Provider reserves the right to request additional technical information from Generator as may reasonably become necessary consistent with Good Utility Practice during the course of the Interconnection System Impact Study. If Generator modifies its designated Point of Interconnection, Interconnection Request, or the technical information provided therein is modified, the time to complete the Interconnection System Impact Study may be extended.

5.0 The Interconnection System Impact Study report shall provide the following information:

—Identification of any circuit breaker short circuit capability limits exceeded as a result of the interconnection;

—Identification of any thermal overload or voltage limit violations resulting from the interconnection;

—Identification of any instability or inadequately damped response to system disturbances resulting from the interconnection and

—Description and non-binding, good faith estimated cost of facilities required to interconnect the Facility to the Transmission System and to address the identified short circuit, instability, and power flow issues.

6.0 The Transmission Provider's good faith estimated cost for performance of the Interconnection System Impact Study is $50,000. The Transmission Provider's good faith estimate for the time of completion of the Interconnection System Impact Study is [insert date].

Upon receipt of the Interconnection System Impact Study, Transmission Provider shall charge and Generator shall pay the actual costs of the Interconnection System Impact Study.

Any difference between the deposit and the actual cost of the study shall be paid by or refunded to the Generator, as appropriate.

7.0 Miscellaneous. The Interconnection System Impact Study Agreement shall include standard miscellaneous terms including, but not limited to, indemnities, representations, disclaimers, warranties, governing law, amendment, execution, waiver, enforceability and assignment, that reflect best practices in the electric industry, that are consistent with regional differences, applicable laws and the organizational nature of each Party. All of these provisions, to the extent practicable, shall be consistent with the provisions of the Interconnection Procedures and the Interconnection and Operating Agreement.]

In witness thereof, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

[Insert Name of Transmission Provider]

By _____

Name (typed or printed): _____

Title _____

[Insert Name of Generator]

By _____

Name (typed or printed): _____

Title _____

Attachment A to Interconnection System Impact Study Agreement

Assumptions Used in Conducting the Interconnection System Impact Study

The Interconnection System Impact Study will be based upon the results of the Interconnection Feasibility Study, subject to any modifications in accordance with Section 4.4 of the Interconnection Procedures, and the following assumptions:

Designation of Point of Interconnection and configuration to be studied.

Designation of alternative Point(s) of Interconnection and configuration.

[Above assumptions to be completed by Generator and other assumptions to be provided by Generator and Transmission Provider]

Appendix 4

Interconnection Facilities Study Agreement

This agreement is made and entered into this ____ day of _____, 20 ____ by and between _____, a _____ organized and existing under the laws of the State of _____, (''Generator,'') and _____ a _____ existing under the laws of the State of _____, (''Transmission Provider ''). Generator and Transmission Provider each may be referred to as a ''Party,'' or collectively as the ''Parties.''

Recitals

Whereas, Generator is proposing to develop a Facility or generating capacity addition to an existing Facility consistent with the Interconnection Request submitted by the Generator dated _____; and

Whereas, Generator desires to interconnect the Facility with the Transmission System;

Whereas, the Transmission Provider has completed a Interconnection System Impact Study (the ''System Impact Study'') and provided the results of said study to the Generator; and

Whereas, Generator has requested the Transmission Provider to perform an Interconnection Facilities Study to specify and estimate the cost of the equipment, engineering, procurement and construction work needed to implement the conclusions of the Interconnection System Impact Study in accordance with Good Utility Practice to physically and electrically connect the Facility to the Transmission System.

Now, therefore, in consideration of and subject to the mutual covenants contained herein the Parties agreed as follows:

1.0 When used in this agreement, with initial capitalization, the terms specified shall have the meanings indicated. Terms used in this agreement with initial capitalization but not defined in this Section 1 shall have the meanings specified in the Tariff.

2.0 Generator elects and Transmission Provider shall cause an Interconnection Facilities Study consistent with Section 8.0 of these Interconnection Procedures to be performed in accordance with the Tariff.

3.0 The scope of the Interconnection Facilities Study shall be subject to the assumptions set forth in Attachment A and the data provided in Attachment B to this Agreement.

4.0 The Interconnection Facilities Study report (i) shall provide a description, estimated cost of (consistent with Attachment A), schedule for required facilities to interconnect the Facility to the Transmission System and (ii) shall address the short circuit, instability, and power flow issues identified in the Interconnection System Impact Study.

5.0 The Transmission Provider's good faith estimated cost for performance of the Interconnection Facilities Study is $100,000. The time for completion of the Interconnection Facilities Study is specified in Attachment A.

Transmission Provider shall invoice Generator on a monthly basis for the work to be conducted on the Interconnection Facilities Study each month. Generator shall pay invoiced amounts within thirty (30) Calendar Days of receipt of invoice. Transmission Provider shall continue to hold the amounts on deposit until settlement of the final invoice.

6.0 Miscellaneous. [The Interconnection Facility Study Agreement shall include standard miscellaneous terms including, but not limited to, indemnities, representations, disclaimers, warranties, governing law, amendment, execution, waiver, enforceability and assignment, that reflect best practices in the electric industry, and that are consistent with regional differences,

[1] This recital to be omitted if Generator has elected to forego the Interconnection Feasibility Study.

applicable laws, and the organizational nature of each Party. All of these provisions, to the extent practicable, shall be consistent with the provisions of the Interconnection Procedures and the Interconnection and Operating Agreement.]

In witness whereof, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

[Insert Name of Transmission Provider]

By _____
Name (typed or printed): _____
Title _____

[Insert Name of Generator]

By _____
Name (typed or printed): _____
Title _____

Attachment A to Interconnection Facilities Study Agreement

Generator Schedule Election for Conducting the Interconnection Facilities Study

The Transmission Provider shall use Reasonable Efforts to complete the study and issue a draft Interconnection Facilities Study report to the Generator within the following number of days after of receipt of an executed copy of this Interconnection Facilities Study Agreement:

—Ninety (90) Calendar Days with no more than a ±20% cost estimate contained in the report, or
—One hundred eighty (180) Calendar Days with no more than a ±10% cost estimate contained in the report.

Attachment B to Interconnection Facilities Study Agreement

Data Form To Be Provided by Generator With the Interconnection Facilities Study Agreement

Provide location plan and simplified one-line diagram of the plant and station facilities. For staged projects, please indicate future generation, transmission circuits, etc.

One set of metering is required for each generation connection to the new ring bus or existing Transmission Provider station. Number of generation connections:

On the one line indicate the generation capacity attached at each metering location. (Maximum load on CT/PT)
On the one line indicate the location of auxiliary power. (Minimum load on CT/PT) Amps

Will an alternate source of auxiliary power be available during CT/PT maintenance? ____ Yes ____ No

Will a transfer bus on the generation side of the metering require that each meter set be designed for the total plant generation? ____ Yes ____ No (Please indicate on one line).

What type of control system or PLC will be located at the Generator's Facility?

_____

What protocol does the control system or PLC use?

_____

Please provide a 7.5-minute quadrangle of the site. Sketch the plant, station, transmission line, and property line.

_____

Physical dimensions of the proposed interconnection station:

_____

Bus length from generation to interconnection station:

_____

Line length from interconnection station to Transmission Provider transmission line.

_____

Tower number observed in the field. (Painted on tower leg)*

_____

Number of third party easements required for transmission lines:*

_____

* To be completed in coordination with Transmission Provider.

Is the Facility in the Transmission Provider's service area?
____ Yes ____ No
Local provider: _____

Please provide proposed schedule dates:

Begin Construction—Date: _____
GSU transformers receive back feed—Date: _____
Generation Testing—Date: _____
Commercial Operation—Date: _____

Appendix 5

Optional Study Agreement

This Agreement is made and entered into this _____ day of _____, 20 ____by and between _____, a _____ organized and existing under the laws of the State of _____, (''Generator,'') and _____ a _____existing under the laws of the State of _____, (''Transmission Provider ''). Generator and Transmission Provider each may be referred to as a ''Party,'' or collectively as the ''Parties.''

Recitals

Whereas, Generator is proposing to develop a Facility or generating capacity addition to an existing Facility consistent with the Interconnection Request submitted by the Generator dated _____;

Whereas, Generator is proposing to establish an interconnection with the Transmission System; and

Whereas, Generator has submitted to Transmission Provider an Interconnection Request; and

Whereas, on or after the date when the Generator receives the Interconnection System Impact Study results, Generator has further requested that the Transmission Provider prepare an Optional Study;

Now, therefore, in consideration of and subject to the mutual covenants contained herein the Parties agree as follows:

1.0 When used in this agreement, with initial capitalization, the terms specified shall have the meanings indicated. Terms used in this agreement with initial capitalization but not defined in this Section 1 shall have the meanings specified in the Tariff.

2.0 Generator elects and Transmission Provider shall cause an Optional Study consistent with Section 10.0 of these Interconnection Procedures to be performed in accordance with the Tariff.

3.0 The scope of the Optional Study shall be subject to the assumptions set forth in Attachment A to this Agreement.

4.0 The Optional Study shall be performed solely for informational purposes.

5.0 The Optional Study report shall provide a sensitivity analysis based on the assumptions specified by the Generator in Attachment A to this Agreement. The Optional Study will identify the Transmission Provider Interconnection Facilities and the Network Upgrades, and the estimated cost thereof, that may be required to provide transmission service or interconnection service based upon the assumptions specified by the Generator in Attachment A.

6.0 The Transmission Provider's good faith estimated cost for performance of the Optional Study is $10,000. The Transmission Provider's good faith estimate for the time of completion of the Optional Study is [insert date].

Upon receipt of the Optional Study, the Transmission Provider shall charge and Generator shall pay the actual costs of the Optional Study.

Any difference between the initial payment and the actual cost of the study shall be paid by or refunded to the Generator, as appropriate.

7.0 Miscellaneous. [The Optional Study Agreement shall include standard miscellaneous terms including, but not limited to, indemnities, representations, disclaimers, warranties, governing law, amendment, execution, waiver, enforceability and assignment, that reflect best practices in the electric industry, and that are consistent with regional differences, applicable laws, and the organizational nature of each Party. All of these provisions, to the extent practicable, shall be consistent with the provisions of the Interconnection Procedures and the Interconnection and Operating Agreement.]

In witness whereof, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

[Insert Name of Transmission Provider]

By _____
Name (typed or printed): _____
Title _____

[Insert Name of Generator]

By _____
Name (typed or printed): _____
Title _____

Attachment A to Optional Study Agreement

Assumptions Used in Conducting the Optional Study

[To be completed by Generator consistent with Section 10 of the Interconnection Procedures.]

[FR Doc. 02–10663 Filed 5–01–02; 8:45 am]

BILLING CODE 6717–01–P

Federal Register

Thursday,
May 2, 2002

Part IV

Department of Health and Human Services

42 CFR Parts 81 and 82

Guidelines for Determining the Probability of Causation and Methods for Radiation Dose Reconstruction Under the Employees Occupational Illness Compensation Program Act of 2000; Final Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 81

RIN 0920–ZA01

Guidelines for Determining the Probability of Causation Under the Energy Employees Occupational Illness Compensation Program Act of 2000; Final Rule

AGENCY: Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: This rule implements select provisions of the Energy Employees Occupational Illness Compensation Program Act of 2000 (''EEOICPA'' or ''Act''). The Act requires the promulgation of guidelines, in the form of regulations, for determining whether an individual with cancer shall be found, ''at least as likely as not,'' to have sustained that cancer from exposure to ionizing radiation in the performance of duty for nuclear weapons production programs of the Department of Energy and its predecessor agencies. The guidelines will be applied by the U.S. Department of Labor, which is responsible for determining whether to award compensation to individuals seeking federal compensation under the Act.

DATES: *Effective Date:* This final rule is effective May 2, 2002.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, MS-R45, Cincinnati, OH 45226, Telephone 513–841–4498 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV*

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Authority

The Energy Employees Occupational Illness Compensation Program Act of 2000(''EEOICPA''), 42 U.S.C. 7384–7385 [1994, supp. 2001], established a compensation program to provide a lump sum payment of $150,000 and medical benefits as compensation to covered employees suffering from designated illnesses (i.e. cancer resulting from radiation exposure, chronic beryllium disease, or silicosis) incurred as a result of their exposures while in the performance of duty for the Department of Energy (''DOE'') and certain of its vendors, contractors, and subcontractors. This legislation also provided for payment of compensation to certain survivors of covered employees.

EEOICPA instructed the President to designate one or more federal agencies to carry out the compensation program. Pursuant to this statutory provision, the President issued Executive Order 13179 titled Providing Compensation to America's Nuclear Weapons Workers, which assigned primary responsibility for administering the compensation program to the Department of Labor (''DOL''). 65 FR 77,487 (Dec. 7, 2000). DOL published an interim final rule governing its administration of EEOICPA on May 25, 2001 (20 CFR Parts 1 and 30).

The Executive Order directed the Department of Health and Human Services (''HHS'') to perform several technical and policymaking roles in support of the DOL program:

(1) HHS is to develop guidelines to be used by DOL to assess the likelihood that an employee with cancer developed that cancer as a result of exposure to radiation in performing his or her duties at a DOE facility or Atomic Weapons Employer (''AWE'') facility. These ''Probability of Causation'' guidelines are the subject of this final rule, and were initially proposed for public comment in a notice of proposed rulemaking published on October 5, 2001.

(2) HHS is also to establish methods to estimate radiation doses (''dose reconstruction'') for certain individuals with cancer applying for benefits under the DOL program, and HHS is to implement these methods in a program of dose reconstruction for EEOICPA claims. HHS published these methods as an interim final rule under 42 CFR part 82 on October 5, 2001, and is publishing them as a final rule simultaneously in this issue of the **Federal Register**. HHS is presently applying these methods to conduct the program of dose reconstruction required by EEOICPA.

(3) HHS is to staff the Advisory Board on Radiation and Worker Health and provide it with administrative and other necessary support services. The Board, a federal advisory committee, was appointed by the President in November 2001. It was first convened on January 22, 2001, and is advising HHS in implementing its roles under EEOICPA described here.

(4) Finally, HHS is to develop and apply procedures for considering petitions by classes of employees at DOE or AWE facilities seeking to be added to the Special Exposure Cohort established under EEOICPA. Employees included in the Special Exposure Cohort who have a specified cancer and meet other conditions, as defined by EEOICPA and DOL regulations (20 CFR 30), qualify for compensation under EEOICPA. HHS has developed proposed procedures for considering Special Exposure Cohort petitions which will be published soon in the **Federal Register**. HHS will obtain public comment and a review by the Advisory Board on Radiation and Worker Health before these procedures are made final and implemented.

As provided for under 42 U.S.C. 7384p, HHS is implementing its responsibilities with the assistance of the National Institute for Occupational Safety and Health (''NIOSH''), an institute of the Centers for Disease Control and Prevention, HHS.

B. Purpose of Probability of Causation Guidelines

Under EEOICPA, a covered employee seeking compensation for cancer, other than as a member of the Special Exposure Cohort seeking compensation for a specified cancer, is eligible for compensation only if DOL determines that the cancer was ''at least as likely as not'' (a 50% or greater probability) caused by radiation doses incurred in the performance of duty while working for DOE and/or an atomic weapons employer (AWE) facility. These guidelines provide DOL with the procedure to make these determinations, and specify the information DOL will use.

HHS notes that EEOICPA does not authorize the establishment of new radiation protection standards through the promulgation of these guidelines, and these guidelines do not constitute such new standards.

C. Statutory Requirements for Probability of Causation Guidelines

EEOICPA has several general requirements concerning the development of these guidelines. It requires the guidelines provide for determinations that are based on the radiation dose received by the employee, incorporating the methods of dose reconstruction to be established by HHS. It requires determinations be based on the upper 99 percent confidence interval of the probability of causation in the radioepidemiological tables published under section 7(b) of the Orphan Drug Act (42 U.S.C. 241 note), as such tables may be updated. EEOICPA also requires HHS to consider the type of cancer, past health-related activities, the risk of developing a radiation-related cancer from workplace exposure, and other relevant factors. 42 U.S.C. 7384n(c). It is also important to

note EEOICPA does *not* include a requirement limiting the types of cancers to be considered radiogenic for these guidelines.

D. Understanding Probability of Causation

Probability of Causation is a technical term generally meaning an estimate of the percentage of cases of illness caused by a health hazard among a group of persons exposed to the hazard. This estimate is used in compensation programs as an estimate of the probability or likelihood that the illness of an individual member of that group was caused by exposure to the health hazard. Other terms for this concept include ''assigned share'' and ''attributable risk percent'.

In this rule, the potential hazard is ionizing radiation to which U.S. nuclear weapons workers were exposed in the performance of duty; the illnesses are specific types of cancer. The probability of causation (PC) is calculated as the risk of cancer attributable to radiation exposure (RadRisk) divided by the sum of the baseline risk of cancer to the general population (BasRisk) plus the risk attributable to the radiation exposure, then multiplied by 100 percent, as follows:

$$\frac{\text{RadRisk}}{\text{RadRisk} + \text{BasRisk}} \times 100\% = \text{PC}$$

This calculation provides a percentage estimate between 0 and 100 percent, where 0 would mean 0 likelihood that radiation caused the cancer and 100 would mean 100 percent certainty that radiation caused the cancer.

Scientists evaluate the likelihood that radiation caused cancer in a worker by using medical and scientific knowledge about the relationship between specific types and levels of radiation dose and the frequency of cancers in exposed populations. Simply explained, if research determines that a specific type of cancer occurs more frequently among a population exposed to a higher level of radiation than a comparable population (a population with less radiation exposure but similar in age, gender, and other factors that have a role in health), and if the radiation exposure levels are known in the two populations, then it is possible to estimate the proportion of cancers in the exposed population that may have been caused by a given level of radiation.

If scientists consider this research sufficient and of reasonable quality, they can then translate the findings into a series of mathematical equations that estimate how much the risk of cancer in a population would increase as the dose of radiation incurred by that population increases. The series of equations, known as a dose-response or quantitative risk assessment model, may also take into account other health factors potentially related to cancer risk, such as gender, smoking history, age at exposure (to radiation), and time since exposure. The risk models can then be applied as an imperfect but reasonable approach to determine the likelihood that the cancer of an individual worker was caused by his or her radiation dose.

E. Development and Use of the RadioEpidemiological Tables and Interactive RadioEpidemiological Program

In 1985, in response to a congressional mandate in the Orphan Drug Act, a panel established by the National Institutes of Health developed a set of Radioepidemiological Tables. The tables serve as a reference tool providing probability of causation estimates for individuals with cancer who were exposed to ionizing radiation. Use of the tables requires information about the person's dose, gender, age at exposure, date of cancer diagnosis and other relevant factors. The tables are used by the Department of Veterans Affairs (DVA) to make compensation decisions for veterans with cancer who were exposed in the performance of duty to radiation from atomic weapon detonations.

The primary source of data for the 1985 tables is research on cancer-related deaths occurring among Japanese atomic bomb survivors from World War II.

The 1985 tables are presently being updated by the National Cancer Institute (NCI) and the Centers for Disease Control and Prevention [1] to incorporate progress in research on the relationship between radiation and cancer risk. The draft update has been reviewed by the National Research Council [2] and by NIOSH. DOL will employ the updated version of the tables, with modifications important to claims under EEOICPA (described below under ''G'' and in response to public comments under ''II''), as a basis for determining probability of causation for employees covered under EEOICPA.

A major scientific change achieved by this update is the use of risk models developed from data on the occurrence of cancers (cases of illness) rather than the occurrence of cancer deaths among Japanese atomic bomb survivors. The risk models are further improved by being based on more current data as well. Many more cancers have been modeled in the revised report. The new risk models also take into account factors that modify the effect of radiation on cancer, related to the type of radiation dose, the amount of dose, and the timing of the dose.

A major technological change accompanying this update, which represents a scientific improvement, is the production of a computer software program for calculating probability of causation. This software program, named the Interactive RadioEpidemiological Program (IREP), allows the user to apply the NCI risk models directly to data on an individual employee. This makes it possible to estimate probability of causation using better quantitative methods than could be incorporated into printed tables. In particular, IREP allows the user to take into account uncertainty concerning the information being used to estimate probability of causation. There typically is uncertainty about the radiation dose levels to which a person has been exposed, as well as uncertainty relating levels of dose received to levels of cancer risk observed in study populations.

Accounting for uncertainty is important because it can have a large effect on the probability of causation estimates. DVA, in their use of the 1985 Radioepidemiological Tables, uses the probability of causation estimates found in the tables at the upper 99 percent credibility limit. This means when DVA determines whether the cancer of a veteran was more likely than not caused by radiation, they use the estimate that is 99 percent certain to be greater than the probability that would be calculated if the information on dose and the risk model were perfectly accurate. Similarly, these HHS guidelines, as required by EEOICPA, will use the upper 99 percent credibility limit to determine whether the cancers of employees are at least as likely as not caused by their occupational radiation doses. 42 U.S.C. 7384n(c)(3)(A). This will help minimize the possibility of denying compensation to claimants under EEOICPA for those employees with cancers likely to have been caused by occupational radiation exposures.

F. Use of IREP for Energy Employees

The risk models developed by NCI and CDC for IREP provide the primary basis for developing guidelines for estimating probability of causation under EEOICPA. They directly address 33 cancers and most types of radiation

[1] Draft Report of the NCI–CDC Working Group to Revise the 1985 NIH Radioepidemiological Tables, May 31, 2000.

[2] A Review of the Draft Report of the NCI–CDC Working Group to Revise the ''1985 Radioepidemiological Tables'', National Research Council.

exposure relevant to employees covered by EEOICPA. These models take into account the employee's cancer type, year of birth, year of cancer diagnosis, and exposure information such as years of exposure, as well as the dose received from gamma radiation, x rays, alpha radiation, beta radiation, and neutrons during each year. Also, the risk model for lung cancer takes into account smoking history and the risk model for skin cancer takes into account race/ethnicity. None of the risk models explicitly accounts for exposure to other occupational, environmental, or dietary carcinogens. Models accounting for these factors have not been developed and may not be possible to develop based on existing research. Moreover, DOL could not consistently or efficiently obtain the data required to make use of such models.

IREP models do not specifically include cancers as defined in their early stages: carcinoma in situ (CIS). These lesions are becoming more frequently diagnosed, as the use of cancer screening tools, such as mammography, have increased in the general population. The risk factors and treatment for CIS are frequently similar to those for malignant neoplasms, and, while controversial, there is growing evidence that CIS represents the earliest detectable phase of malignancy.[3] Therefore, for determining compensation under EEOICPA, HHS requires that CIS be treated as a malignant neoplasm of the specified site.

Cancers identified by their secondary sites (sites to which a malignant cancer has spread), when the primary site is unknown, raise another issue for the application of IREP. This situation will most commonly arise when death certificate information is the primary source of a cancer diagnosis. It is accepted in medicine that cancer-causing agents such as ionizing radiation produce primary cancers. This means, in a case in which the primary site of cancer is unknown, the primary site must be established by inference to estimate probability of causation.

HHS establishes such assignments in these guidelines, based on an evaluation of the relationship between primary and secondary cancer sites using the National Center for Health Statistics (NCHS) Mortality Database for years 1995–1997. Because national cancer incidence databases (*e.g.*, the National Cancer Institute's Surveillance, Epidemiology and End Results program) do not contain information about sites of metastasis, the NCHS database is the best available data source at this time to assign the primary site(s) most likely to have caused the spread of cancer to a known secondary site. For each secondary cancer, HHS identified the set of primary cancers producing approximately 75% of that secondary cancer among the U.S. population (males and females were considered separately). The sets are tabulated in this rule (Table 1). DOL will determine the final assignment of a primary cancer site for an individual claim on a case-by-case basis, as the site among possible primary sites which results in the highest probability of causation estimate.

Employees diagnosed with two or more primary cancers also raise a special issue for determining probability of causation. Even under the assumption that the biological mechanisms by which each cancer is caused are unrelated, uncertainty estimates about the level of radiation delivered to each cancer site will be related. While fully understanding this situation requires statistical training, the consequence has simple but important implications. Under this rule, instead of determining the probability that each cancer was caused by radiation independently, DOL will perform an additional statistical procedure following the use of IREP to determine the probability that at least one of the cancers was caused by the radiation. This approach is important to the claimant because it would determine a higher probability of causation than would be determined for either cancer individually.

G. Limitations of IREP for Energy Employees

NCI is developing IREP to serve the needs of DVA in deciding cancer compensation claims for veterans. This means IREP has to be adapted in various ways to meet the needs of DOL, because the radiation exposure experience of employees covered by EEOICPA differs substantially.

Some employees covered by EEOICPA were exposed to radon and other sources of high linear energy transfer (LET) radiation. This type of radiation exposure has unique properties affecting cancer risk, which are not addressed in the risk models included in IREP. Specifically, the IREP risk models do not account for a possible inverse dose-rate effect for high-LET radiation exposures. This effect means at any particular dose level, especially higher dose levels, a dose of high LET radiation incurred gradually over time is more likely to cause cancer than the same total dose incurred quickly or at once. A substantial body of research supports this finding, including studies of uranium miners, [4] patients exposed to bone-seeking radium alpha particles,[5] and research on the cancer effects of high LET radiation in animals.[6] Because high-LET radiation is an important type of radiation exposure among employees covered by EEOICPA, NIOSH has modified IREP to include uncertainty associated with the assumption of an inverse dose-rate effect for these exposures.

The DOE workforce has been exposed to various types of neutron energies and these exposures are frequently documented in the worker's dosimetry records. The relative biological effectiveness (RBE) of radiation exposure, a factor in cancer risk models that accounts for the differing level of cancer risk associated with different forms of radiation, varies as a function of neutron energy.[7] This variation in RBE related to differing neutron energy is not accounted for in the current version of IREP, which contains a single neutron RBE distribution. Therefore, NIOSH has modified IREP for DOE workers to include different RBE distributions for neutrons of various energies.

The currently public draft of IREP does not incorporate a unique lung cancer model for radon exposure, which is an important exposure for some workers covered under EEOICPA. Using epidemiologic evidence on the lung carcinogenicity of radon exposures, NCI

[3] Kerlikowske, K, J Barclay, D Grady, EA Sickles, and V Ernster. ''Comparison of risk factors for ductal carcinoma in situ and invasive breast cancer.'' *J. Natl. Canc. Inst.* 89:76–82, 1997.

Grippo, PJ, and EP Sandgren. ''Highly invasive transitional cell carcinoma of the bladder in a simian virus 40 T-antigen transgenic mouse model.'' Am. J. Pathol. 157:805–813, 2000.

Correa P, ''Morphology and natural history of cancer precursors'' Chapter 4 in: Cancer Epidemiology and Prevention, 2nd Edition, D Schottenfeld and JF Fraumeni, Jr, eds. New York: Oxford University Press, 1996.

[4] Hornung RW, Meinhardt TJ. Quantitative risk assessment of lung cancer in U.S. uranium miners. Health Phys 52: 417–430, 1987.

Lubin JH, Boice JD Jr, Edling C, et al. Radon-exposed underground miners and the inverse dose-rate (protraction enhancement) effects. Health Phys 69:494–550, 1995.

[5] Mays CW, Spiess H. Bone sarcomas in patients given radium-224. In: Radiation Carcinogenesis: Epidemiology and Biological Significance. Boice JD Jr, Fraumeni JF Jr (eds): New York: Raven Press, pp 241–252, 1984.

[6] Luebeck EG, Curtis SB, Cross FT, Moolgavkar SH. Two-stage model of radon-induced malignant lung tumors in rats: effects of cell killing. Radiat. Res. 145:163–173, 1996.

Hall EJ, Miller RC, Brenner DJ. Neoplastic transformation and the inverse dose-rate effect for neutrons. Radiat. Res. 128 (Suppl): S75–S80, 1991.

[7] International Commission on Radiological Protection (ICRP) 60: ''1990 Recommendations of the International Commission on Radiological Protection.'' Ann. ICRP 21 (1–3): 1–201.

has incorporated a lung cancer model for radon exposures into IREP. The data source for this model is the analysis conducted by the federal Radiation Exposure Compensation Act Committee.[8]

NIOSH has changed IREP to modify an assumption for non-leukemia cancers that low-level acute radiation doses (defined in IREP as doses between 3 and 30 cSv) cause less risk, per unit of dose, than higher level acute doses. NIOSH will use an uncertainty distribution for the dose and dose rate effectiveness factor (DDREF) that more heavily weights a DDREF of one, reducing the distinction in risk effects for low-level acute doses. A recent study of the Japanese atomic bomb survivors supports this change.[9]

Additionally, some employees covered by EEOICPA were required, as a condition of employment, to undergo routine medical screening with x rays. The dose resulting from these x rays will be included in their dose reconstruction. This required NIOSH to add to IREP an RBE distribution appropriate to the low-energy form of radiation produced from some of these x rays.[10]

Research has found bone cancer risk substantially and significantly elevated among animals and humans exposed to certain forms of high-LET radiation.[11] Although Japanese A-bomb survivor risk models for bone cancer have been used for a plutonium risk assessment,[12] they are based on highly unstable risk models. Therefore, NIOSH is using in IREP the risk model recommended in the NCI-IREP documentation, which is based on all residual cancers, including bone.

Limitations of current research and development have prevented NIOSH from considering and implementing all possible improvements to IREP at this time. In the future, NIOSH may make additional changes in IREP to address differences in radiation-related cancer risk between Japanese atomic bomb survivors and employees involved in nuclear weapons production. Some research has shown substantial differences in risk for certain cancers, such as brain cancer and multiple myeloma[13]. The radiation-related risk of these cancers is significantly elevated among employees involved in nuclear weapons production, whereas it is not among the Japanese study population. The IREP risk models for these cancers were produced using data from the Japanese study population.

Similarly, it may be possible to improve the fit of IREP risk models to employees covered by EEOICPA with respect to differences between the frequency of certain cancers in the general population in the United States versus Japan. The IREP risk models include a simplistically derived factor (risk transfer) that accounts for these differences, based on expert judgment. For some cancers, such as breast and stomach cancer, sufficient research may exist to improve this factor. In addition, where current IREP risk models could be replaced with risk models based on studies of U.S. DOE workers, or other U.S. populations, this factor could be omitted entirely. The potential future use of risk models based on studies of U.S. DOE workers may also eliminate limitations arising because data are sparse for certain cancers among the Japanese atomic bomb survivors, such as most specific types of leukemia. Using data on the Japanese cohort, the effect on risk of age at time of exposure to radiation, an important modifier of leukemia risk, cannot be estimated for specific types of leukemia, except chronic myeloid leukemia. It can only be estimated for other leukemia types by using a general leukemia model that combines data from cases of different types of leukemia.

Finally, NIOSH may make modifications in cancer risk models in IREP, as appropriate and if feasible, to account for the changing frequency among the general population (baseline rates) of certain types of cancer in the United States. Certain types of cancer (*e.g.*, lung cancer among women, breast cancer) have become more frequent in recent decades. Similarly, NIOSH may make modifications in cancer risk models to reflect the differing frequency of certain types of cancer among different racial and ethnic groups in the United States (*e.g.*, multiple myeloma). The effect of these modifications, at such time as they may become available, would be to improve the accuracy of probability of causation estimates.

H. Procedures for Review and Public Comment on NIOSH–IREP

As described under Section G above, some current and potential future changes to the cancer risk models in IREP are particularly appropriate for addressing the radiation exposures and statutory requirements of claimants under EEOICPA. As a result, the version of IREP to include NIOSH modifications will be unique and distinguished as ''NIOSH–IREP.'' This version, which DOL will use to estimate probability of causation under EEOICPA, will be reviewed by the Advisory Board on Radiation and Worker Health. NIOSH–IREP is available for public review on the NIOSH homepage at: *www.cdc.gov/niosh/ocas/ocasirep/html.* It includes documentation of underlying risk models and calculations. The public can obtain complete information about NIOSH–IREP by contacting NIOSH at its toll-free telephone information service: 1–800–35–NIOSH (1–800–356–4674).

The public may comment on NIOSH–IREP at any time. Comments can be submitted by e-mail to *OCAS@CDC.GOV,* or by mailing written comments to: NIOSH–IREP Comments, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, MS–R45, Cincinnati, Ohio 45226. All comments will be considered. In addition, NIOSH will forward all substantive comments to the Advisory Board on Radiation and Worker Health, which will have an ongoing role to review and advise NIOSH on possible changes to NIOSH–IREP, as described in this rule.

I. Operating Guide for NIOSH–IREP

DOL will use procedures specified in the NIOSH–IREP Operating Guide to calculate probability of causation estimates under EEOICPA. The guide provides current, step-by-step instructions for the operation of NIOSH–IREP. The procedures include entering personal, diagnostic, and exposure data; setting/confirming appropriate values for variables used in calculations; conducting the calculation; and, obtaining, evaluating, and reporting results.

[8] Final Report of the Radiation Exposure Compensation Act Committee, submitted to the Human Radiation Interagency Working Group, July 1996 (Appendix A), 30 pp (plus Figures).

[9] Pierce DA and Preston DL ''Radiation-related cancer risks at low doses among atomic bomb survivors.'' Radiat. Res. 154:178–186, 2000.

[10] ICRU Report 40: The quality factor in radiation protection. Internat. Commission on Radiat. Units and Meas., 33 pp, 1986.

Hall EJ. ''Linear energy transfer and relative biological effectiveness'' Chapter 9 in Radiobiology for the Radiobiologist, 4th Edition. Philadelphia: J.B. Lippincott, 1994.

[11] International Agency for Research on Cancer (IARC). IARC Monographs on the Evaluation of Carcinogenic Risks to Humans, Vol. 78 Ionizing Radiation, Part 2: Some Internally Deposited Radionuclides. Lyon, France: IARC Press, 595 pp, 2001.

[12] Grogan HA, Sinclair WK, and Voillequé PG. ''Risks of fatal cancer from inhalation of 239,240plutonium by humans: a combined four-method approach with uncertainty evaluation'' Health Physics 80:447–461, 2001.

[13] Alexander V and DiMarco JH. ''Reappraisal of brain tumor risk among U.S. nuclear workers: a 10–year review.'' Occupational Medicine: State of the Art Reviews 16(2):289–315, 2001.

Cardis E, Gilbert ES, Carpenter L, et al. ''Effects of low doses and low dose rates of external ionizing radiation: cancer mortality among nuclear industry workers in three countries.'' Radiat. Res. 142:117–132, 1995.

An initial version of the NIOSH–IREP Operating Guide is available to the public online on the NIOSH homepage at: *www.cdc.gov/niosh/ocas/ocasirep/html*. The public can obtain printed copies by contacting NIOSH at its toll-free telephone information service: 1–800–35–NIOSH (1–800–356–4674).

II. Summary of Public Comments

On October 5, 2001, HHS proposed guidelines for determining probability of causation under EEOICPA (42 CFR 81; see 66 FR 50967). HHS initially solicited public comments from October 5 to December 4, 2001. The public comment period was reopened subsequently from January 17, 2002 to January 23, 2002 for public comments, and from January 17, 2002 to February 6, 2002, for comments from the Advisory Board on Radiation and Worker Health (67 FR 2397).

HHS received comments from 12 organizations and 24 individuals. Organizations commenting included several labor unions representing DOE workers, a community based organization, an administrative office of the University of California, several DOE contractors, and several federal agencies. A summary of these comments and HHS responses is provided below. These are organized by general topical area.

A. Appropriateness of Adapting Compensation Policy Used for Atomic Veterans

One commenter requested explanation of the appropriateness of adapting existing compensation policy for atomic veterans to a compensation program for nuclear weapons workers. The comment appears to question whether this existing policy for atomic veterans is an appropriate starting point from which to develop compensation policy under EEOICPA. In the notice of proposed rulemaking, HHS had solicited public comment on whether it had appropriately adapted compensation policy for atomic veterans to meet the needs of this workforce, which has a substantially different occupational and radiation exposure experience.

Congress determined the veteran's compensation policy as a starting point for HHS. It did so by requiring the determination of probability of causation based on radiation doses and the use of the NIH Radioepidemiological Tables, and by requiring that the cancer covered in a claim be determined to be ''at least as likely as not'' caused by radiation doses incurred in the performance of duty, based on the upper 99 percent credibility limit. These are defining features of compensation policy for atomic veterans.

The public should also recognize that the Radioepidemiological Tables required years to initially develop and then additional years to update (the update is not completed). Without this critical, highly sophisticated element developed for the veterans' program, it would not have been possible to establish and implement a policy for nuclear weapons workers in a timely fashion.

HHS adapted these policies for nuclear weapons workers through two prominent measures, discussed in the notice of proposed rulemaking and below. HHS included provisions to allow NIOSH to adapt the cancer risk models in the latest version of the NIH Radioepidemiological Tables to reflect the unique radiation exposure experience of nuclear weapons workers. And HHS established transparent, objective procedures for DOL to handle a variety of circumstances in which various information relevant to determining probability of causation will be unknown. The majority of comments received on this rule suggest most commenters view as appropriate the measures HHS has taken to adapt existing compensation policy to this new program.

B. Compensability

Various comments relating to the use of these guidelines were received. Specifically, HHS received comments on: awarding compensation based upon a proportional level of probability of causation; the use of the upper 99 percent confidence limit to estimate probability of causation; awarding compensation for employees who incurred radiation doses within regulated radiation safety limits; automatically qualifying employees who incurred doses in excess of the maximum allowable radiation dose under Atomic Energy Commission regulations; waiving dose reconstruction and probability of causation for employees with rare cancers; and automatically compensating employees for whom DOE is unwilling or unable to provide employment records.

The development and use of these guidelines for determining compensability and the benefit structure are statutorily mandated and therefore these comments were not adopted.

One commenter suggested prohibiting the use of probability of causation findings as proof of fault in litigation. This suggestion was not adopted because prohibiting the use of probability of causation findings for litigation purposes is not authorized by the statute. However, because these findings will be based on NIOSH dose reconstructions, which will not always produce complete or best estimates of the actual doses received by an individual, [14] HHS does not believe these findings should be used for any purpose other than the adjudication of claims under EEOICPA.

C. Need for Peer Review

Several commenters recommended that HHS obtain peer review of the cancer risk models that comprise NIOSH–IREP, and of changes to NIOSH–IREP, as it is updated based on progress in the underlying sciences. Several commenters recognized that the Advisory Board on Radiation and Worker Health is intended by HHS as one means of obtaining such peer review, but the commenters raised concerns about whether the Board would have sufficient expertise for this purpose.

HHS recognizes the importance of peer review. Consequently, as indicated above, the National Cancer Institute obtained peer review of IREP by the National Research Council. NCI and NIOSH have made modifications in IREP consistent with this peer review. NIOSH has also obtained peer-review by independent subject matter experts of changes developed by NIOSH to adapt IREP to the experience of nuclear weapons workers. These peer-reviews are posted on the NIOSH website and are also available to the public by request.

In addition, the Advisory Board on Radiation and Worker Health will be reviewing the cancer risk models in NIOSH–IREP, as indicated above and in the notice of proposed rulemaking. Contrary to the public comments noted above, HHS finds the Board has appropriate expertise for such a review, including eminent physicians and scientists from the field of health physics. Moreover, the Board maintains the option to commission additional independent scientists to participate in the Board's review. HHS also has the option to obtain additional peer reviews by the National Academy of Sciences, as recommended by some commenters.

In response to comments recommending peer review and to the recommendations of the Advisory Board on Radiation and Worker Health discussed below, HHS has added a new requirement to this rule to affirm the commitment of HHS to involve the

[14] For explanation of these possible limitations of NIOSH dose reconstructions, see the discussion under ''II. Summary of Public Comments; A. Purpose of the Rule'' in the preamble of 42 CFR Part 82 (the HHS dose reconstruction rule).

Board in peer-review of future decisions to change NIOSH–IREP and to ensure this process is open to public participation. These provisions, which were previously contained in the preamble of the notice of proposed rulemaking, are now incorporated into the rule itself under § 81.12.

One commenter recommended HHS extend the comment period of the rule to provide the public with additional time to review NIOSH–IREP.

As indicated in the notice of proposed rulemaking and above, the public can comment on NIOSH–IREP at any time. The rule comment period applies only to provisions of the rule itself.

D. Updating NIOSH–IREP to Remain Current With Science

Commenters supported the intent of HHS to update NIOSH–IREP as scientific progress enables HHS to improve the cancer risk models. Two commenters recommended that DOL apply updates to NIOSH–IREP retrospectively to claims that were denied on the basis of a probability of causation finding that might change as a result of the update.

Under 42 CFR 81.12 NIOSH will notify the public and DOL when changes to NIOSH–IREP are completed and explain the effect of changes on probability of causation estimates. This will enable DOL and claimants with denied claims to identify denied claims potentially affected by the changes and evaluate the effect of this new information.

E. Chemical or Non-Occupational Radiation Exposures as Risk Factors

Some nuclear weapons workers were exposed to potential and known chemical carcinogens as well as radiation in the performance of duty. Several commenters urged that cancer risk models in NIOSH–IREP take into account the effects that these combined or ''mixed'' exposures might have on risk associated with radiation exposure.

There is no adjustment in NIOSH–IREP for chemical exposures. It is not clear that the state of science presently could support risk adjustments that account for possibly differing roles of chemical exposures. A second, probably overriding, practical concern is whether this compensation program for nuclear weapons workers, which already requires the collection and consideration of large amounts of information, could produce fair, timely decisions with the addition of a substantial new informational burden. New information would be required for each claim regarding the type, level, duration, and timing of relevant chemical exposures, as well as the use of administrative measures and protective equipment to protect exposed workers.

Despite these limitations, NIOSH will consider taking into account the effect of mixed exposures at such time as this may become scientifically supportable and feasible. HHS has added section 81.10(b)(4) to specifically include this possibility.

Several other commenters made similar but distinct recommendations to modify the cancer risk models in NIOSH–IREP to account for cancer risks that might be independent of radiation risks, arising from occupational and community exposures to chemicals or non-occupational exposures to radiation. Some commonplace examples of such exposures might include exposures to solvents or preservatives used at work or home, radon in the home, second-hand tobacco smoke, or sun exposure. The recommendation relates to the fact that groups have different ''background'' risks of cancers depending on their exposure to these various carcinogens. Groups with higher than normal background risks might be shown in studies of radiation risks to have lower increases in cancer risk attributable to radiation. Likewise, groups with lower than normal background risks might be shown to have higher increases in risk attributable to radiation, depending on the form of interaction between radiation exposures and these other cancer risk factors.

It is not scientifically supportable or feasible to adjust NIOSH–IREP risk models for the multitude of occupational and community exposures. The carcinogenic risks associated with most chemical exposures, and the appropriate form of their interaction with radiation, have not been adequately quantified. Moreover, DOL generally would not have access to exposure data on the individual's exposure to chemicals or radiation in the community. As discussed above, access to data on occupational exposures to chemicals is also infeasible at this time.

F. Covered Exposures

A few commenters recommended changes in the set of exposures included by this rule to contribute to the probability of causation calculation.

Several commenters recommended against HHS including medical screening x rays administered to nuclear weapons employees as a condition of employment. Similar comments were received on the interim final HHS dose reconstruction rule (42 CFR 82) as well. Commenters argue that the benefit of these exposures justifies their attendant risks, and therefore they should not contribute to the acceptance of a claim for compensation.

HHS will not exclude radiation exposures resulting from these occupationally required medical screening x rays. The important factor in this decision is that the exposures were incurred ''in the performance of duty,'' as specified by EEOICPA. The employees were required to receive these x ray screenings and hence were exposed to radiation in performing this duty.

Several commenters recommended HHS include cancer risks associated with chemical exposures and in effect calculate a probability of causation related to all occupational exposures, rather than radiation exposures alone.

HHS cannot include the cancer risks associated with chemical exposures in the calculation of probability of causation. EEOICPA explicitly limits these guidelines and DOL to making determinations as to whether the cancer subject to a claim was caused by radiation doses incurred in the performance of duty (see § 7384(n)(c) of EEOICPA).

G. Covered Illnesses

HHS received several comments addressing the exclusion or inclusion of illnesses covered by these guidelines.

Several commenters noted that EEOICPA only covers cancers but should cover other or all illnesses. A second commenter recommended that probability of causation should be determined for inherited genetic effects (among offspring of covered workers).

The probability of causation guidelines cover only cancers because this is a statutory requirement of EEOICPA (see discussion of statutory requirements above). Moreover, science has not progressed sufficiently to permit probability of causation determinations for many radiogenic illnesses other than cancers; specifically not for inherited genetic effects.

Readers should note, however, that part B of EEOICPA, which provides lump sum payments of $150,000 as well as medical benefits, provides coverage for chronic beryllium disease and silicosis (when incurred by workers exposed in connection with mining of tunnels for atomic weapons tests or experiments in Nevada or Alaska), two well documented occupational illnesses. Part B also provides for medical monitoring of covered workers with beryllium sensitivity. In addition, part D of EEOICPA provides assistance through a worker advocacy program administered by DOE to assist nuclear

weapons workers with illnesses that might have resulted from toxic occupational exposures who are seeking state workers' compensation benefits. Panels of expert physicians appointed by HHS will review the medical records in connection with each of these cases and make a determination as to whether the illness was likely to have been caused by toxic occupational exposures.

Another commenter recommended that HHS not permit probability of causation to be determined for cancers in situ—that is, cancers that have yet to spread to neighboring tissues. In other words, the comment recommends assigning a probability of causation of zero to individuals with this early stage of cancer.

HHS is retaining the procedures it proposed for estimating probability of causation for carcinomas in situ, treating them within NIOSH–IREP identically to invasive cancers. Although more research is needed, some studies have shown the risk factors for a carcinoma in situ are similar to cancer at a later stage. In addition, for any given individual, it is not possible to determine which carcinomas in situ will progress to become invasive cancers.

H. Radiation Dose Threshold for Calculating Probability of Causation

Several commenters recommended HHS establish a radiation dose threshold below which DOL would deny the claim without calculating probability of causation. One commenter proposed NIOSH–IREP be modified to take into account alternative theories of radiation effects at low cumulative doses. The commenters argue that it is unknown whether cancers can be caused at radiation doses below 10 to 20 rem. In addition, several commenters note that claims for rare cancers, for which there is likely to be a high level of uncertainty about the dose-risk relationship, would have unfair advantage over claims for more common cancers, due to the use of the 99 percent credibility limit.

The National Research Council, which reviewed IREP, noted concern about the effect of uncertainty with respect to rare cancers. NCI has responded to this concern by grouping rare cancers in more general cancer categories, for which there is a more robust research basis for quantifying risk.

HHS does not find that any further measures are necessary, particularly the application of a threshold. The issue of whether or not there is a threshold for causation of cancer by radiation is controversial. Moreover, the issue is avoided by the practical approach taken in this rule. Doses resulting in a probability of causation finding of 50 percent or greater are determined based on current and cumulative epidemiologic findings. The NCI solution of grouping rare cancers addresses the concern about high levels of uncertainty for rare cancers.

I. Non-Radiogenic Cancers

One commenter recommended against the proposed rule's consideration of chronic lymphocytic leukemia (CLL) as non-radiogenic (§ 81.30). This provision requires DOL to assign a probability of causation of zero for a claim for CLL. The commenter asserts that it cannot be proven that this form of leukemia is non-radiogenic.

As discussed in the notice of proposed rulemaking and below, CLL is widely considered non-radiogenic by the radiation health research community and is not covered by other radiation compensation programs. Moreover, there is no risk model appropriate to CLL, nor data to support the development of such a risk model. Consequently, it is not possible to calculate probability of causation for CLL and it is both appropriate and necessary to consider CLL as non-radiogenic for the purposes of this rule.

J. Documentation of NIOSH–IREP

Several commenters recommended NIOSH fully document the risk models and calculations of NIOSH–IREP so that the basis for its calculations are fully transparent. One commenter added that in this documentation, NIOSH should explain how different sources of uncertainty are taken into account.

NIOSH agrees with the comment and, as indicated in the notice of proposed rulemaking, is committed to maintaining and providing full documentation on NIOSH–IREP. To a substantial extent, this documentation is directly available to the public while using or examining NIOSH–IREP. The software, which is accessible for public use from the NIOSH homepage on the internet, has a feature that allows the user to call-up the formulae and information underlying each calculation. The user can also call-up graphic illustrations (pie charts) that quantitatively depict the role of different sources of uncertainty in contributing to the overall uncertainty calculated for use in a probability of causation estimate. [15] As noted above, the documentation is also available in print form by contacting NIOSH.

K. Current Technical Elements of NIOSH–IREP

HHS received a variety of comments on specific aspects of the cancer risk models in NIOSH–IREP. While these risk models are not themselves subject to this rulemaking, HHS is committed to receiving and responding to public comments on NIOSH–IREP, and making improvements as appropriate. As indicated in § 81.12 of this rule, recommendations for modifications to NIOSH–IREP will be addressed routinely through a public process involving the Advisory Board on Radiation and Worker Health. Hence, HHS addresses current comments submitted during the rulemaking comment period below, but notes that some of these issues may receive further consideration subsequent to this rulemaking, once HHS has obtained advice on these issues by the Advisory Board. The Advisory Board has received these public comments for review.

One commenter generically recommended against making use in NIOSH–IREP of cancer risk models developed for determining probability of causation for atomic veterans. As discussed above and in the notice of proposed rulemaking, most of the risk models in IREP were developed based on the exposure and disease experience of Japanese survivors of the atomic bomb detonations in World War II. The commenter finds the differences between the exposure conditions of these survivors and those of nuclear weapons employees too great to support probability of causation determinations for the latter.

HHS recognizes the substantial differences between the radiation exposure experiences of these two populations and discussed these differences above and in the notice of proposed rulemaking. To address these differences, NIOSH has adapted the available risk models to the extent feasible and supportable using current science. The difference in exposure characteristics is also part of the rationale for the provisions of this rule supporting updates of NIOSH–IREP, as scientific progress allows additional improvements. One of the specified goals of such updates is to use, as this becomes feasible, risk findings derived from occupational health studies of nuclear weapons workers.

Nonetheless, NIOSH maintains that the current scientific basis applied in

[15] The uncertainty distributions for the various sources of uncertainty involved in a probability of causation estimate are combined in NIOSH–IREP using a Monte Carlo simulation program that draws values randomly, repeatedly from each distribution to derive a single, representative uncertainty distribution.

NIOSH–IREP is the best available at this time and that its use is both reasonable and fair. As discussed throughout this rule, NIOSH has taken into account, whenever feasible, recognized limitations in the current state of relevant sciences.

Several commenters recommended changes in the way the lung cancer risk model adjusts risk according to the individual's smoking history. The risk model produces a higher probability of causation that lung cancer was caused by radiation for a non-smoker than a smoker, at a given level and pattern of radiation exposure.

One commenter indicated that the probability of causation estimate for a heavy smoker should be much lower than currently estimated by the risk model. The other commenters recommended the opposite, that NIOSH should eliminate adjustment for smoking history. They assert research indicates that smoking may have a multiplicative effect on lung cancer risk, when combined with radiation exposure. If this research were proven correct, then smoking history would not affect the contribution of radiation to cancer risk, and could indeed be omitted from consideration.

The adjustment for smoking history in NIOSH–IREP has been adopted from the approach developed by NCI, and fully takes into account the cumulative body of research evaluating the interaction between smoking and radiation risks, as well as leading scientific views on this research. The NCI review of relevant literature, and a scientific consensus panel opinion (UNSCEAR 2000 [16]), conclude that the best-supported risk models to evaluate the form of interaction between smoking and radiation are based on meta-analyses of radon-exposed workers. Combined analyses of these studies suggest that the most appropriate form of interaction is sub-multiplicative (i.e., the excess relative risk from radiation exposure among smokers is less than the excess relative risk among non-smokers), but greater than additive (Lubin and Steindorf 1995). NCI used this scientific basis to develop an uncertainty distribution for the form of interaction between smoking and radiation in the lung cancer risk models that is centered on a sub-multiplicative model (i.e., a model which assumes the excess relative risk of cancer per unit of radiation dose is lower for individuals who smoke more), but includes the possibility of either a multiplicative model (i.e., that excess relative risk per unit of radiation dose is the same for various levels of smoking, including non-smokers) or a super-multiplicative model (i.e., that excess relative risk per unit dose is higher for individuals who smoke more). As with all assumptions, this uncertainty distribution is subject to modification in future revisions of NIOSH–IREP, pending the availability of new scientific information.

Several commenters recommended against use of a factor that reduces cancer risk for workers who were exposed to radiation at older ages. In support of this recommendation, they contend atomic bomb survivor and occupational studies do not find an inverse relationship for adults between age at time of radiation exposure and cancer risk.

NIOSH is using in NIOSH–IREP the NCI approach to adjusting radiation risk estimates for different exposure ages. This approach is based on new epidemiological analyses of atomic bomb survivors who were of working age when exposed during the blast, and uses an approach recommended by an international expert committee (Pierce et al. 1993, UNSCEAR 2000 [17]). It addresses all solid cancers except skin and thyroid. Thus, for most cancers NIOSH–IREP relies on direct evidence from the A-bomb survivors exposed as adults rather than as children. NCI did not incorporate any age at exposure effect for the following cancers: acute myeloid leukemia, chronic myeloid leukemia, lung cancer (non-radon exposures), and female genital cancers other than ovary. The NCI models do incorporate a trend of decreasing risk per unit dose with increasing age at exposure for the following cancer sites: acute lymphocytic leukemia, all leukemia other than chronic lymphocytic, basal cell carcinoma, and cancers of thyroid. For radon exposures and lung cancer, there is no direct adjustment for exposure age: risks are dependent on time since last exposure and on age at diagnosis. The effect of this adjustment is that, at a constant ''time since last exposure'', the risk decreases for increasing age at last exposure; however, for constant ''age at diagnosis'', the risk increases for increasing age at last exposure. For all other cancers, the NCI models incorporate a trend of decreasing risk per unit dose for exposure ages between 15 and 30, and assume constancy (no effect of age) thereafter.

There is substantial evidence from several key studies in addition to those of the A-bomb cohort that suggests radiation risk for many cancers decreases with increasing age at exposure. These include studies of breast cancer among x-ray tuberculosis patients (Boice et al. 1991 [18]), of thyroid cancer among medically- and occupationally-exposed populations (summarized in UNSCEAR 2000a3), and of skin cancer (UNSCEAR 2000b3). While some studies of DOE workers suggest no effect or find increased relative risk estimates for certain cancers from exposure to radiation at older ages, this information is insufficient to support the selection of appropriate cancers and an appropriate method for quantitatively incorporating this information into risk adjustments in NIOSH–IREP. As indicated in the rule, HHS will re-evaluate this issue in future revisions of NIOSH–IREP, as warranted by advances in scientific information.

Several commenters recommended adding a risk adjustment factor to NIOSH–IREP to account for a possible ''healthy survivor effect'' presently unaccounted for in the research on Japanese atomic bomb survivors. The theory underlying this comment is that atomic bomb survivors may be healthier than the general public and less likely to incur cancer. Therefore, according to this theory, it would be mistaken to equate the level of increased cancer risk from radiation among this robustly healthy population to the level of increased cancer risk among the U.S. population, with its normal distribution of health. If this were proven correct, the risk models in NIOSH–IREP should

[16] United National Scientific Committee on the Effects of Atomic Radiation. 2000. Sources and Effects of Ionizing Radiation: UNSCEAR 2000 Report to the General Assembly, with Scientific Annexes, Volume II: Effects; p. 201–203.

Lubin JH and Steindorf K. 1995. Cigarette use and the estimation of lung cancer attributable to radon in the United States. Radiat. Res. 141:79–85.

[17] Pierce DA, Preston DL. 1993. Joint analysis of site-specific cancer risks for the A-bomb survivors. Radiat. Res. 137:134–142.

United National Scientific Committee on the Effects of Atomic Radiation. 2000. Sources and Effects of Ionizing Radiation: UNSCEAR 2000 Report to the General Assembly, with Scientific Annexes, Volume II: Effects; p. 208.

SU> Lubin JH, Boice JD Jr, Edling C, et al. 1995. Lung cancer risk in radon-exposed miners and estimation of risk from indoor exposure. J. Natl. Canc. Inst. 87≅817–827.

Boice JD Jr, Engholm G, Kleinerman RA, et al. 1991. Frequent chest x-ray fluoroscopy and breast cancer incidence among tuberculosis patients in Massachusetts. Radiat. Res. 125:214–222.

United National Scientific Committee on the Effects of Atomic Radiation. 2000a. Sources and Effects of Ionizing Radiation: UNSCEAR 2000 Report to the General Assembly, with Scientific Annexes, Volume II: Effects; p. 338–343.

United National Scientific Committee on the Effects of Atomic Radiation. 2000b. Sources and Effects of Ionizing Radiation: UNSCEAR 2000 Report to the General Assembly, with Scientific Annexes, Volume II: Effects; p. 402.

Richardson DB, Wing S, Hoffmann W. 2001. Cancer risk from low-level ionizing radiation: the role of age at exposure. Occupat. Med.: State of the Art Reviews 16:191–218.

be adjusted to increase the level of cancer risk caused by a unit of radiation dose, since the U.S. population would presumably be more susceptible than the Japanese survivor population to the cancer-causing effects of radiation.

The possible existence of a healthy survivor effect has been theorized by some researchers (Stewart and Kneale 1990 [19]), and has been determined by others to be of small magnitude or non-existent (Little and Charles 1990, NCRP 1997). The NCI determined that insufficient information on the possible effect of this bias is available for use the IREP program. NIOSH, in consultation with the Advisory Board on Radiation and Worker Health, will consider whether to add an adjustment factor to future versions of NIOSH–IREP to account for a possible healthy survivor effect, if supported by new scientific information. HHS notes such a finding would be equally relevant for claimants under EEOICPA and under the Atomic Veterans Compensation Program, and thus should be decided by scientific consensus between these two programs whose relevant policies are both determined by HHS.

Several commenters recommended changing the factor in NIOSH–IREP that reduces cancer risk for workers who were exposed to low linear energy transfer (LET) [20] radiation at low dose rates (workers who received many small doses of radiation, versus fewer large doses). They cite reports by the Nuclear Regulatory Commission and the International Agency for Research on Cancer as finding no relationship between the rate at which low LET radiation doses are incurred and the risk of cancer.

HHS agrees that this is an area of substantial uncertainty. Many studies suggest that risks are reduced for particular cancers when doses are fractionated or received at low dose-rate, while other studies suggest no effect of dose-rate or dose fractionation on radiation risk.

NIOSH–IREP accounts for this uncertainty. For chronic exposures, NIOSH–IREP adopts the approach used in the final revision of the NCI–IREP program, which more heavily weights a probability that there is no attenuation of risk at low dose rates of exposure. This uncertainty distribution also includes a small probability that dose-rate reduction or dose fractionation enhances, rather than reduces, radiation risk.

One commenter recommends that NIOSH–IREP account for a possible inverse relationship between exposure to low doses of high LET radiation and cancer risk. The commenter cites recent research suggesting that individuals who incurred high LET radiation doses at lower rates had higher risk of cancer, compared with individuals who incurred the same cumulative doses at higher rates.

As indicated in the notice of proposed rulemaking and above, NIOSH has incorporated the possibility of this inverse relationship into NIOSH–IREP for both neutron and low-LET exposures. Based on reviews of subject matter experts, the revised version of NIOSH–IREP includes a small probability of an inverse dose-rate effect for alpha radiation exposures as well.

One commenter noted that a linear-quadratic model of the dose-risk relationship is not equivalent to use of a dose-rate correction factor to reduce the per-unit contribution of low doses to cumulative risk of cancer. The commenter recommended either using a dose-rate correction factor to keep these model elements separate, or alternatively to explain why it is appropriate to use the linear-quadratic model to mimic a reduced cancer risk effect at low dose rates.

This comment is contradicted by several research groups, including the NCI–IREP working group, the NIH Ad Hoc Working Group which initially developed the Radioepidemiological Tables (NIH 1985 [21]), and the Committee on Biological Effects of Ionizing Radiation (BEIR)V. The BEIR V committee explicitly states that ''[Dose rate] reductions should be applied only to the non-leukemia risks, as the leukemia risks already contain an implicit DREF [dose rate effectiveness factor] owing to the use of the linear-quadratic model'' [22]. The theoretical basis for this equivalence is the observation that the use of a linear-quadratic dose assumption applies a reduction in risk that is equivalent to using a dose-and-dose-rate reduction factor of about two, which has been commonly recommended by advisory groups for modeling leukemia risk.

One commenter recommended NIOSH change the dose and dose rate effectiveness factor (DDREF) for leukemia (for low LET radiation exposure) to three. This would reduce by two-thirds the probability of causation estimates for workers with leukemia who accrued their cumulative radiation doses slowly. The commenter cites two studies to support this recommendation.

NIOSH–IREP uses the models developed by the NCI Working Group for leukemia risk from low-LET exposure. As discussed previously, rather than incorporating a DDREF of greater than one for leukemia risk models, the dose-response function for leukemia is of the linear-quadratic form. This corresponds approximately to a DDREF of two for leukemia risk at low compared to high doses and dose rates. This approach has been recommended by several expert committees, referenced above. [6, 7] While findings from individual epidemiological studies may vary from this approach, these individual study findings are subject to the limitations of the studies. For this reason, risk modeling requires consideration of the totality of scientific evidence regarding the effects of dose protraction. Consistent with the extensive expert analyses cited above, NIOSH–IREP uses a linear-quadratic model with uncertainty in the model parameters, which best captures the uncertainties associated with the effects at low doses and dose rates.

One commenter recommends NIOSH obtain peer review for the radiation weighting factors used in NIOSH–IREP. These weighting factors take into account the differing biological effect potency of different types of radiation in inducing cancer. The commenter states that a factor of 40 used for alpha radiation in NIOSH–IREP, that this is ''too conservative'' (i.e., results in probability of causation estimates that would be higher than scientifically justified), and notes that the International Commission on Radiological Protection (ICRP) intends to lower its recommended weight for alpha radiation from 20 to 10.

The commenter misunderstands how information on the biological effectiveness of radiation types is used in NIOSH–IREP. The ICRP and other leading expert groups recommend weighting factors in the form of point estimates to summarize the differing biological effectiveness of various types of radiation for use by radiation protection programs. These programs

[19] Stewart AM, and Kneale GW. 1990. A-bomb radiation and evidence of late effects other than cancer. Health Phys. 58:729–735.

Little MP, and Charles MW. 1990. Bomb survivor selection and consequences for estimates of population cancer risks. Health Phys. 59:765–775.

National Council on Radiation Protection and Measurements (NCRP). 1997. Uncertainties in fatal cancer risk estimates used in radiation protection. NCRP report 126. 112 pp.

[20] See § 81.4 in rule for a definition of LET.

[21] National Institutes of Health (NIH). 1985. Report of the National Institutes of Health Ad Hoc Working Group to Develop Radioepidemiological Tables. US DHHS. NIH Publication No. 85–2748, p. 88.

[22] National Research Council. 1990. Health Effects of Exposure to Low Levels of Ionizing Radiation: BEIR V. National Academy Press, Washington, DC. 421 pp., p.174.

require a point estimate to calculate appropriate safety criteria that can be applied to protect populations. On the other hand, the task involving NIOSH–IREP is to calculate probability of causation for individual claims, taking into account sources of scientific uncertainty. There is substantial uncertainty of science in describing the biological effectiveness of various types of radiation, and in part due to this uncertainty, there are differences in the review findings of ICRP, the International Commission on Radiation Units and Measurements, and the National Council on Radiation Protection and Measurements. In addition, some radiation exposures are incompletely addressed by the reviews by these expert groups.

To evaluate scientific uncertainty, NIOSH analyzed the reviews of biological effectiveness of radiation by each of the expert committees cited above and, where these reviews were incomplete, other expert reviews and primary research as well. Based on this analysis, NIOSH established the central tendency of ''relative biological effectiveness'' for each type of radiation and assigned a probability distribution to describe the scientific uncertainty about the central tendency estimate. To calculate probability of causation, NIOSH–IREP will apply these resulting uncertainty distributions derived by NIOSH, instead of point estimate weighting factors, to account for the differing biological effectiveness of various radiation types.

The NIOSH analysis of relative biological effectiveness described here has been summarized in a scientific paper, peer-reviewed by subject matter experts, and revised accordingly. It is available to the public, along with the peer-review comments, from the NIOSH homepage on the internet or by direct request to NIOSH (addresses provided above) [23].

One commenter questions how the lung cancer model for radon in NIOSH–IREP compares with the recommendations of the Committee on Health Risks of Exposure to Radon (BEIR VI) [24].

As discussed in the notice of proposed rulemaking and above, the lung cancer model for radon in NIOSH–IREP was developed based on an analysis of risk by the Radiation Exposure Compensation Act (RECA) Committee [25], as recommended by the National Research Council review of the NCI IREP software. The RECA committee recommended scientific methods for adapting the radon and lung cancer risk models derived from uranium miner research to compensation decisions. These research findings were an important component of the BEIR VI analyses as well.

L. HHS Dose Reconstruction Program (42 CFR 82)

HHS received several comments addressed to this rule that relate to HHS dose reconstructions under EEOICPA. In some cases, the comments were directed to this rule because dose reconstruction results serve as inputs to calculate probability of causation. The HHS rule establishing methods for dose reconstruction, 42 CFR Part 82, is being published simultaneously in this issue of the **Federal Register**.

Several commenters recommended that these guidelines prescribe the selection of uncertainty distributions associated with radiation dose information supplied by the NIOSH dose reconstruction.

As discussed in the dose reconstruction rule, uncertainty distributions associated with the dose information will indeed be defined by NIOSH in its individual dose reconstruction final reports provided to DOL, the claimant, and DOE. This information, also included in the electronic dose files provided to DOL by NIOSH, will be imported into NIOSH–IREP by DOL when it calculates probability of causation.

These uncertainty distributions associated with dose information cannot be generically prescribed by these guidelines. This information will vary substantially depending on radiation exposure circumstances and informational sources associated with each claim. Therefore, NIOSH will be defining the use of appropriate uncertainty distributions on a claim-by-claim basis, based on technical procedures established by NIOSH to implement the HHS dose reconstruction rule.

One commenter recommended NIOSH use a default assumption that characterizes radiation doses as chronic rather than acute. The commenter indicated that the radiation doses incurred by many workers are more accurately characterized as chronic using traditional definitions.

NIOSH will characterize radiation doses as chronic when it has information to substantiate this designation. However, in most cases NIOSH is unlikely to have sufficient information to make this distinction. For these cases, NIOSH will continue to characterize doses as acute as the default assumption, since this gives claimants the benefit of the doubt. As discussed above, this rule, consistent with the requirement of EEOICPA to calculate probability of causation at the upper 99 percent credibility limit, gives claimants the benefit of the doubt with respect to uncertainty. The use of chronic as a default assumption would reduce the level of probability of causation calculated for some claims.

One commenter recommended NIOSH–IREP include as an input radiation doses from nuclides (types of radiation) associated with particle accelerators.

The radiation weighting factors included in NIOSH–IREP cover the vast majority of exposures that have occurred or will occur in the claimant population. Exposures to the most unusual radiation exposure types, such as protons and other accelerator produced particles, will be addressed on an individual basis, as specified by NIOSH. It would not be useful to construct a priori probability distributions for these radiation types without knowledge of the range of energies likely to be involved in an actual exposure. Probability distributions developed for these unusual radiation types will be incorporated into the probability of causation calculation for affected claimants by DOL through a user-definable feature of NIOSH–IREP. NIOSH will define the probability distribution to be applied by DOL and summarize its technical basis in the dose reconstruction report.

One commenter questioned how NIOSH would know the energies of neutron doses, since this information will not always be available from DOE or AWE records.

As discussed in the interim final and final dose reconstruction rules, NIOSH will assign the energies for claims in which this specific information is unknown. NIOSH will give the benefit of the doubt to the claimant in making such assignments, such that the energy selected is consistent with available information and represents the case most favorable to the claimant for calculating probability of causation.

[23] The paper was originally titled: ''Proposed Radiation Weighting Factors for Use in Calculating Probability of Causation for Cancers'' and is now published with revisions and more extensive explanation under the title: ''Relative Biological Effectiveness Factors (RBE) for Use in Calculating Probability of Causation of Radiogenic Cancers.''

[24] National Research Council. 1999. Health Effects of Exposure to Radon: BEIR VI. National Academy Press, Washington, DC. 500 pp.

[25] Final Report of the Radiation Exposure Compensation Act Committee, submitted to the Human Radiation Interagency Working Group, July 1996 (Appendix A), 30 pp (plus Figures).

One commenter recommended that NIOSH combine the internal and external dose reconstruction data into single annual dose values.

It is unclear how this suggested change would be useful. Moreover, it would rarely be feasible. It would be feasible only when radiation doses in a given year are limited to a single type of radiation and the uncertainty distributions for the external and internal doses are identical.

Several commenters questioned why HHS added a parameter to the definition of ''covered employee,'' under § 81.4 of the proposed rule, that is not specified in EEOICPA. HHS specified more narrowly than EEOICPA that a covered employee, for the purposes of the HHS rules, is a DOE or AWE employee for whom DOL has requested HHS perform a dose reconstruction.

This distinction results practically from the separate responsibilities of DOL and HHS in implementing EEOICPA. DOL is solely responsible for initially reviewing each claim, evaluating whether the claim represents a covered employee with a covered illness, and determining whether or not the claim requires a dose reconstruction. The only claims DOL will forward to HHS for dose reconstructions are those involving a covered employee with a cancer not covered by provisions of the Special Exposure Cohort. Hence, HHS retains its proposed definition in this rule to be clear that NIOSH will only conduct dose reconstructions under EEOICPA for the subset of claims submitted by DOL to HHS for dose reconstructions. This is intended to avoid the possible confusion and delay that would arise if claimants or the public were to directly submit to NIOSH requests for dose reconstructions.

M. Special Exposure Cohort

HHS received several comments that provide recommendations, criteria, or concerns related to adding members to the Special Exposure Cohort established under EEOICPA. These comments fall outside the scope of this rule and address related but separate procedures to be established by HHS.

As discussed above, HHS is proposing procedures by which it will consider petitions by classes of employees at DOE or AWE facilities to be added to the cohort, with the advice of the Advisory Board on Radiation and Worker Health. These procedures will be published soon in the **Federal Register**. The proposed HHS procedures and their accompanying explanation address the comments received and directly solicit additional public comments, which HHS will fully consider in establishing final procedures.

N. DOL Responsibilities Under EEOICPA

HHS received several comments that relate to DOL responsibilities under EEOICPA and thus fall outside the scope of this rule.

One commenter recommended that claimants be provided with full documentation of the basis for the probability of causation estimate determined for their claim by DOL.

DOL will provide the claimant with a recommended decision which will explain the decision based upon the probability of causation. In addition, NIOSH will provide the claimant with complete documentation on the dose reconstruction conducted for the claim, which, together with the DOL report, provides the claimant with a complete set of the claim-related data and information used to calculate probability of causation.

The claimant would not, however, automatically receive documentation of the formulae and underlying research basis for the cancer risk models applied to the claim in NIOSH–IREP. This information is highly technical and complex and is unlikely to be of value to most claimants. Claimants who desire this information, however, can obtain it either from NIOSH–IREP, from the NIOSH homepage, or by contacting NIOSH directly (see contact information above). Some details of IREP documentation are only available at this time from NCI but will be incorporated into NIOSH informational resources as soon as possible.

One commenter recommended that claimants be permitted to submit affidavits in lieu of medical records when necessary.

DOL determines what types of information can constitute medical evidence of a diagnosis of cancer (see 20 CFR 30.211.). More details can be obtained by contacting DOL.

One commenter recommended that staff working for contractor support services offsite from the DOE facility should be treated as covered employees under EEOICPA. The comment identifies workers providing offsite laundry services as an example of such support staff. As discussed above, DOL is responsible for determining whether an individual is a covered employee within the scope of coverage defined by Congress in EEOICPA. Individuals who are concerned that certain employee groups involved in nuclear weapons production or related activities might be excluded from coverage under EEOICPA should consult DOL, which makes these determinations.

III. Review and Recommendations of the Advisory Board on Radiation and Worker Health

As discussed above, the Advisory Board on Radiation and Worker Health is required by Section 7384(n)(c) of EEOICPA to conduct a technical review of these HHS guidelines. The Board reviewed the guidelines during public meetings on January 22–23 and February 5, 2002. In preparation for the meeting, the Board members individually reviewed the notice of proposed rulemaking as well as the HHS interim final rule providing the methods of dose reconstruction (42 CFR 82) that govern the estimation of radiation doses to be used under these guidelines. The members also reviewed public comments on these rules and written comments by subject matter experts who evaluated technical elements of NIOSH–IREP. In addition, NIOSH staff members gave formal presentations on the HHS rules, implementation procedures, and related issues during the Board meetings. The transcripts and minutes of these meetings are included in the NIOSH docket for this rule and are available to the public.

All of the Board members participated in the technical review of these guidelines and they unanimously concurred in establishing the Board findings and recommendations. The Board organized its findings and recommendations to correspond with the three general questions for public comment HHS identified in the notice for proposed rulemaking. The findings and recommendations are provided below, together with responses by HHS to the recommendations:

Board Comment #1: The Board agrees that the NIOSH guidelines and procedures for probability of causation determinations have been developed using the best and most current scientific information relating radiation exposures to cancer risks. The use of current recommendations from independent expert bodies lends strength to the approach proposed by NIOSH. The NIOSH approach also implements the spirit of concern for nuclear workers that was inherent in the legislation underlying this compensation program. In this context, the NIOSH guidelines and procedures provide an appropriate application of existing science to the compensation process.

HHS Response: No response is necessary, but it may be helpful to readers to explain the Board's reference to the ''spirit of concern.'' HHS has

implemented the ''spirit of concern'' to which the Board refers by consistently and reasonably giving the benefit of the doubt to nuclear weapons workers, whenever feasible, with respect to policy decisions and technical procedures involving factual or scientific unknowns and uncertainty.

Board Comment #2: ''The Board has also noted the differences between the approach being used in this compensation program and that of the Atomic Veterans Act. There are significant differences in the categories of compensation covered by the two acts. In some cases, the Atomic Veterans Act required primarily that the claimants were present in a specific area, had one of the specified cancers, and were therefore compensated. This proposed rule is an effort to address much more complicated situations and to face the reality that simple exposure to radiation does not automatically presume the development of disease. The Board recognizes the excellent efforts of NIOSH staff and their subject matter experts in bringing the best known current science to an appropriate method for translating experience gained in the veterans exposure calculations to this civilian nuclear worker proposal.''

HHS Response: No response necessary.

Board Comment #3: ''The Board also agrees that the proposed NIOSH procedures appropriately allow for the incorporation of new scientific information into the compensation procedures as this new information becomes available. However, given the limited time that the Board has had to review the details of the probability of causation procedures and the potential impact of changes in the NIOSH IREP on compensation decisions, the Board recommends that the regulations be amended to formalize the role of the Board in reviewing any substantial changes in these procedures (i.e., the NIOSH IREP). This change should include publication of the planned changes in the **Federal Register**, an appropriate opportunity for public comment, and then review by this Board before finalization. Although these actions are included in the Preamble ''Background,'' (Section III, Subsection I, Paragraph 3) of 42 CFR Part 81, making them part of the rule itself would formalize the updating process, significantly strengthening assurance that review of revisions by the Board will occur.''

HHS Response: HHS accepts this recommendation by the Board. Accordingly, as discussed above in response to public comments on peer-review, HHS has moved provisions for peer-review involving the Board from the preamble of the notice of proposed rulemaking into the body of the rule itself. These provisions can be found at 42 CFR 81.12.

IV. Summary of the Rule

Congress, in enacting EEOICPA, created a new Energy Employees Occupational Illness Compensation Program to ensure an efficient, uniform, and adequate compensation system for certain employees. Through Executive Order 13179, the President assigned primary responsibility for administering the program to DOL. The President assigned various technical responsibilities for policymaking and assistance to HHS. Included among these is promulgation of this rule to establish guidelines DOL will apply to adjudicate cancer claims for covered employees seeking compensation for cancer, other than as members of the Special Exposure Cohort seeking compensation for a specified cancer. Sections 81.20–81.25 and 81.30 provide guidelines for determining the probability of causation with respect to all known cancers.

In the summary below, HHS indicates all the changes in provisions of this rule made since the notice of proposed rulemaking. These occur under §§ 81.10(b) and 81.12.

Introduction

Sections 81.0 and 81.1 briefly describe how this rule relates to DOL authorities under EEOICPA and the assignment of authority for this rule to HHS. Section 81.2 summarizes the specific provisions of EEOICPA directing HHS in the development of this rule.

Definitions

This section of the regulation defines the principal terms used in this part. It includes terms specifically defined in EEOICPA that, for the convenience of the reader of this part, are repeated in this section. The citation to EEOICPA has been revised to reflect the codification of the Act in the United States Code.

Data Required To Estimate Probability of Causation

Sections 81.5 and 81.6 identify the sources and types of personal, medical, and radiation dose information that would be required by this regulation. Claimants will provide personal and medical information to DOL under DOL regulations 20 CFR Part 30. NIOSH will provide radiation dose information pursuant to 20 CFR Part 30. NIOSH will develop the dose information required pursuant to the HHS regulation under 42 CFR Part 82, which was promulgated on October 5, 2001 as an interim final rule and is being promulgated as a final rule simultaneously with this final rule in this issue of the **Federal Register**. The application of this personal, medical, and radiation dose information to estimate probability of causation is described generally under §§ 81.22—81.25.

Requirements for Risk Models Used To Estimate Probability of Causation

Sections 81.10 and 81.11 describe the use of cancer risk models and uncertainty analysis underlying the NIH RadioEpidemiological Tables in their current, updated form, which is a software program named the ''Interactive RadioEpidemiological Program'' (IREP). NIOSH–IREP, the version of IREP to be used by DOL to implement this rule, is discussed extensively in the notice of proposed rulemaking and above. These sections also propose criteria by which the risk models in NIOSH–IREP may be changed to ensure that probability of causation estimates calculated for EEOICPA claimants represent the unique exposure and disease experiences of employees covered by EEOICPA. In response to public comments, a criterion discussed above has been added to § 81.10. This criterion authorizes NIOSH to modify NIOSH–IREP to account for new understanding of the potential interaction between cancer risks associated with occupational exposures to chemical carcinogens and radiation-related cancer effects (see § 81.10(b)(4)).

Section 81.12 was added in response to comments and describes the procedure to update NIOSH–IREP. NIOSH may periodically revise NIOSH–IREP to add, modify, or replace cancer risk models, improve the modeling of uncertainty, and improve the functionality and user-interface of NIOSH–IREP. Principal sources of potential improvements in cancer risk models include new epidemiologic research on DOE employee populations and periodic updates from scientific committees evaluating such research (e.g., the Committee on Biological Effects of Ionizing Radiation).

Improvements may also be recommended by the Advisory Board on Radiation and Worker Health, scientific reviews relevant to or addressing this program, public comment, or by DOL, which is the principal user and hence may require functional changes and improvements in the user-interface.

Substantive changes to NIOSH–IREP (changes that would substantially affect

estimates of probability of causation calculated using NIOSH–IREP, including the addition of new cancer risk models) will be submitted to the Advisory Board on Radiation and Worker Health for review. Proposed changes provided to the Advisory Board for review will also be made available to the public, which will have opportunity to comment and have its comments considered by NIOSH and the Board.

To facilitate public participation in updating NIOSH–IREP, NIOSH will periodically publish a notice in the **Federal Register** informing the public of proposed substantive changes to NIOSH–IREP currently under development, the status of the proposed changes, and the expected completion dates. NIOSH will also publish a notice in the **Federal Register** notifying DOL and the public of the completion of substantive changes to NIOSH–IREP. In the notice, NIOSH will address relevant public comments and recommendations from the Advisory Board received by NIOSH.

Guidelines To Estimate Probability of Causation

Sections 81.20 and 81.21 require DOL to use NIOSH–IREP to estimate probability of causation for cancers for which probability of causation estimates can be calculated using available cancer risk models. Section 81.21 also requires DOL to assume carcinoma in situ (ICD–9 [26] codes 230–234), neoplasms of uncertain behavior (ICD–9 codes 235–238), and neoplasms of unspecified nature (ICD–9 code 239) are malignant, for purposes of estimating probability of causation.

Sections 81.22–81.25 provide general guidelines for the use of NIOSH–IREP and specific applications to accommodate special circumstances anticipated. The special circumstances include claims in which: (1) The primary site of a metastasized cancer is unknown; (2) the subtype of leukemia presented lacks a single, optimal risk model in NIOSH–IREP; and (3) two or more primary cancers are presented, requiring further statistical adjustment of probability of causation estimates calculated using NIOSH–IREP.

The procedure concerning subtypes of leukemia (2) is needed because of a limitation of the data on Japanese atomic bomb survivors, as discussed above and in the notice of proposed rulemaking. The general leukemia model in IREP allows for adjustment for age at exposure, which is an important modifier of leukemia risk. The data are too sparse, however, to allow for such an adjustment with respect to specific types of leukemia, with the exception of chronic myeloid leukemia. Since it is not possible to determine which factor, age at exposure or leukemia subtype, is more important to determining probability of causation for most specific types of leukemia, the guidelines require use of both the general model and the specific model. The guidelines require DOL to use the findings of whichever model produces the higher probability of causation estimate.

Section 81.30 specifies one cancer to be considered non-radiogenic for the purposes of this rule: chronic lymphocytic leukemia (ICD–9 Code: 204.1). DOL would assign a value of zero to the probability of causation for a claim based on this type of leukemia. There is general consensus among the scientific and medical communities that treatment of this leukemia as non-radiogenic is appropriate, and such treatment is consistent with other radiation illness compensation programs.

V. Significant Regulatory Action (Executive Order 12866)

This rule is a ''significant regulatory action,'' within the meaning of Executive Order 12866, because it raises novel or legal policy issues arising out of the legal mandate established under EEOICPA. The rule is designed to establish objective guidelines, grounded in current science, to support DOL in the adjudication of applicable claims seeking compensation for cancer under EEOICPA. The guidelines will be applied by DOL to calculate a reasonable, scientifically supported determination of the probability that a cancer for which a claimant is seeking compensation was as likely as not caused by radiation doses incurred in the performance of duty by the covered employee. The financial cost to the federal government of applying these guidelines is covered under administrative expenses estimated by DOL under its rule (see FR 28948, May 25, 2001).

The rule carefully explains the manner in which the regulatory action is consistent with the mandate for this action under § 3623(c) of EEOICPA and implements the detailed requirements concerning this action under this section of EEOICPA. The rule does not interfere with State, local, and tribal governments in the exercise of their governmental functions.

The rule is not considered economically significant, as defined in section 3(f)(1) of the Executive Order 12866. This rule has a subordinate role in the adjudication of claims under EEOICPA, serving as one element of an adjudication process administered by DOL under 20 CFR Parts 1 and 30. DOL has determined that its rule fulfills the requirements of Executive Order 12866 and provides estimates of the aggregate cost of benefits and administrative expenses of implementing EEOICPA under its rule (see FR 28948, May 25, 2001).

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires each agency to consider the potential impact of its regulations on small entities including small businesses, small governmental units, and small not-for-profit organizations. HHS certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. This rule affects only DOL, HHS, and some individuals filing compensation claims under EEOICPA. Therefore, a regulatory flexibility analysis as provided for under RFA is not required.

VII. Paperwork Reduction Act

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, requires an agency to invite public comment on and to obtain OMB approval of any regulation that requires ten or more people to report information to the agency or to keep certain records. This rule does not contain any information collection requirements. It provides guidelines only to the U.S. Department of Labor (DOL) for adjudicating compensation claims and thus requires no reporting or record keeping. Information required by DOL to apply these guidelines is being provided by HHS and by individual claimants to DOL under DOL regulations 20 CFR 30. Thus, HHS has determined that the PRA does not apply to this rule.

VIII. Small Business Regulatory Enforcement Fairness Act

As required by Congress under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), the Department will report to Congress promulgation of this rule. The report will state that the Department has concluded that this rule is not a ''major rule'' because it is not likely to result in

[26] ICD–9 is a version of the standard system of classifying diseases that will be used by IREP. The most recent version of this system, ICD–10, will not be used because the cancer risk models have been constructed using ICD–9.

See: The International Classification of Diseases Clinical Modification (9th Revision) Volume I&II. [1991] Department of Health and Human Services Publication No. (PHS) 91–1260, U.S. Government Printing Office, Washington, D.C.

an annual effect on the economy of $100 million or more. However, this rule has a subordinate role in the adjudication of claims under EEOICPA, serving as one element of an adjudication process administered by DOL under 20 CFR Parts 1 and 30. DOL has determined that its rule is a ''major rule'' because it will likely result in an annual effect on the economy of $100 million or more.

IX. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*) directs agencies to assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector, ''other than to the extent that such regulations incorporate requirements specifically set forth in law.'' For purposes of the Unfunded Mandates Reform Act, this rule does not include any Federal mandate that may result in increased annual expenditures in excess of $100 million by State, local or tribal governments in the aggregate, or by the private sector.

X. Executive Order 12988 (Civil Justice)

This rule has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform and will not unduly burden the Federal court system. Probability of causation may be an element in reviews of DOL adverse decisions in the United States District Courts pursuant to the Administrative Procedure Act. However, DOL has attempted to minimize that burden by providing claimants an opportunity to seek administrative review of adverse decisions, including those involving probability of causation. HHS has provided a clear legal standard for DOL to apply regarding probability of causation. This rule has been reviewed carefully to eliminate drafting errors and ambiguities.

XI. Executive Order 13132 (Federalism)

The Department has reviewed this rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' The rule does not ''have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

XII. Executive Order 13045 (Protection of Children From Environmental, Health Risks and Safety Risks)

In accordance with Executive Order 13045, HHS has evaluated the environmental health and safety effects of this rule on children. HHS has determined that the rule would have no effect on children.

XIII. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)

In accordance with Executive Order 13211, HHS has evaluated the effects of this rule on energy supply, distribution or use, and has determined that the rule will not have a significant adverse effect on them.

XIV. Effective Date

The Secretary has determined, pursuant to 5 U.S.C. 553(d)(3), that there is good cause for this rule to be effective immediately to avoid undue hardship on and facilitate payment to eligible claimants.

List of Subjects in 42 CFR Part 81

Cancer, Government Employees, Probability of Causation, Radiation Protection, Radioactive Materials, Workers' Compensation.

Text of the Rule

For the reasons discussed in the preamble, the Department of Health and Human Services is amending 42 CFR to add Part 81 to read as follows:

PART 81—GUIDELINES FOR DETERMINING PROBABILITY OF CAUSATION UNDER THE ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM ACT OF 2000

Subpart A—Introduction

Sec.
81.0 Background.
81.1 Purpose and Authority.
81.2 Provisions of EEOICPA concerning this part.

Subpart B—Definitions

81.4 Definition of terms used in this part.

Subpart C—Data Required To Estimate Probability of Causation

81.5 Use of personal and medical information
81.6 Use of radiation dose information.

Subpart D—Requirements for Risk Models Used To Estimate Probability of Causation

81.10 Use of cancer risk assessment models in NIOSH–IREP.
81.11 Use of uncertainty analysis in NIOSH–IREP.
81.12 Procedure for updating NIOSH–IREP.

Subpart E—Guidelines To Estimate Probability of Causation

81.20 Required use of NIOSH–IREP.
81.21 Cancers requiring the use of NIOSH–IREP.
81.22 General guidelines for use of NIOSH–IREP.
81.23 Guidelines for cancers for which primary site is unknown.
81.24 Guidelines for leukemia.
81.25 Guidelines for claims involving two or more primary cancers.
81.30 Non-radiogenic cancers.

Appendix A to Part 81—Glossary of ICD–9 codes and their cancer descriptions.

Authority: 42 U.S.C. 7384n(c); E.O. 13179, 65 FR 77487, 3 CFR, 2000 Comp., p. 321.

Subpart A—Introduction

§ 81.0 Background.

The Energy Employees Occupational Illness Compensation Program Act (EEOICPA), 42 U.S.C. 7384–7385 [1994, supp. 2001], provides for the payment of compensation benefits to covered employees and, where applicable, survivors of such employees, of the United States Department of Energy, its predecessor agencies and certain of its contractors and subcontractors. Among the types of illnesses for which compensation may be provided are cancers. There are two categories of covered employees with cancer under EEOICPA for whom compensation may be provided. The regulations that follow under this part apply only to the category of employees described under paragraph (a) of this section.

(a) One category is employees with cancer for whom probability of causation must be estimated or determined, as required under 20 CFR 30.115.

(b) The second category is members of the Special Exposure Cohort seeking compensation for a specified cancer, as defined under EEOICPA. The U.S. Department of Labor (DOL) which has primary authority for implementing EEOICPA, has promulgated regulations at 20 CFR 30.210 et seq. that identify current members of the Special Exposure Cohort and requirements for compensation. Pursuant to section 7384(q) of EEOICPA, the Secretary of HHS is authorized to add additional classes of employees to the Special Exposure Cohort.

§ 81.1 Purpose and Authority.

(a) The purpose of this regulation is to establish guidelines DOL will apply to adjudicate cancer claims for covered employees seeking compensation for cancer, other than as members of the Special Exposure Cohort seeking compensation for a specified cancer. To award a claim, DOL must first determine that it is at least as likely as not that the cancer of the employee was caused by radiation doses incurred by the employee in the performance of

duty. These guidelines provide the procedures DOL must apply and identify the information DOL will use.

(b) Section 7384(n)(b) of EEOICPA requires the President to promulgate these guidelines. Executive Order 13179 assigned responsibility for promulgating these guidelines to the Secretary of HHS.

§ 81.2 Provisions of EEOICPA concerning this part.

EEOICPA imposes several general requirements concerning the development of these guidelines. It requires that the guidelines produce a determination as to whether it is at least as likely as not (a 50% or greater probability) that the cancer of the covered employee was related to radiation doses incurred by the employee in the performance of duty. It requires the guidelines be based on the radiation dose received by the employee, incorporating the methods of dose reconstruction to be established by HHS. It requires determinations be based on the upper 99 percent confidence interval (credibility limit) of the probability of causation in the RadioEpidemiological tables published under section 7(b) of the Orphan Drug Act (42 U.S.C. 241 note), as such tables may be updated. EEOICPA also requires HHS consider the type of cancer, past health-related activities, the risk of developing a radiation-related cancer from workplace exposure, and other relevant factors. Finally, it is important to note EEOICPA does not include a requirement limiting the types of cancers to be considered radiogenic for these guidelines.

Subpart B—Definitions

§ 81.4 Definition of terms used in this part.

(a) Covered employee, for purposes of this part, means an individual who is or was an employee of DOE, a DOE contractor or subcontractor, or an atomic weapons employer, and for whom DOL has requested HHS to perform a dose reconstruction.

(b) *Dose and dose rate effectiveness factor (DDREF)* means a factor applied to a risk model to modify the dose-risk relationship estimated by the model to account for the level of the dose and the rate at which the dose is incurred. As used in IREP, a DDREF value of greater than one implies that chronic or low doses are less carcinogenic per unit of dose than acute or higher doses.

(c) *Dose-response relationship* means a mathematical expression of the way that the risk of a biological effect (for example, cancer) changes with increased exposure to a potential health hazard (for example, ionizing radiation).

(d) *EEOICPA* means the Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. §§ 7384–7385 [1994, supp. 2001].

(e) *Equivalent dose* means the absorbed dose in a tissue or organ multiplied by a radiation weighting factor to account for differences in the effectiveness of the radiation in inducing cancer.

(f) *External dose* means the portion of the equivalent dose that is received from radiation sources outside of the body.

(g) *Interactive RadioEpidemiological Program (IREP)* means a computer software program that uses information on the dose-response relationship, and specific factors such as a claimant's radiation exposure, gender, age at diagnosis, and age at exposure to calculate the probability of causation for a given pattern and level of radiation exposure.

(h) *Internal dose* means the portion of the equivalent dose that is received from radioactive materials taken into the body.

(i) *Inverse dose rate effect* means a phenomenon in which the protraction of an exposure to a potential health hazard leads to greater biological effect per unit of dose than the delivery of the same total amount in a single dose. An inverse dose rate effect implies that the dose and dose rate effectiveness factor (DDREF) is less than one for chronic or low doses.

(j) *Linear energy transfer (LET)* means the average amount of energy transferred to surrounding body tissues per unit of distance the radiation travels through body tissues (track length). Low LET radiation is typified by gamma and x rays, which have high penetrating capabilities through various tissues, but transfer a relatively small amount of energy to surrounding tissue per unit of track length. High LET radiation includes alpha particles and neutrons, which have weaker penetrating capability but transfer a larger amount of energy per unit of track length.

(k) *NIOSH* means the National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, United States Department of Health and Human Services.

(l) *Non-radiogenic cancer* means a type of cancer that HHS has found not to be caused by radiation, for the purposes of this regulation.

(m) *Primary cancer* means a cancer defined by the original body site at which the cancer was incurred, prior to any spread (metastasis) to other sites in the body.

(n) *Probability of causation* means the probability or likelihood that a cancer was caused by radiation exposure incurred by a covered employee in the performance of duty. In statistical terms, it is the cancer risk attributable to radiation exposure divided by the sum of the baseline cancer risk (the risk to the general population) plus the cancer risk attributable to the radiation exposure.

(o) *RadioEpidemiological Tables* means tables that allow computation of the probability of causation for various cancers associated with a defined exposure to radiation, after accounting for factors such as age at exposure, age at diagnosis, and time since exposure.

(p) *Relative biological effectiveness (RBE)* means a factor applied to a risk model to account for differences between the amount of cancer effect produced by different forms of radiation. For purposes of EEOICPA, the RBE is considered equivalent to the radiation weighting factor.

(q) *Risk model* means a mathematical model used under EEOICPA to estimate a specific probability of causation using information on radiation dose, cancer type, and personal data (e.g., gender, smoking history).

(r) *Secondary site* means a body site to which a primary cancer has spread (metastasized).

(s) *Specified cancer* is a term defined in § 7384(l)(17) of EEOICPA and 20 CFR 30.5(dd) that specifies types of cancer that, pursuant to 20 CFR part 30, may qualify a member of the Special Exposure Cohort for compensation. It includes leukemia (other than chronic lymphocytic leukemia), multiple myeloma, non-Hodgkin's lymphoma, renal cancers, and cancers of the lung (other than carcinoma in situ diagnosed at autopsy), thyroid, male breast, female breast, esophagus, stomach, pharynx, small intestine, pancreas, bile ducts, gall bladder, salivary gland, urinary bladder, brain, colon, ovary, liver (not associated with cirrhosis or hepatitis B), and bone.

(t) *Uncertainty* is a term used in this rule to describe the lack of precision of a given estimate, the extent of which depends upon the amount and quality of the evidence or data available.

(u) *Uncertainty distribution* is a statistical term meaning a range of discrete or continuous values arrayed around a central estimate, where each value is assigned a probability of being correct.

(v) *Upper 99 percent confidence interval* is a term used in EEOICPA to mean credibility limit, the probability of causation estimate determined at the 99th percentile of the range of

uncertainty around the central estimate of probability of causation.

Subpart C—Data Required To Estimate Probability of Causation

§ 81.5 Use of personal and medical information.

Determining probability of causation may require the use of the following personal and medical information provided to DOL by claimants under DOL regulations 20 CFR part 30:

(a) Year of birth

(b) Cancer diagnosis (by ICD–9 code) for primary and secondary cancers

(c) Date of cancer diagnosis

(d) Gender

(e) Race/ethnicity (if the claim is for skin cancer or a secondary cancer for which skin cancer is a likely primary cancer)

(f) Smoking history (if the claim is for lung cancer or a secondary cancer for which lung cancer is a likely primary cancer)

§ 81.6 Use of radiation dose information.

Determining probability of causation will require the use of radiation dose information provided to DOL by the National Institute for Occupational Safety and Health (NIOSH) under HHS regulations 42 CFR part 82. This information will include annual dose estimates for each year in which a dose was incurred, together with uncertainty distributions associated with each dose estimate. Dose estimates will be distinguished by type of radiation (low linear energy transfer (LET), protons, neutrons, alpha, low-energy x-ray) and by dose rate (acute or chronic) for external and internal radiation dose.

Subpart D—Requirements for Risk Models Used To Estimate Probability of Causation

§ 81.10 Use of cancer risk assessment models in NIOSH IREP.

(a) The risk models used to estimate probability of causation for covered employees under EEOICPA will be based on risk models updated from the 1985 NIH Radioepidemiological Tables. These 1985 tables were developed from analyses of cancer mortality risk among the Japanese atomic bomb survivor cohort. The National Cancer Institute (NCI) and Centers for Disease Control and Prevention (CDC) are updating the tables, replacing them with a sophisticated analytic software program. This program, the Interactive RadioEpidemiological Program (IREP)[1], models the dose-response relationship between ionizing radiation and 33 cancers using morbidity data from the same Japanese atomic bomb survivor cohort. In the case of thyroid cancer, radiation risk models are based on a pooled analysis of several international cohorts[1a].

(b) NIOSH will change the risk models in IREP, as needed, to reflect the radiation exposure and disease experiences of employees covered under EEOICPA, which differ from the experiences of the Japanese atomic bomb survivor cohort. Changes will be incorporated in a version of IREP named NIOSH–IREP, specifically designed for adjudication of claims under EEOICPA. Possible changes in IREP risk models include the following:

(1) Addition of risk models to IREP, as needed, for claims under EEOICPA (e.g., malignant melanoma and other skin cancers)

(2) Modification of IREP risk models to incorporate radiation exposures unique to employees covered by EEOICPA (e.g., radon and low energy x rays from employer-required medical screening programs, adjustment of relative biological effectiveness distributions based on neutron energy).

(3) Modification of IREP risk models to incorporate new understanding of radiation-related cancer effects relevant to employees covered by EEOICPA (e.g., incorporation of inverse dose-rate relationship between high LET radiation exposures and cancer; adjustment of the low-dose effect reduction factor for acute exposures).

(4) Modification of IREP risk models to incorporate new understanding of the potential interaction between cancer risk associated with occupational exposures to chemical carcinogens and radiation-related cancer effects.

(5) Modification of IREP risk models to incorporate temporal, race and ethnicity-related differences in the frequency of certain cancers occurring generally among the U.S. population.

(6) Modifications of IREP to facilitate improved evaluation of the uncertainty distribution for the probability of causation for claims based on two or more primary cancers.

§ 81.11 Use of uncertainty analysis in NIOSH–IREP.

(a) EEOICPA requires use of the uncertainty associated with the probability of causation calculation, specifically requiring the use of the upper 99% confidence interval (credibility limit) estimate of the probability of causation estimate. As described in the NCI document,[2] uncertainty from several sources is incorporated into the probability of causation calculation performed by NIOSH–IREP. These sources include uncertainties in estimating: radiation dose incurred by the covered employee; the radiation dose-cancer relationship (statistical uncertainty in the specific cancer risk model); the extrapolation of risk (risk transfer) from the Japanese to the U.S. population; differences in the amount of cancer effect caused by different radiation types (relative biological effectiveness or RBE); the relationship between the rate at which a radiation dose is incurred and the level of cancer risk produced (dose and dose rate effectiveness factor or DDREF); and, the role of non-radiation risk factors (such as smoking history).

(b) NIOSH–IREP will operate according to the same general protocol as IREP for the analysis of uncertainty. It will address the same possible sources of uncertainty affecting probability of causation estimates, and in most cases will apply the same assumptions incorporated in IREP risk models. Different procedures and assumptions will be incorporated into NIOSH–IREP as needed, according to the criteria outlined under § 81.10.

§ 81.12 Procedure to update NIOSH–IREP.

(a) NIOSH may periodically revise NIOSH–IREP to add, modify, or replace cancer risk models, improve the modeling of uncertainty, and improve the functionality and user-interface of NIOSH–IREP.

(b) Revisions to NIOSH–IREP may be recommended by the following sources:

(1) NIOSH,

(2) The Advisory Board on Radiation and Worker Health,

(3) Independent reviews of NIOSH–IREP or elements thereof by scientific organizations (e.g., National Academy of Sciences),

(4) DOL,

(5) Public comment.

(c) NIOSH will submit substantive changes to NIOSH–IREP (changes that would substantially affect estimates of probability of causation calculated using NIOSH–IREP, including the addition of new cancer risk models) to the Advisory Board on Radiation and Worker Health for review. NIOSH will obtain such review and address any recommendations of the review before completing and implementing the change.

[1] NIOSH–IREP is available for public review on the NIOSH homepage at: www.cdc.gov/niosh/ocas/ocasirep/html.

[1a] Ron E, Lubin JH, Shore RE, et al. ''Thyroid cancer after exposure to external radiation: a pooled analysis of seven studies.'' Radiat. Res. 141:259–277, 1995.

[2] Draft Report of the NCI–CDC Working Group to Revise the 1985 NIH Radioepidemiological Tables, May 31, 2000, p. 17–18, p. 22–23.

(d) NIOSH will inform the public of proposed changes provided to the Advisory Board for review. HHS will provide instructions for obtaining relevant materials and providing public comment in the notice announcing the Advisory Board meeting, published in the **Federal Register**.

(e) NIOSH will publish periodically a notice in the **Federal Register** informing the public of proposed substantive changes to NIOSH–IREP currently under development, the status of the proposed changes, and the expected completion dates.

(f) NIOSH will notify DOL and publish a notice in the **Federal Register** notifying the public of the completion and implementation of substantive changes to NIOSH–IREP. In the notice, NIOSH will explain the effect of the change on estimates of probability of causation and will summarize and address relevant comments received by NIOSH.

(g) NIOSH may take into account other factors and employ other procedures than those specified in this section, if circumstances arise that require NIOSH to implement a change more immediately than the procedures in this section allow.

Subpart E—Guidelines To Estimate Probability of Causation

§ 81.20 Required use of NIOSH–IREP.

(a) NIOSH–IREP is an interactive software program for estimating probability of causation for covered employees seeking compensation for cancer under EEOICPA, other than as members of the Special Exposure Cohort seeking compensation for a specified cancer.

(b) DOL is required to use NIOSH–IREP to estimate probability of causation for all cancers, as identified under §§ 81.21 and 81.23.

§ 81.21 Cancers requiring the use of NIOSH–IREP.

(a) DOL will calculate probability of causation for all cancers, except chronic lymphocytic leukemia as provided under § 81.30, using NIOSH–IREP.

(b) Carcinoma in situ (ICD–9 codes 230–234), neoplasms of uncertain behavior (ICD–9 codes 235–238), and neoplasms of unspecified nature (ICD–9 code 239) are assumed to be malignant, for purposes of estimating probability of causation.

(c) All secondary and unspecified cancers of the lymph node (ICD–9 code 196) shall be considered secondary cancers (cancers resulting from metastasis of cancer from a primary site). For claims identifying cancers of the lymph node, Table 1 in § 81.23 provides guidance for assigning a primary site and calculating probability of causation using NIOSH–IREP.

§ 81.22 General guidelines for use of NIOSH–IREP.

DOL will use procedures specified in the NIOSH–IREP Operating Guide to calculate probability of causation estimates under EEOICPA. The guide provides current, step-by-step instructions for the operation of IREP. The procedures include entering personal, diagnostic, and exposure data; setting/confirming appropriate values for variables used in calculations; conducting the calculation; and, obtaining, evaluating, and reporting results.

§ 81.23 Guidelines for cancers for which primary site is unknown.

(a) In claims for which the primary cancer site cannot be determined, but a site of metastasis is known, DOL will calculate probability of causation estimates for various likely primary sites. Table 1, below, indicates the primary cancer site(s) DOL will use in NIOSH–IREP when the primary cancer site is unknown.

Table 1

Primary cancers (ICD–9 codes [3]) for which probability of causation is to be calculated, if only a secondary cancer site is known. ''M'' indicates cancer site should be used for males only, and ''F'' indicates the cancer site should be used for females only. A glossary of cancer descriptions for each ICD–9 code is provided in Appendix A to this part.

Secondary cancer (ICD–9 code)	ICD–9 code of likely primary cancers
Lymph nodes of head, face and neck (196.0)	141, 142 (M), 146 (M), 149 (F), 161 (M), 162, 172, 173, 174 (F), 193 (F).
Intrathoracic lymph nodes (196.1)	150 (M), 162, 174 (F).
Intra-abdominal lymph nodes (196.2)	150 (M), 151 (M), 153, 157 (F), 162, 174 (F), 180 (F), 185 (M), 189, 202 (F).
Lymph nodes of axilla and upper limb (196.3)	162, 172, 174 (F).
Inguinal and lower limb lymph nodes (196.5)	154 (M), 162, 172, 173 (F), 187 (M).
Intrapelvic lymph nodes (196.6)	153 (M), 154 (F), 162 (M), 180 (F), 182 (F), 185 (M), 188.
Lymph nodes of multiple sites (196.8)	150 (M), 151 (M), 153 (M), 162, 174 (F).
Lymph nodes, site unspecified (196.9)	150 (M), 151, 153, 162, 172, 174 (F), 185 (M).
Lung (197.0)	153, 162, 172 (M), 174 (F), 185 (M), 188 (M), 189.
Mediastinum (197.1)	150 (M), 162, 174 (F).
Pleura (197.2)	150 (M), 153 (M), 162, 174 (F), 183 (F), 185 (M), 189 (M).
Other respiratory organs (197.3)	150, 153 (M), 161, 162, 173 (M), 174 (F), 185 (M), 193 (F).
Small intestine, including duodenum (197.4)	152, 153, 157, 162, 171, 172 (M), 174 (F), 183 (F), 189 (M).
Large intestine and rectum (197.5)	153, 154, 162, 174 (F), 183 (F), 185 (M).
Retroperitoneum and peritoneum (197.6)	151, 153, 154 (M), 157, 162 (M), 171, 174 (F), 182 (F), 183 (F).
Liver, specified as secondary (197.7)	151 (M), 153, 154 (M), 157, 162, 174 (F).
Other digestive organs (197.8)	150 (M), 151, 153, 157, 162, 174 (F), 185 (M).
Kidney (198.0)	153, 162, 174 (F), 180 (F), 185 (M), 188, 189, 202 (F).
Other urinary organs (198.1)	153, 174 (F), 180 (F), 183 (F), 185 (M), 188, 189 (F).
Skin (198.2)	153, 162, 171 (M), 172, 173 (M), 174 (F), 189 (M).
Brain and spinal cord (198.3)	162, 172 (M), 174 (F).
Other parts of nervous system (198.4)	162, 172 (M), 174 (F), 185 (M), 202.
Bone and bone marrow (198.5)	162, 174 (F), 185 (M).
Ovary (198.6)	153 (F), 174 (F), 183 (F).
Suprarenal gland (198.7)	153 (F), 162, 174 (F).
Other specified sites (198.8)	153, 162, 172 (M), 174 (F), 183 (F), 185 (M), 188 (M).

[3] The International Classification of Diseases Clinical Modification (9th Revision) Volume I&II. [1991] Department of Health and Human Services Publication No. (PHS) 91–1260, U.S. Government Printing Office, Washington D.C.

(b) DOL will select the site producing the highest estimate for probability of causation to adjudicate the claim.

§ 81.24 Guidelines for leukemia.

(a) For claims involving leukemia, DOL will calculate one or more probability of causation estimates from up to three of the four alternate leukemia risk models included in NIOSH–IREP, as specified in the NIOSH–IREP Operating Guide. These include: ''Leukemia, all types except CLL'' (IDC–9 codes: 204–208, except 204.1), ''acute lymphocytic leukemia'' (ICD–9 code: 204.0), and ''acute myelogenous leukemia'' (ICD–9 code: 205.0).

(b) For leukemia claims in which DOL calculates multiple probability of causation estimates, as specified in the NIOSH–IREP Operating Guide, the probability of causation estimate DOL assigns to the claim will be based on the leukemia risk model producing the highest estimate for probability of causation.

§ 81.25 Guidelines for claims including two or more primary cancers.

For claims including two or more primary cancers, DOL will use NIOSH–IREP to calculate the estimated probability of causation for each cancer individually. Then DOL will perform the following calculation using the probability of causation estimates produced by NIOSH–IREP:

EQUATION 1

Calculate: $1 - [\{1 \times PC_1\} \times \{1 - PC_2\} \times \ldots \times \{1 - PC_n\}] = PC_{total}$,

where PC_1 is the probability of causation for one of the primary cancers identified in the claim, PC_2 is the probability of causation for a second primary cancer identified in the claim, and PC_n is the probability of causation for the nth primary cancer identified in the claim. PC_{total} is the probability that at least one of the primary cancers (cancers 1 through ''n'') was caused by the radiation dose estimated for the claim when Equation 1 is evaluated based on the joint distribution of $PC_1, \ldots, PC_n$.[4] DOL will use the probability of causation value calculated for PC_{total} to adjudicate the claim.

§ 81.30 Non-radiogenic cancers

The following cancers are considered non-radiogenic for the purposes of EEOICPA and this part. DOL will assign a probability of causation of zero to the following cancers:

(a) Chronic lymphocytic leukemia (ICD–9 code: 204.1)

(b) [Reserved]

[4] Evaluating Equation 1 based on the individual upper 99th percentiles of $PC_1, \ldots, PC_n$ approximates the upper 99th percentile of PC_{total} whenever $PC_1, \ldots, PC_n$ are highly related, e.g., when a common dose-reconstruction is the only non-negligible source of uncertainty in the individual PC_i's. However, this approximation can overestimate it if other sources of uncertainty contribute independently to the $PC_1, \ldots, PC_n$, whereas treating the joint distribution as fully independent could substantially underestimate the upper 99th percentile of PC_{total} whenever the individual PC_i's are positively correlated.

APPENDIX A TO PART 81—GLOSSARY OF ICD–9 CODES AND THEIR CANCER DESCRIPTIONS [1]

ICD–9 code	Cancer description
140	Malignant neoplasm of lip.
141	Malignant neoplasm of tongue.
142	Malignant neoplasm of major salivary glands.
143	Malignant neoplasm of gum.
144	Malignant neoplasm of floor of mouth.
145	Malignant neoplasm of other and unspecified parts of mouth.
146	Malignant neoplasm of oropharynx.
147	Malignant neoplasm of nasopharynx.
148	Malignant neoplasm of hypopharynx.
149	Malignant neoplasm of other and ill-defined sites within the lip, oral cavity, and pharynx.
150	Malignant neoplasm of esophagus.
151	Malignant neoplasm of stomach.
152	Malignant neoplasm of small intestine, including duodenum.
153	Malignant neoplasm of colon.
154	Malignant neoplasm of rectum, rectosigmoid junction, and anus.
155	Malignant neoplasm of liver and intrahepatic bile ducts.
156	Malignant neoplasm of gall bladder and extrahepatic bile ducts.
157	Malignant neoplasm of pancreas.
158	Malignant neoplasm of retroperitoneum and peritoneum.
159	Malignant neoplasm of other and ill-defined sites within the digestive organs and peritoneum.
160	Malignant neoplasm of nasal cavities, middle ear, and accessory sinuses.
161	Malignant neoplasm of larynx.
162	Malignant neoplasm of trachea, bronchus and lung.
163	Malignant neoplasm of pleura.
164	Malignant neoplasm of thymus, heart, and mediastinum.
165	Malignant neoplasm of other and ill-defined sites within the respiratory system and intrathoracic organs.
170	Malignant neoplasm of bone and articular cartilage.
171	Malignant neoplasm of connective and other soft tissue.
172	Malignant melanoma of skin.
173	Other malignant neoplasms of skin.
174	Malignant neoplasm of female breast.
175	Malignant neoplasm of male breast.
179	Malignant neoplasm of uterus, part unspecified.
180	Malignant neoplasm of cervix uteri.
181	Malignant neoplasm of placenta.
182	Malignant neoplasm of body of uterus.
183	Malignant neoplasm of ovary and other uterine adnexa.
184	Malignant neoplasm of other and unspecified female genital organs.
185	Malignant neoplasm of prostate.
186	Malignant neoplasm of testis.

APPENDIX A TO PART 81—GLOSSARY OF ICD–9 CODES AND THEIR CANCER DESCRIPTIONS [1]—Continued

ICD–9 code	Cancer description
187	Malignant neoplasm of penis and other male genital organs.
188	Malignant neoplasm of urinary bladder.
189	Malignant neoplasm of kidney and other unspecified urinary organs.
190	Malignant neoplasm of eye.
191	Malignant neoplasm of brain.
192	Malignant neoplasm of other and unspecified parts of nervous system.
193	Malignant neoplasm of thyroid gland.
194	Malignant neoplasm of other endocrine glands and related structures.
195	Malignant neoplasm of other and ill-defined sites.
196	Secondary and unspecified malignant neoplasm of the lymph nodes.
197	Secondary malignant neoplasm of the respiratory and digestive organs.
198	Secondary malignant neoplasm of other tissue and organs.
199	Malignant neoplasm without specification of site.
200	Lymphosarcoma and reticulosarcoma.
201	Hodgkin's disease.
202	Other malignant neoplasms of lymphoid and histiocytic tissue.
203	Multiple myeloma and other immunoproliferative neoplasms.
204	Lymphoid leukemia
205	Myeloid leukemia.
206	Monocytic leukemia.
207	Other specified leukemia.
208	Leukemia of unspecified cell type.

[1] The International Classification of Diseases Clinical Modification (9th Revision) Volume I&II. [1991] Department of Health and Human Services Publication No. (PHS) 91–1260, U.S. Government Printing Office, Washington, D.C.

Dated: April 10, 2002.

Tommy G. Thompson,

Secretary, Department of Health and Human Services.

[FR Doc. 02–10764 Filed 4–30–02; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 82

RIN 0920–ZA00

Methods for Radiation Dose Reconstruction Under the Energy Employees Occupational Illness Compensation Program Act of 2000; Final Rule

AGENCY: Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: This rule implements select provisions of the Energy Employees Occupational Illness Compensation Program Act of 2000 (''EEOICPA'' or ''Act''). The Act requires the promulgation of methods, in the form of regulations, for estimating the dose levels of ionizing radiation incurred by workers in the performance of duty for nuclear weapons production programs of the Department of Energy and its predecessor agencies. These ''dose reconstruction'' methods will be applied by the National Institute for Occupational Safety and Health, which is responsible for producing the radiation dose estimates that the U.S. Department of Labor will use in adjudicating certain cancer claims under the Act.

DATES: *Effective Date:* This final rule is effective May 2, 2002.

Compliance Dates: Affected parties are required to comply with the information collection requirements in § 82.10 May 2, 2002.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, MS-R45, Cincinnati, OH 45226, Telephone 513–841–4498 (this is not a toll-free number). Information requests may also be submitted by e-mail to *OCAS@CDC.GOV.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Authority

The Energy Employees Occupational Illness Compensation Program Act of 2000 (''EEOICPA''), 42 U.S.C. 7384–7385 [1994, supp. 2001], established a compensation program to provide a lump sum payment of $150,000 and medical benefits as compensation to covered employees suffering from designated illnesses (i.e. cancer resulting from radiation exposure, chronic beryllium disease, or silicosis) incurred as a result of their exposures while in the performance of duty for the Department of Energy (''DOE'') and certain of its vendors, contractors, and subcontractors. This law also provided for payment of compensation to certain survivors of covered employees.

EEOICPA instructed the President to designate one or more federal agencies to carry out the compensation program. Pursuant to this statutory provision, the President issued Executive Order 13179, titled Providing Compensation to America's Nuclear Weapons Workers, which assigned primary responsibility for administering the compensation program to the Department of Labor (''DOL''). 65 FR 77487 (Dec. 7, 2000). DOL published an interim final rule governing DOL's administration of EEOICPA on May 25, 2001 (20 CFR parts 1 and 30).

The executive order directed the Department of Health and Human Services (''HHS'') to perform several technical and policymaking roles in support of the DOL program:

(1) HHS is to develop methods to estimate radiation doses (''dose reconstruction'') for certain individuals with cancer applying for benefits under the DOL program. These methods are the subject of this rule. HHS is also to apply these methods to conduct the program of dose reconstructions required by EEOICPA. This program is delegated to the National Institute for Occupational Safety and Health (''NIOSH''), an institute of the Centers for Disease Control and Prevention.

(2) HHS is also to develop guidelines to be used by DOL to assess the likelihood that an employee with cancer developed that cancer as a result of exposure to radiation in performing his or her duties at a DOE facility or atomic

weapons facility. These guidelines were published as a notice of proposed rulemaking under 42 CFR Part 81 on October 5, 2001, and are being published as a final rule simultaneously with this rule in this issue of the **Federal Register**.

(3) HHS is to staff the Advisory Board on Radiation and Worker Health and provide it with administrative and other necessary support services. The Board, a federal advisory committee, was appointed by the President in November 2001. It first convened on January 22, 2002, and is advising HHS in implementing its roles under EEOICPA described here.

(4) Finally, HHS is to develop and apply procedures for considering petitions by classes of employees at DOE or Atomic Weapons Employer facilities seeking to be added to the Special Exposure Cohort established under EEOICPA. Employees included in the Special Exposure Cohort who have a specified cancer and meet other conditions, as defined by EEOICPA and DOL regulations (20 CFR 30), qualify for compensation under EEOICPA. Proposed HHS procedures for considering Special Exposure Cohort petitions will be published soon in the **Federal Register**. HHS will obtain public comment and a review by the Advisory Board on Radiation and Worker Health before these procedures are made final and implemented.

As provided for under 42 U.S.C. 7384p, HHS is implementing its responsibilities with the assistance of NIOSH.

B. What Legal Requirements Are Specified by EEOICPA for Dose Reconstruction?

EEOICPA requires that HHS establish, by regulation, methods for arriving at reasonable estimates of the radiation doses incurred by covered employees in connection with claims seeking compensation for cancer, other than as members of the Special Exposure Cohort. 42 U.S.C. 7384n(d). These methods will be applied to estimate radiation doses for the following covered employees: (1) An employee who was not monitored for exposure to radiation at a DOE or Atomic Weapons Employer facility; (2) an employee who was monitored inadequately for exposure to radiation at such a facility; or (3) an employee whose records of exposure to radiation at such facility are missing or incomplete.

EEOICPA requires the Advisory Board on Radiation and Worker Health to independently review the methods established by this rule and to verify a reasonable sample of dose reconstructions established under these methods. The Advisory Board is a federal advisory committee established by the statute and appointed by the President which is advising HHS on its major responsibilities under EEOICPA.

EEOICPA requires that DOE provide HHS with relevant information on worker radiation exposures necessary for dose reconstructions and requires DOE to inform covered employees with cancer of the results of their dose reconstructions. 42 U.S.C. 7384n(e) and 7384q(c). NIOSH, which will be conducting the dose reconstructions, will inform covered employees and DOE of the results of these dose reconstructions.

Subject to provisions of the Privacy Act (5 U.S.C. 552(a)), HHS will also make available to researchers and the general public information on the assumptions, methodology, and data used in estimating radiation doses. 42 U.S.C. 7384n(e)(2).

Finally, HHS notes that EEOICPA does not authorize the establishment of new radiation protection standards through the promulgation of these methods, and these methods do not constitute such new standards.

C. What Is the Purpose of Dose Reconstruction?

Dose reconstructions are used to estimate the radiation doses to which individual workers or groups of workers have been exposed, particularly when radiation monitoring is unavailable, incomplete, or of poor quality. Originally dose reconstructions were conducted for research on the health effects of exposure to radiation. In recent decades, dose reconstruction has become an integral component of radiation illness compensation programs in the United States and internationally.

D. How Are Radiation Doses Reconstructed?

The procedures and level of effort involved in dose reconstructions depend in part on the quantity and quality of available dose monitoring information, the conditions under which radiation exposure arose, and the forms of radiation to which the individual was exposed. If individuals for whom dose estimates are needed were monitored using present day technology and received only external radiation doses, dose reconstruction could be very simple. It might only require summing the radiation doses recorded from radiation badges and adding estimated potential ''missed'' doses resulting from the limits of detection of monitoring badges.

Dose reconstruction can require extensive research and analysis. Such work is required if radiation doses were not monitored or there is uncertainty about the monitoring methods involved; if there was potential for internal doses through the ingestion, inhalation or absorption of radioactive materials; or if the processes and circumstances involved in the radiation exposures were complex. For the most complex dose reconstructions, research and analyses may include determining or assuming specific characteristics of the monitoring procedures; identifying events or processes that were unmonitored; identifying the types and quantities of radioactive materials involved; evaluating production processes and safety procedures employed; identifying the locations and activities of exposed persons; identifying comparable exposure circumstances for which data is available to make assumptions; and conducting a variety of complex analyses to interpret the data compiled or estimated.

E. How Is Dose Reconstruction Conducted in a Compensation Program?

An additional, critical factor affecting how doses are reconstructed is the amount of time available. For health research studies dose reconstructions may take from months to years to complete. In compensation programs, however, a balance must be struck between efficiency and precision. Section 7384d of EEOICPA specifically states that one of the purposes of the compensation program is to provide for ''timely'' compensation. As applied under EEOICPA, dose reconstruction must rely on information that can be developed on a timely basis and on carefully developed assumptions.

When conducting dose reconstruction for a compensation program, our primary concern will be to ensure the assumptions used to estimate doses are fair, consistent, and well grounded in the best available science. To address fairness, the Defense Threat Reduction Agency (''DTRA''), which conducts dose reconstructions for veterans and Department of Defense civilian personnel who participated in U.S. atmospheric nuclear testing and in the occupation forces of Hiroshima and Nagasaki, applies certain assumptions that err reasonably on the side of overestimating exposures (*see* 32 CFR part 218). These assumptions substitute for more detailed information that would be time-consuming and costly to develop. HHS will take an approach similar to that of DTRA by using reasonable, fair, and scientifically based

assumptions as substitutes for additional research and analysis to achieve an efficient dose reconstruction process.

F. How Will Dose Reconstruction Methods Under EEOICPA Differ From Dose Reconstruction for Veterans?

The major differences for the HHS methods for dose reconstructions arise from characteristics that distinguish the radiation exposure experiences of nuclear weapons production workers from those of veterans. Whereas veterans were primarily exposed to external sources of radiation over brief periods in acute doses, employees covered by EEOICPA frequently may have received both acute and chronic exposures to internal and external radiation over periods as long as three to four decades. Further, nuclear weapons production employees experienced more diverse exposures and circumstances of exposure, on an individual basis and as a group than did veterans. As a result, many HHS dose reconstructions will be more complex than those conducted by DTRA, making it necessary that HHS place a high premium on any efficiencies that can be achieved.

Addressing the need for efficiency, HHS is establishing a dose reconstruction process that limits the work performed in cases where it is evident the outcome of the compensation claim will be unaffected. HHS will rely on less detailed or precise estimates for claims for which compensation would clearly be due based on the more limited dose reconstruction, and for claims for which additional work clearly would not result in compensation. In the former case, if it is evident from limited dose reconstruction that the estimated cumulative dose is sufficient to qualify the claimant for compensation, no additional work will be performed. In the latter case, limited dose reconstructions will be conducted only for claims for which it is evident that further research and dose reconstruction will not produce a compensable level of radiation dose, because the use of worst-case assumptions does not produce a compensable level of radiation dose. In these latter cases, the decisive factors that result in NIOSH deciding to limit the dose reconstruction process will be clearly explained in the draft of the dose reconstruction results reported to the claimant under § 82.25, and in the dose reconstruction results reported to the claimant under § 82.26.

A second important aspect of the HHS dose reconstruction process is that it will involve interaction with the covered employee or survivor. NIOSH will use information provided by the claimant to evaluate the completeness and adequacy of dose information available, to locate additional exposure or dose-related information, and to estimate unmonitored doses.

G. How Will HHS Incorporate Scientific Methods Established by the Radiation Safety Scientific Community in Internal Dose Estimation Under EEOICPA?

The methods for calculating internal dose under this rule use current models published by the International Commission on Radiological Protection (ICRP). Specifically, at this time NIOSH will use the new ICRP respiratory tract model for assessing doses due to inhalation of radioactive particles. [1] In addition, NIOSH will use the new biokinetic models for the radionuclides contained in publications 56,[2] 67 [3] and 69 [4] in place of those described in previous ICRP publications. These models currently provide the most widely accepted methods for mathematically describing the uptake, transport and retention of radionuclides in the body.

H. What Elements Underlying the Dose Reconstruction Process Are Expected To Change With Scientific Progress?

ICRP periodically updates the models used to evaluate internal doses, based on new research on the metabolic properties of radioactive materials (radionuclides). These ICRP updates reflect the current state of scientific knowledge on the uptake, transport, and retention of radionuclides in the human body.

In addition, technological advances in the areas of retrospective detection of radiation exposure or radiation exposure and dose biomarkers (detectable changes in human tissues and/or physiologic processes resulting from radiation exposure) may make it possible to add new analyses to the dose reconstruction process in the future.

As described in §§ 82.30–82.33 of the rule, NIOSH will address the need to update the scientific elements underlying dose reconstructions in a process that involves review by the Advisory Board on Radiation and Worker Health and permits and facilitates input from the public.

II. Summary of Public Comments

On October 5, 2001, HHS promulgated an interim final rule issuing methods for conducting dose reconstructions under EEOICPA (42 CFR part 82; see 66 FR 50978). Public comments were solicited initially from October 5, 2001 to November 5, 2001. The public comment period was reopened subsequently from January 17, 2002, to January 23, 2002; from January 17, 2002, to February 6, 2002, for comments from the Advisory Board on Radiation and Worker Health; and from February 14, 2002, to March 1, 2002.

HHS received comments from 13 organizations and 23 individuals. Organizations commenting included several labor unions representing DOE workers, a community based organization, an administrative office of the University of California, several DOE contractors, and several federal agencies. A summary of these comments and HHS responses is provided below. These are organized by general topical area.

A. Purpose of the Rule

HHS received various comments regarding the purpose of the rule.

Several comments concerned the general issue of whether or not the rule includes sufficient technical detail. Several commenters recommended HHS specify the detailed assumptions and technical methods that might be used in a dose reconstruction. Another commenter supported retaining the general level of detail included in the interim rule. One commenter recommended the comment period on the rule remain open until the public has had opportunity to review the dose reconstruction technical procedures discussed in the interim final rule.

The approach of this rule is to establish the principles, general procedures, and general criteria by which the NIOSH dose reconstruction program will operate. Very specific details about the technical procedures that may be involved in a dose reconstruction are established in NIOSH implementation guides and will be available for public review as discussed in this rule. These detailed technical procedures were presented in draft form

[1] International Commission on Radiological Protection (ICRP). 1994. Human Respiratory Model for Radiological Protection. ICRP Publicatiaon 66, Annals of the ICRP 24(1–4). Elsevier Scientific Ltd., Oxford.

[2] International Commission on Radological Protection (ICRP). 1989. Age Dependent Doses to Members of the Public from Intakes of Radionuclides: Part 1. ICRP Publication 56, Annals of the ICRP 20(2). Pergamon Press, Oxford.

[3] International Commission on Radiological Protection (ICRP). 1993. Age Dependent Doses to Members of the Public from Intakes of Radionuclides: Part 2 ICRP Publication 67, Annals of the ICRP 23(⅔). Pergamon Press, Oxford.

[4] International Commission on Radiological Protection (ICRP). 1995. Age Dependent Doses to Members of the Public from Intakes of Radionuclides: Part 3: Ingestion Dose Coefficients. ICRP Publication 69, Annals of the ICRP 25(1). Elsevier Scientific Ltd., Oxford.

to the Advisory Board on Radiation and Worker Health on January 24 and February 13, 2002. Further detail will be established as standard operating procedures as procedural issues arise in performing dose reconstructions.

This approach to regulation is necessary because the level of possible detail is far too great to encompass in a reasonably comprehensible regulation. Many specific circumstances that might arise in dose reconstructions either cannot be anticipated with reasonable certainty or cannot be identified and addressed without causing a great delay in the initiation of the dose reconstruction program, seriously harming claimants already awaiting decisions on compensation. This approach is appropriate because the public is provided a clear explanation of the general approach of the dose reconstruction procedures and the principles and criteria that will guide implementation of these procedures. And the public will have the opportunity to review the procedures set forth in the NIOSH implementation guides as they are developed and at any time thereafter.

Several commenters requested HHS define what constitutes a ''reasonable estimate'' of the radiation doses incurred by an employee. EEOICPA requires the dose reconstruction program to arrive at ''reasonable estimates'' of these doses (42 U.S.C. 7384n(d)).

HHS interprets this term to mean estimates calculated using a substantial basis of fact and the application of science-based, logical assumptions to supplement or interpret the factual basis. As discussed in the interim final rule, assumptions applied by NIOSH will give the benefit of the doubt to claimants in cases of scientific or factual uncertainty or unknowns.

One commenter noted that the single purpose of dose reconstructions under EEOICPA is to support compensation decisions by DOL and recommended HHS clarify the limitations of the dose reconstruction findings arising from this circumstance.

As discussed above and in the interim final rule, NIOSH is applying methods designed to support compensation decisions by DOL that are fair and as timely as possible. As a consequence, many of the NIOSH dose reconstruction results are likely to differ substantially from those that would be produced under a scientific research protocol, when the principal object is to produce maximally complete and precise estimates. Under the methods promulgated in this rule and consistent with the intent of Congress, NIOSH will give the benefit of the doubt to claimants when there is uncertainty or unknowns concerning radiation exposures. This will tend to overestimate radiation doses for employees, except for those employees for whom immediately available records reveal doses sufficiently high to produce a compensable level of probability of causation. For these employees whose dose levels can be immediately determined to be compensable, NIOSH will tend to underestimate their total cumulative doses by abbreviating the dose reconstruction process. Further dose reconstruction for these latter claimants, however, would be unnecessary and harmful. It would prolong the adjudication process without benefit to the claimant (since the abbreviated dose reconstruction has already estimated a compensable level of radiation dose), and at the cost of unnecessarily delaying dose reconstructions for other claimants.

For the reasons discussed above, a dose reconstruction conducted by NIOSH will not always produce complete or best estimates of the actual doses received by an individual. HHS does not believe that the dose reconstruction results should be used for any purpose other than the probability of causation calculations required under EEOICPA.

B. Claimant Involvement

HHS received various comments concerning the involvement of claimants in the dose reconstruction process and other related claims processes.

Several commenters recommended that the claimant not be burdened with collecting the records needed for the dose reconstruction. Another commenter recommended that the claimant have an opportunity to contribute information for the dose reconstruction.

The former comments appear to stem from a misunderstanding of the role of claimant interviews in the dose reconstruction process. As outlined in the interim final rule and this final rule, DOE will provide the records needed for dose reconstruction directly to NIOSH in response to requests by NIOSH. The claimant is generally not burdened with collecting dosimetry and related data.

The purpose of the claimant interview is to capture any information or records available to the claimant that might not be initially identified by or available from DOE or AWEs; as well as information that would help NIOSH interpret DOE records, such as information on radiation dosimetry badge practices or placement of radiation area monitors or particulars of work practices; or information that might be missing from DOE records, such as radiation monitoring results, information connecting an employee with a radiation contamination incident, or medical records indicating the employee received medical treatment resulting from radiation exposure.

The contribution of information from claimants (and also coworkers when the claimant is a survivor of a covered employee) is entirely voluntary. It is intended to improve, when possible and necessary, the dose reconstruction record that can be established using DOE records and the records and results of research conducted at DOE or AWE facilities or research evaluating the health of DOE or AWE employees.

One commenter requested clarification of the interview options in cases when the claimant is a survivor.

As noted above, when the claimant is a survivor, NIOSH will interview the claimant and will also attempt to interview one or more co-workers of the employee. HHS recognizes that survivors frequently will not know much, if anything, about working conditions, work procedures, or dosimetry practices at DOE facilities, even when the survivor is the spouse of an employee. Interviews with co-workers are intended to supplement information available from the survivor.

One commenter recommended that when the federal compensation program of EEOICPA, administered by DOL, denies a cancer claim and the employee involved in the claim had a combination of radiation and chemical exposures, the federal government should itself submit a compensation claim on behalf of the claimant to the workers' compensation program in the state with jurisdiction. The commenter's intent is to reduce the burden on the claimant who has already filed for compensation once, under the federal EEOICPA compensation program.

The federal government does not have legal authority to file compensation claims with state workers' compensation programs on behalf of nuclear weapons employees. On the other hand, the federal government has established a program to assist DOE contractor employees in obtaining compensation from state workers' compensation programs for any illnesses that may have been caused by toxic exposures at DOE facilities, including cancers potentially caused by a combination of radiation and chemical exposures or either of these types of exposures individually. The DOE Office of Worker Advocacy is authorized to conduct this program under Part D of

EEOICPA. The program includes the establishment of physicians panels, appointed by HHS, to evaluate the work-relatedness of such illnesses and the establishment of agreements between DOE and individual states to facilitate the consideration of these compensation claims.

The public should note, however, that claimants under the federal EEOICPA compensation program are eligible to seek compensation from state workers' compensation programs regardless of the outcome of their federal claim. A decision by DOL to compensate a claimant under the federal program provides no guarantee, in and of itself, that a state compensation program will also compensate the claimant. These programs are legally and administratively independent, apart from any agreements that might be entered into by DOE and individual state workers' compensation programs.

One commenter recommended NIOSH re-analyze completed dose reconstructions without a request by the claimant when NIOSH obtains new data or information that could substantially change the findings of the completed dose reconstruction. This comment is relevant to two foreseeable circumstances: (1) When NIOSH discovers records or information on previously unidentified or possibly underestimated radiation exposures at DOE or AWE facilities; and (2) when NIOSH modifies the scientific elements underlying dose reconstructions, such as the biokinetic models used to estimate internal radiation doses.

HHS agrees with the comment and has added provisions under § 82.27 of this rule to authorize NIOSH to review completed dose reconstructions on its own initiative, upon obtaining new information or changing scientific elements underlying dose reconstructions. HHS has targeted the added provisions to circumstances in which use of the new information or scientific element could increase the levels of radiation doses previously estimated, since the purpose of these provisions is to provide new information to DOL on claims that were denied based on outdated information.

One commenter recommended that the federal government provide claimants with resources to obtain independent reviews of NIOSH dose reconstructions.

HHS will not fund claimants to obtain independent reviews of dose reconstructions. EEOICPA already provides for an independent review of the NIOSH dose reconstruction program by the Advisory Board on Radiation and Worker Health, funded by HHS. This review will be periodic and include a sample of completed dose reconstructions. NIOSH will also establish several levels of quality assurance procedures integral to the dose reconstruction process. The proposal for HHS to fund further independent reviews is largely duplicative of these current efforts and hence, unlikely to benefit claimants or further improve the NIOSH dose reconstruction program.

C. Basics of Dose Reconstruction

HHS received several comments addressing provisions on the basic approach of dose reconstructions described under § 82.2 of the interim final rule.

Several commenters were uncertain how to interpret the ''hierarchy of methods'' described under this section. The commenters were concerned that NIOSH might exclusively analyze monitoring data on individual workers, when such data are available, without taking under consideration other relevant data, such as area monitoring, information on monitoring practices and technology, or information on unrecorded exposures or missing records.

It is first important to note, this section provides only a general outline on the basic approach of dose reconstructions. It is intended to introduce readers to the elementary concepts of dose reconstruction, which is why it is included in the ''Introduction'' subpart of the rule. Section 82.10 and following sections provide detail on the specific procedures NIOSH must follow in conducting a dose reconstruction.

Second, the hierarchical use of dose reconstruction methods discussed in this section implicitly requires the consideration of data from various sources. The provision of this section which gives highest priority to individual monitoring data begins with the conditional statement: ''If found to be complete and adequate, individual worker monitoring data...are given the highest priority in assessing exposure.'' To evaluate whether individual monitoring data are complete and adequate, NIOSH may have to examine and consider the full scope of sources and types of data available and relevant, as described under the detailed procedural sections of the rule beginning with § 82.10. NIOSH will have to examine other sources and types of data to properly interpret primary data, even when they are complete and adequate, as explained in § 82.2.

One commenter recommended HHS explain in detail in this section how NIOSH would evaluate data adequacy.

As discussed above, this section is introductory and general. Section 82.15 of the rule explains in some detail how NIOSH will evaluate the completeness and adequacy of individual monitoring data. NIOSH has prepared implementation guides that provide additional detail, and will be preparing standard operating procedures as needed to address issues that arise as NIOSH conducts dose reconstructions. The implementation guides will be available to the public from the NIOSH addresses provided above and the standard operating procedures will also be made available as they are established.

Several commenters requested HHS clarify the meaning of the expression used in this section: ''reasonable and scientific assumptions.'' This section explains that dose reconstructions use such assumptions in establishing default values to supplement existing data on workplace radiation exposures. This expression is intended to mean assumptions that follow logically from scientific experience and a factual basis. For example, dosimetrists assume that a process operating at different times or in different places but involving the same source term used under comparable conditions, controls, and practices will produce comparable radiation exposure levels and characteristics.

One commenter suggested a substantive edit to the last sentence under § 82.2(a), which provides an example of a situation in which a dose reconstruction would employ a worst case assumption to substitute for lack of information on the solubility of an inhaled material. The commenter recommended that HHS clarify in this example that the worst case assumption would be reasonable. HHS has clarified this sentence accordingly. The sentence now reads: ''For example, if the solubility classification of an inhaled material cannot be determined, the dose reconstruction would use the classification that results in the largest dose to the organ or tissue relevant to the cancer and that is possible given existing knowledge of the material and process.''

D. Who Receives Dose Reconstructions?

HHS received various comments concerning who is eligible for dose reconstructions and the circumstances under which NIOSH would conduct a dose reconstruction.

Several commenters suggested there may be covered employees who require dose reconstructions who do not fit

within the three statutorily-prescribed groups specified under section 7384n(d)(1) of EEOICPA and reiterated under § 82.3 of this rule to be eligible for dose reconstructions. The commenters recommended the rule should include all individuals filing compensation claims for cancer under EEOICPA.

EEOICPA covers two groups of claims seeking compensation for cancer: claims seeking compensation under provisions of the Special Exposure Cohort and all others. Claims seeking compensation in the former group do not require dose reconstructions for DOL to adjudicate and hence DOL will not refer these claims to NIOSH for a dose reconstruction. Thus, the HHS rule should not be broadened to include all claims seeking compensation.

Several other commenters stated that EEOICPA did not require dose reconstructions for employees who were monitored and for whom DOE has complete dose records. One commenter indicated that DOL should be able to use the dose of record from DOE instead of obtaining a dose reconstruction from NIOSH when the dose of record is sufficiently high to qualify the claimant for compensation.

NIOSH is implicitly required by EEOICPA to evaluate the dose of record of every eligible claim, since without such an evaluation it could not be determined whether the monitoring data for the individual are complete and adequate. Moreover, the data provided in the dose of record from DOE are not in a form that can be used by DOL to calculate probability of causation. Nonetheless, HHS agrees that when the dose of record is itself very high, NIOSH should not expend resources on a dose reconstruction needlessly or cause unnecessary delay in DOL's adjudication of the claim. For this reason, the rule includes efficiency measures under § 82.10 to limit the extent of the dose reconstruction depending on the circumstances. In the example given by the commenter, if the dose of record was evidently high enough to qualify the claimant for compensation, NIOSH would greatly abbreviate its effort, so that the claimant is not unnecessarily delayed in awaiting DOL to determine probability of causation and complete adjudication of the claim.

One commenter questioned whether the definition of a ''covered employee'' under § 82.5 is sufficiently inclusive. HHS specified more narrowly than EEOICPA that a covered employee, for the purposes of the HHS rules, is a DOE or AWE employee for whom DOL has requested HHS to perform a dose reconstruction.

This distinction results practically from the separate responsibilities of DOL and HHS in implementing EEOICPA. DOL is solely responsible for initially reviewing each claim, evaluating whether the claim represents a covered employee with a covered illness, and determining whether or not the claim requires a dose reconstruction. The only claims DOL will forward to HHS for dose reconstructions are those for a cancer not covered by provisions of the Special Exposure Cohort. Hence, HHS retains its proposed definition in this rule to be clear that NIOSH will only conduct dose reconstructions under EEOICPA for the subset of claims submitted by DOL to HHS for dose reconstructions. This is intended to avoid the possible confusion and delay that would arise if claimants were to directly submit to NIOSH requests for dose reconstructions.

One commenter recommended a change to the definition given in this rule for Atomic Weapons Employer (AWE). The commenter recommended the definition include entities that ''handled'' material that emitted radiation and include entities that processed, produced, or handled radiation-emitting equipment as well as material.

The definition for AWE in the rule was established by Congress in EEOICPA. For a conclusive interpretation, the commenter should contact DOE, which is the only federal agency authorized to designate AWEs.

One commenter recommended that HHS explain which employees at DOE or AWE facilities are not covered by EEOICPA and hence not eligible for dose reconstructions. The commenter specified Department of Defense employees as an example.

As explained above, HHS does not determine whether an individual is a covered employee under EEOICPA. This is a responsibility of DOL. Potential claimants for individuals who worked at DOE or AWE facilities should consult with DOL to determine whether the individual might be a covered employee.

E. Establishing a Time Limit for Dose Reconstructions

One commenter recommended HHS consider establishing a time limit for dose reconstructions.

HHS is especially interested in ensuring that dose reconstructions are conducted on a timely basis, to allow the timely adjudication of claims by DOL. To this end, NIOSH is establishing performance standards for dose reconstructions that include time criteria for completion of dose reconstructions and for critical intermediate steps. And NIOSH is establishing capacity to conduct a high volume of dose reconstructions.

It would not be in the interests of claimants, however, to establish rigid time requirements for dose reconstructions. A variety of parameters will affect the speed with which a dose reconstruction can be completed; these are not controlled or determined by NIOSH. For example: the first dose reconstructions conducted for employees at a particular facility or operation within a facility are likely to take longer than subsequent dose reconstructions, since a substantial factual basis relevant to the subsequent dose reconstructions will be established by the initial dose reconstructions; some facilities will have better organized and more accessible records than other facilities, making dose reconstruction more efficient; individual claims will require dose reconstructions that differ in complexity, depending on the employment history, the adequacy and completeness of the records available, and the radiation dose levels indicated by the records initially available; and the overall dose reconstruction program will become more efficient over time, as experience and data accrue to NIOSH, reducing the data collection phase of subsequent dose reconstructions.

F. Use of Records and Information

HHS received a variety of comments concerning the use of records and information for dose reconstructions.

Several commenters disagreed with HHS in requiring under § 82.10(e) that for NIOSH to use information provided by the claimant, the information must be supported by ''substantial evidence,'' and not be ''refuted by other evidence.'' The commenters interpret the substantial evidence provision as placing the burden of proof on the claimant. They interpret the refutation provision as unfairly favoring information from DOE over information from the claimant.

The provision concerning substantial evidence, when considered completely, should not place an unreasonable burden of proof on the claimant. The provision explains a variety of parameters that NIOSH will evaluate in determining whether information provided by the claimant is supported by substantial evidence. NIOSH, rather than the claimant, has the burden of conducting this evaluation, and most of the parameters relate to information held by NIOSH, rather than supplied by the claimant. The claimant may be requested to provide medical records, if relevant. Likewise, the claimant may be

able to identify coworkers who could confirm certain information provided by the claimant.

The commenter did not indicate that any of the parameters NIOSH will consider, in evaluating information provided by the claimant, are unreasonable or unfair. Moreover, it would be irresponsible for NIOSH to make use of information provided by the claimant without considering its validity. In many cases, claimants and coworkers will be recalling procedures and conditions and incidents that occurred decades earlier.

Similarly, HHS finds it reasonable to omit the use of information provided by a claimant that is refuted by other, more persuasive evidence available to NIOSH. If, for example, NIOSH establishes the period when a certain process was undertaken at a facility, based on a complete administrative record (purchase orders, shipment logs, production figures, etc.), this record might refute a claimant's recollection that a different process operated during this period.

This provision does not, as suggested by the commenter, unfairly favor DOE information over that of the claimant. The dose reconstruction program established under this rule includes major elements to evaluate the adequacy and completeness of DOE or AWE records. A key purpose of NIOSH interviewing claimants and co-workers and making use of records from research and other sources, is specifically to support such an evaluation.

Several commenters recommended NIOSH determine the availability of records from DOE facilities independently of DOE, versus relying on certifications by DOE as provided for under § 82.10(h).

As discussed in the rule, NIOSH will be determining the availability of records from a variety of sources, including NIOSH-conducted and NIOSH-funded research, other researchers with experience at DOE facilities, and interviews with claimants and coworkers. Nonetheless, the DOE certifications are an important measure to assist NIOSH in ensuring it has employed as complete a record as possible in each dose reconstruction.

Several commenters recommended NIOSH should be required to make use of data from NIOSH records in a dose reconstruction, versus having the option to do so, as provided for under § 82.10 (a).

NIOSH should not be compelled to make use of records from sources other than DOE in all dose reconstructions. There will be many dose reconstructions for which the records provided by DOE will be preferable for use in the dose reconstruction. NIOSH must have the discretion to use records from whichever source will support the completion of the highest quality dose reconstructions and timely dose reconstructions under efficiency measures, when applied.

One commenter interpreted the text of § 82.10(a) to limit the relevant types of information NIOSH would seek from DOE. The commenter recommended that this text be expanded to explicitly include all types of records, such as information on contamination incidents and work restrictions.

HHS provides substantial detail under § 82.14 on the types of data NIOSH will use, as necessary, in dose reconstructions. The text addressed by the commenter is intended to be general and inclusive.

G. Claimant and Coworker Interviews

HHS received several comments concerning the claimant and coworker interviews covered under § 82.10 of the rule.

One commenter sought clarification about whom would be interviewed when the claimant is a survivor.

When the claimant is a survivor, the claimant and one or more coworkers of the deceased employee may be interviewed, as necessary and possible. The interviews of coworkers are intended to substitute for information that would have been available from the employee.

One commenter recommended that the claimant have multiple rounds of the closing interview, if the claimant provides additional information at these interviews that might be incorporated into the dose reconstruction.

NIOSH will continue the closing interview until it is complete. The use of the term ''interview'' (singular) in this rule, for both the initial and closing interviews, is intended to cover as many interview sessions as required. NIOSH anticipates that the initial interviews will often be conducted over more than one session, allowing the claimant or coworker to recall information or, in the case of ill and aged individuals, to rest and recover between sessions. When claimants provide new information or notify NIOSH of the intent to obtain new information in closing interviews, these too will require multiple sessions to conclude.

One commenter noted that the interviews will not meet the therapeutic or social counseling needs the claimant might require as a cancer patient.

HHS agrees with the commenter. The interviewers will be sensitive to the perspectives of claimants but they will not be trained as counselors or therapists. This is outside the scope of these interviews.

H. Evaluating Exposure Characteristics

HHS received one comment regarding § 82.10(i), which describes generally that NIOSH will characterize internal and external exposure environments for parameters known to influence dose, as necessary, in conducting the dose reconstruction. A parameter for external dose is the non-uniformity and geometry of the radiation exposure, which relates to the fact that the location of a radiation source in relation to the worker can affect the level of exposure recorded by their radiation monitoring badge. The commenter asks how NIOSH will assess this factor.

NIOSH will use process information available from DOE, an AWE, and/or the claimant or coworkers to locate the worker in relation to the radiation source. NIOSH will use this information, along with conversion factors published by the ICRP and the International Commission on Radiation Units and Measurements, to calculate the level of radiation dose received based on the level recorded by the radiation badge. More details on this procedure will be provided in the NIOSH Implementation Guide for External Dose Reconstruction under EEOICPA, which will be available through the internet or direct addresses for NIOSH provided above.

I. Use of ICRP Models

HHS received various comments concerning the use of ICRP models for calculating internal radiation doses.

Most of the comments concerned differences between the use of the current ICRP models under this rule and the use of older ICRP models applied in DOE and other U.S. radiation protection programs. Commenters indicated that some of the older ICRP models produce higher dose estimates than current models, whereas other older ICRP models produce lower dose estimates than the current models. One commenter asserted these differences extend from one to two orders of magnitude (*i.e.,* a difference of 10—100 times). Several commenters recommended that NIOSH use the dose of record, calculated using the older ICRP models, when these would produce a higher dose estimate. Another commenter recommended that NIOSH not diverge from the models used by DOE for radiation protection programs. Finally, one commenter recommended that NIOSH explain to claimants the difference between the doses estimated by NIOSH and the doses of record.

As explained in the interim final rule and above, NIOSH is using current ICRP models because they represent improvements in the science of internal and external radiation dosimetry compared to older ICRP models. It is true that in some cases the current models will reduce the dose calculated and in other cases they will increase the dose calculated, but the differences should typically be far less than stated by the commenter. In any event, the estimates are more accurate when based on the current ICRP models.

Moreover, it is not possible for NIOSH to use the dose of record from DOE, nor will it generally be possible to even compare the dose of record with the dose estimates produced by NIOSH. In general, the dose of record is not organ-specific, is not reported for the different forms of radiation required as an input for NIOSH-IREP, and applies to different time periods than the period from first exposure to the diagnosis of cancer, including 50 year committed doses, which are not useful for purposes of calculating probability of causation. These differences will be explained to the claimant in the final dose reconstruction report and during their closing interview.

Several commenters recommended that NIOSH not rely exclusively on ICRP models, but allow the use of individual-specific models when available data are adequate.

In rare individual cases the ICRP models will not be applicable, such as for workers with chronic emphysema, or who have undergone chelation therapy, or had their thyroids removed. Singular exposures might also fall outside the scope of ICRP models, such as a worker that inhaled metal tritides. In these cases, NIOSH will have to use alternate models or modify existing models. In all other cases, NIOSH will consistently apply the ICRP models, which are widely accepted and extensively peer-reviewed.

One commenter questioned how NIOSH will handle cases for which the cancer is in a tissue not covered by existing ICRP models.

In these cases, NIOSH will use the ICRP model that best approximates the model needed, while giving the benefit of the doubt to the claimant. For internal exposures, NIOSH will select the highest dose estimate from among the modeled organs or tissues that do not concentrate the radionuclide. This provision has been added to the rule under § 82.18(b).

One commenter questioned whether NIOSH intends to use original urine and fecal data and lung count data to recalculate the employee's dose.

As outlined in this rule, NIOSH will be using original source data from DOE. These procedures are explained in detail in the NIOSH implementation guides for dose reconstruction, available from NIOSH through the internet or directly from the addresses provided above.

One commenter recommended against using the ICRP weighting factors provided in Table 1 of § 82.10(j) of the interim rule, which can differ from the weighting factors used by DOE in its radiation protection program. Another commenter suggested NIOSH obtain a peer-review of these weighting factors. And a third suggested HHS remove Table 1 from the rule, since this would lock HHS into using these current ICRP weighting factors, some of which could change in future ICRP udpates.

As discussed above with respect to use of ICRP models, NIOSH is using current ICRP weighting factors because they represent the best, thoroughly peer-reviewed, science. HHS agrees with the recommendation to remove Table 1, so that NIOSH can use new weighting factors at such time as ICRP updates them, without requiring HHS to re-promulgate a section of this rule. This is consistent with the overall construction of this rule, which allows NIOSH to update underlying scientific elements through a public process that does not require rulemaking.

J. Use of Efficiency Measures

HHS received several comments addressing the use of efficiency measures under § 82.10k this rule to enable NIOSH to complete dose reconstructions efficiently and on a timely basis for claimants. These measures are discussed in the summary of rule below.

One commenter recommended against use of these measures out of concern that resulting dose reconstructions might provide the basis for appeals by claimants whose claims are denied. The same commenter was also concerned these dose reconstructions might cause difficulties if they were used as evidence in litigation between private parties.

It is highly likely some denied claimants will contest the results of their dose reconstructions, regardless of whether or not their doses were reconstructed using efficiency measures. DOL has established an administrative process for claimants to object to recommended decisions under 20 CFR Part 30. The public should recognize, however, that the use of efficiency measures in these cases means the claim has been adjudicated using dose levels estimated on a worst-case basis. In other words, the claim has been assigned dose estimates that are likely to be substantially higher than the doses actually incurred by the covered employee. This same understanding, which will be clearly explained in the NIOSH dose reconstruction report for these claims, will be important to any litigation that might arise between private parties. HHS does not believe that the dose reconstruction results should be used for any purpose other than the probability of causation calculations required under EEOICPA.

Several commenters recommended against NIOSH considering the level of probability of causation associated with dose information on claims, a recommendation which, if accepted, would effectively preclude NIOSH from applying any efficiency measures. One commenter indicated that consideration of probability of causation by NIOSH would detract from the credibility of NIOSH dose reconstructions. A second commenter reasoned it would be presumptive for NIOSH to evaluate probability of causation, when this is the role of DOL later in the adjudication process.

NIOSH will not consider probability of causation on a routine basis, only for claims that evidently involve very high or low doses, as explained in the interim rule and this final rule. As HHS has explained above, without the use of efficiency measures HHS cannot complete dose reconstructions on a timely basis, which would harm all claimants, whether or not their claims are accepted. Furthermore, for the claims in which efficiency measures will be applied, it would be disingenuous to suggest NIOSH does not recognize the implications for probability of causation of the high or low doses that are evident.

One commenter requested HHS define the meaning of the phrase under 82.10(k): ''extremely unlikely to produce a compensable level of radiation dose.'' This phrase is used in the provision allowing the use of worst-case assumptions as an efficiency measure only for claims involving uncompensably low doses of radiation.

Dose estimates sufficiently high to qualify a claimant for compensation definitively cannot be based on worst case assumptions employed as an efficiency measure to abbreviate research and analysis. Consequently, HHS has changed this phrase to be definitive. This provision now reads: ''Worst-case assumptions will be employed * * * to limit further research and analysis only for claims for which it is evident that further research and analysis will not produce a

compensable level of radiation dose (a dose producing a probability of causation of 50% or greater), because using worst-case assumptions it can be determined that the employee could not have incurred a compensable level of radiation dose.''

K. Types of Information To Be Used

HHS received various comments addressing the types of information to be used by NIOSH in dose reconstructions. These comments primarily address provisions under § 82.14 of the interim rule and this final rule.

Several commenters recommended NIOSH include additional items under several of the types of information listed in § 82.14. One of the commenters suggested NIOSH add an ''other'' option for each type of information, rather than specify each possibility.

HHS has added an appropriate option for other, unspecified examples of information that NIOSH might use, where needed. This will avoid the risk of omitting a type of information that has not been considered but might be relevant.

One commenter questioned how NIOSH would determine the radiation type using the summary radiation records produced by DOE.

NIOSH is obtaining and using primary data on radiation sources, exposures, and doses, rather than the summarized data reported to employees. In cases in which NIOSH cannot identify the type of radiation, NIOSH will assume the radiation is of a type consistent with existing information and which results in a higher probability of causation, compared to the alternatives.

One commenter recommended that NIOSH not assume that neutron exposures are chronic doses and that photon exposures are acute doses.

The methods under this rule do not include any presumption of chronic or acute doses based on the radiation type. Doses will be characterized as chronic or acute based on the information available. If, however, NIOSH does not have information that distinguishes between chronic and acute doses, NIOSH will assume the type of dose that would result in a higher probability of causation.

Several commenters recommended against HHS including medical screening x rays administered to nuclear weapons employees as a condition of employment. Similar comments were received on the HHS probability of causation notice of proposed rulemaking (42 CFR Part 81), as well. Commenters argue that the benefit of these exposures justifies their attendant risks, and therefore they should not contribute to the acceptance of a claim for compensation.

HHS will not exclude radiation exposures resulting from these medical screening x rays. The important factor in this decision is that the exposures were incurred ''in the performance of duty,'' as specified by EEOICPA. The employees were required to receive these x ray screenings and hence were exposed to radiation in the performance of duty.

One commenter questioned how NIOSH would account for the doses associated with x ray administrations that were unsuccessful and thus had to be repeated, resulting in multiple doses. Similarly, the commenter asked whether individual factors affecting the x-ray dose would be taken into account, such as the weight of the employee.

The rate of repeat exposures associated with unsuccessful administrations has been evaluated in the scientific literature. NIOSH will account for these rates in the uncertainty distribution for the medical x-ray dose. Generally, NIOSH will also use this approach to account for variation in individual factors affecting radiation dose. NIOSH will make use of information on individual factors when available and feasible, but expects such circumstances will be unusual.

One commenter suggested HHS consider including the doses from diagnostic x rays that employees received in the treatment of work-related injuries.

EEOICPA authorizes HHS to account only for radiation exposures incurred by an employee in the performance of duty. The intent of Congress was to provide compensation for cancers arising from the unique radiation exposures incurred by covered employees in the performance of duty for U.S. nuclear weapons programs. Radiation exposures associated with medical treatment of work injuries are not incurred in the performance of duty and are not unique to the experience of nuclear weapons employees.

Several commenters recommended NIOSH include radiation exposures to medical staff serving DOE or AWE facilities.

NIOSH will include all radiation exposures incurred by covered employees in the performance of duty.

Several commenters recommended NIOSH estimate non-covered radiation doses from community and personal exposures (e.g., sun, radon, diagnostic and therapeutic exposures in medical care). The commenters intended that DOL would adjust (reduce) probability of causation calculations to account for these non-covered exposures.

The risks associated with these community and non-occupational exposures are already accounted for in the risk models DOL will use to calculate probability of causation. These are inherent in the background rates for cancer. DOL will not have access to personal data or related adjustment factors for the risk models that would be required to account for individual variation with respect to these non-occupational radiation exposures.

One commenter indicated that some of the information, particularly process information, that may be required by NIOSH for dose reconstructions will require substantial labor for DOE and its contractors to provide. The commenter indicated that DOE has not funded its contractors to provide this information and, hence, questions whether such information will be made available.

HHS is aware that this program will make substantial informational demands on DOE and consequently on DOE contractors. NIOSH has experience obtaining information of types specified in the rule from DOE contractors for health studies on DOE populations. HHS, DOE, and DOE contractors are currently working together to collect records presently needed for dose reconstructions and to improve record and information collection procedures for dose reconstructions. The goal of the agencies is to establish procedures that are practical and efficient while ensuring NIOSH can complete high quality dose reconstructions on a timely basis.

L. Evaluating the Completeness and Adequacy of Records

HHS received several comments regarding the procedures by which NIOSH is evaluating the completeness and adequacy of records available for a dose reconstruction, under provisions of § 82.15.

One commenter recommended the rule address the problem of incomplete dose records.

This is one of the principal reasons for conducting a dose reconstruction. The interim final rule and this final rule directly address this issue under § 82.15. NIOSH is determining when dose records are incomplete through comparisons between records available from DOE or the AWE and information provided by the claimant, coworkers, and the variety of other sources available. Sections 82.2, 82.10, 82.16, and 82.17 generally address how NIOSH will conduct dose reconstructions making use of limited records and information.

Several commenters questioned how NIOSH would weigh potentially conflicting evidence from different sources.

NIOSH will conduct these evaluations on a case-by-case basis, evaluating the weight of the evidence from different sources. The NIOSH evaluation will be fully documented in the NIOSH dose reconstruction report provided to the claimant, DOL, and DOE. There are no strict criteria to be applied to this purpose. As § 82.10(e) states, NIOSH will accept claimant information supported by substantial evidence, unless ''refuted'' by other evidence, which in the case of conflicting evidence places the burden on other sources to refute the claimant's information.

For example, a claimant might assert involvement in a contamination incident that cannot be confirmed by DOE records addressing the incident. NIOSH might accept this assertion if it is consistent with work history information, claimant provided details about the incident, co-worker recollections, or other investigations of the incident (*e.g.,* during research). Evidence that certain DOE records are incomplete or inaccurate is likely to weigh against reliance on such records.

As NIOSH develops approaches to address conflicting evidence in dose reconstructions, NIOSH will document those that can be incorporated into standard operating procedures. NIOSH will make these available to the public through the NIOSH addresses provided above.

One commenter raised concerns about possible recall difficulties and bias of employees with respect to past exposure incidents and conditions.

It is well recognized from health, behavioral, and social research that there are substantial limitations and variation in the ability of people to accurately recall past events, and that these limitations generally increase with the time elapsed since the past event. However, all of the sources of information available to NIOSH in conducting dose reconstructions potentially involve substantial limitations. To conduct dose reconstructions, NIOSH will apply procedures available to it to mitigate these limitations to the extent possible. To improve the recall of employees, NIOSH will inform the employee of information available from employment and dosimetry records. NIOSH will also compare information obtained from the employee with other sources of information, such as coworkers or DOE records.

One commenter recommended that the rule require concurrence with NIOSH by DOE and its contractors when NIOSH finds that individual monitoring data from DOE records are either incomplete or inadequate. The commenter was concerned that the complex information available from DOE might be misinterpreted by NIOSH.

Under EEOICPA, NIOSH alone is authorized to determine which data to use in a dose reconstruction and how to interpret them. NIOSH will work closely with DOE and its contractors, however, to obtain the most useful and complete data available, which will ensure dose reconstructions are of the highest possible quality.

M. Remedying Limitations of Monitoring and Missed Dose

HHS received various comments regarding how NIOSH would remedy limitations of monitoring and missed dose, including unmonitored doses. These comments relate to provisions of the interim final rule and this final rule under §§ 82.16–82.18.

Several commenters recommended NIOSH use coworker external monitoring data for a similarly exposed worker whose records omit such information. One of the commenters recommended that NIOSH preferentially use coworker data over data from area monitoring.

The interim final rule and this final rule provide for NIOSH to use coworker data under §§ 82.16 and 82.17. Use of coworker data depends on its availability and the extent to which coworkers shared similar exposures. Nonetheless, NIOSH will review area monitoring data to evaluate the adequacy of the personal dosimetry.

Several commenters recommended NIOSH consider all relevant data, not only air sampling results, to estimate internal doses when biomonitoring data are unavailable. Another commenter indicated concern about the quality of early biomonitoring data.

HHS agrees with the comments and recognizes the limitations of early biomonitoring data, which can be addressed. HHS has revised § 82.18 to reflect the intent of NIOSH to consider all sources of relevant data to interpret or substitute for biomonitoring data.

Several commenters advised concerning § 82.16 that NIOSH cannot estimate missed dose by summing potential doses using the limit of detection of monitoring equipment. Missed dose is a term applied to the dose that is potentially undetected because of the detection limits of monitoring technology and procedures.

Indeed, as indicated in this section, NIOSH will not sum potential doses to estimate missed dose; only to estimate the upper limit of missed dose. Missed dose will be evaluated statistically using standard dose reconstruction procedures, as detailed in the NIOSH implementation guide for reconstructing external doses.

The commenters also remarked that NIOSH should consider the reason for missing records and generally the problem of noncompliance with official DOE procedures.

These issues are important but separate, concerning the completeness and adequacy of records, and are addressed under § 82.15.

One commenter indicated concern that NIOSH might indiscriminately assign missed doses to employees, even if their work did not require them to enter areas of potential radiation exposure. Similarly, the commenter was concerned that NIOSH might not understand that certain employees were not monitored because they did not have potential radiation exposure.

NIOSH is experienced in dose reconstruction and fully understands the variety of conditions of work at DOE and other nuclear weapons production facilities. NIOSH will evaluate the potential for radiation exposure in the work activities and locations of the employee and will not indiscriminately estimate missed dose for periods when monitored workers lack detected exposures, or indiscriminately estimate doses for unmonitored workers. Dose reconstructions will be based on the conditions and radiation levels of the areas in which the individual worked.

One commenter recommended HHS identify radioactive contamination surveys as a source of information that may be used to supplement or substitute for individual monitoring data, under § 82.17.

HHS has revised this section of the rule to explicitly include these surveys, as intended.

N. Accounting for Uncertainty

HHS received several comments concerning issues of statistical uncertainty and its ramifications for the dose reconstructions.

Several commenters recommended NIOSH characterize uncertainty over the entire period of interest rather than estimating uncertainty parameters for each annual dose estimate. They reasoned that this would reduce uncertainty.

NIOSH–IREP requires annual dose estimates with individual uncertainty parameters to calculate probability of causation. Since NIOSH–IREP uses

Monte-Carlo techniques to combine uncertainties, the propagated uncertainty based on annual uncertainties will be less than if the annual uncertainties were simply added. This issue will be addressed in detail in the NIOSH implementation guides.

Several commenters indicated the dose reconstructions would be unfairly biased in favor of internally exposed workers. The commenters assumed there would be more uncertainty associated with internal doses.

The extent and characteristics of uncertainty will differ on a case-by-case basis, depending on the completeness and adequacy of records and monitoring. Uncertainty will not always be greater for internal dose estimates. It is true, however, that a substantial degree of uncertainty is inherent to internal dose calculations. This is a scientific limitation without any remedy.

Several commenters questioned at what point uncertainty associated with a dose reconstruction would be too great to be considered ''reasonable.'' EEOICPA requires ''reasonable estimates'' of radiation doses. 42 U.S.C. 7384n(d)(1).

As explained above, HHS interprets this term to mean estimates calculated using a substantial basis of fact and the application of science-based, logical assumptions to supplement or interpret the factual basis. Claimants will in no case be harmed by any level of uncertainty involved in their claims, since assumptions applied by NIOSH will consistently give the benefit of the doubt to claimants. Hence, the level of uncertainty is not an issue whenever there is a sufficient factual basis to establish the radiation source type and quantity and a basic understanding of the process in which the employee worked. This information can provide the basis for a reasonable estimate. When this basic information is lacking, however, then NIOSH may not be able to establish reasonable estimates. As discussed below, when NIOSH lacks sufficient information to complete dose reconstructions, claimants will be informed of procedures for petitioning HHS under the proposed Special Exposure Cohort procedures, which will be published soon in the **Federal Register**.

O. Completing and Reporting Dose Reconstructions

HHS received several comments concerning the procedures by which NIOSH completes and reports dose reconstructions. These address §§ 82.25 and 82.26 of the interim final rule and this final rule.

One commenter recommended HHS establish a procedure for claimants who refuse to certify that they have completed providing information for the dose reconstruction, by refusing to sign the form OCAS–1. NIOSH requires this certification to close the record and conclude the dose reconstruction.

The interim final rule and this final rule include a provision under § 82.10(n) to address these circumstances. Claimants will have at least 60 days to sign OCAS–1. After the 60 days and after notifying the claimant or the authorized representative, NIOSH will administratively close the dose reconstruction for a claimant who, without good cause as described below, steadfastly refuses to sign OCAS–1. This provision will not be applied, however, while a claimant is attempting to obtain additional information relevant to the claim, notified NIOSH of this fact, and clearly specified the information being sought.

One commenter recommended that NIOSH clarify that internal doses will only be estimated for the primary cancer sites covered in the claim.

HHS agrees with this comment and has clarified the relevant provision under § 82.26(b)(2).

Several commenters recommended NIOSH not report separate doses for different radiation types, dose patterns, and other parameters, because these specifics may not be meaningful to claimants.

NIOSH must provide this detailed information to DOL to calculate probability of causation. HHS believes this information will also be meaningful to claimants, since it is the precise basis for their probability of causation determination by DOL. NIOSH will explain this information to the claimant in the final dose reconstruction report and the closing interview, as provided for under §§ 82.10 and 82.26 of the interim final rule and this final rule.

One commenter requested that HHS define the term: ''as necessary,'' used under § 82.26(b)(3) with respect to specifying uncertainty distributions associated with each dose estimated. The term is used in this provision because uncertainty distributions will not be applied to all doses estimated. Doses estimated using worst-case assumptions will not involve uncertainty.

Several commenters questioned the basis for NIOSH notifying claimants of the results of its dose reconstructions on behalf of DOE, as indicated in the interim final rule. EEOICPA includes a requirement that DOE inform employees of the results of dose reconstructions under EEOICPA. 42 U.S.C. 7384n(e)

HHS has proposed to DOE that it would inform claimants of dose reconstruction results on behalf of DOE to avoid duplication of effort and an unnecessary expenditure of federal resources. This arrangement can be established by agreement between the two federal agencies and would fulfill the statutory requirement. DOE may decide, however, to reserve this authority to itself and inform its employees independently of NIOSH. HHS has omitted the term ''on behalf of DOE'' in this final rule to allow DOE to reserve this authority to itself.

P. Reviews of Dose Reconstructions or Dose Reconstruction Methods

HHS received several comments concerning the review of NIOSH dose reconstructions.

One commenter recommended HHS describe the review process at NIOSH, as provided for under § 82.27, in greater detail.

The rule includes additional provisions describing that reviews can be initiated by NIOSH as well, as discussed above. HHS has also added provisions to this section to clarify that NIOSH will report on the review to the claimant, DOL, and DOE, describing the basis for the review, the methods applied and the results. However, HHS has not specified the details of review processes. These are likely to vary substantially, depending on the basis for the review and the issues that must be addressed. Review processes are likely to vary from simple, in which a NIOSH staff person or contractor makes identified technical or factual corrections, to extensive, requiring previously uninvolved NIOSH employees, contractor staff, or independent experts to collect additional data and re-conduct elements of a dose reconstruction. Standard operating procedures for different types of reviews will be established as needed, and made available to the public. In every case, however, it will be in the agency's interest to conduct an appropriate and credible review, since the review will be examined by DOL in order to exercise its discretion concerning whether the claim should be reopened.

One commenter requested clarification of the review rights of DOL with respect to NIOSH dose reconstructions. Specifically, the commenter appeared to seek further explanation of the provision under § 82.27(a) of the interim final rule and this final rule, which reads as follows: ''(2) although the methodology

established by HHS under this Part is binding on DOL, DOL may determine that arguments concerning the *application* [emphasis added] of this methodology should be considered by NIOSH.''

This provision sets forth DOL's regulatory description of the scope of the review performed by DOL in considering objections to recommended decisions. Further clarification of that provision should come from DOL.

One commenter recommended that NIOSH provide the draft dose reconstruction report to DOE for its review, prior to concluding the dose reconstruction. The commenter indicated that the familiarity of DOE with its own records makes it uniquely able to review the use of its data in the dose reconstruction.

Under EEOICPA, Congress and the President specifically intended that the role of DOE in dose reconstructions be limited to providing records and information, and that an agency in a separate federal department conduct the dose reconstructions. The intent was to ensure that the agency conducting the dose reconstructions would have no actual or perceived interest in their outcomes. HHS has not authorized DOE to review NIOSH dose reconstructions because such a measure would conflict with this intent. The public should also be assured that NIOSH, which has the lead federal role in health research on DOE employees, is highly expert on DOE operations, records, and dosimetry practices.

One commenter recommended this rule specify the percentage of NIOSH dose reconstructions to be reviewed by the Advisory Board on Radiation and Worker Health. A second commenter recommended this rule specify the procedures to be applied by the Board in their review.

As described above under the discussion of statutory provisions related to this rule, EEOICPA requires the Board to conduct an independent review of a sample of NIOSH dose reconstructions. 42 U.S.C. 7384n(d). Since this review is specified to be independent, the Board, rather than HHS, must determine the procedures for the Board's review of NIOSH dose reconstructions. Moreover, this level of autonomy is important for the credibility of the review.

One commenter recommended NIOSH obtain peer review of the detailed dose reconstruction methods used under this rule but not specified in this rule. These methods are described in the NIOSH implementation guides for dose reconstructions and will be further specified as NIOSH develops standard operating procedures, as needed.

NIOSH is obtaining peer review of specific implementation procedures for dose reconstructions by the Advisory Board on Radiation and Worker Health, which is authorized under EEOICPA to review these methods. 42 U.S.C. 7384n(d). In addition, NIOSH will obtain reviews from independent subject matter experts as necessary, and may also seek reviews periodically by other standing scientific bodies, such as the National Academy of Science.

Q. When Information Is Inadequate To Complete a Dose Reconstruction

HHS received several comments concerning NIOSH actions when it cannot complete a dose reconstruction due to inadequate data, as provided for under § 82.12 of this rule.

Several commenters requested HHS to define the circumstances under which information would be inadequate to complete a dose reconstruction. One of the commenters recommended HHS establish a ''checklist'' of potential informational sources that would serve as standardized criteria for determining whether information is adequate to complete a dose reconstruction.

HHS does not expect this situation to arise frequently. In some cases, limited information about the radiation source term (type and quantity of radioactive material) and the process in which it was used, without any individual monitoring records, will be sufficient to complete a dose reconstruction, particularly when the potential level of radiation that was emitted is extremely low. In these cases, NIOSH can make use of worst case assumptions to fully account for the highest possible radiation doses that might have been incurred.

Simplifying assumptions become more difficult to apply, however, when the potential level of radiation exposure for an individual ranges greatly, particularly when they range from low levels to potentially compensable levels (levels that produce a probability of causation of 50% and above). In these circumstances, the ability of NIOSH to complete the dose reconstruction depends on the extent and quality of information available to substitute for monitoring data. This can be readily defined on a case-by-case basis but not using rigid criteria; the potential circumstances are not readily foreseeable. As explained in the interim final rule and in this final rule, when NIOSH cannot complete a dose reconstruction, the basis for this result will be clearly explained in a report to the claimant, DOL, and DOE.

When NIOSH cannot complete a dose reconstruction, one commenter recommended HHS automatically provide any necessary forms required by the claimant to file a petition for addition of a class of employees to the Special Exposure Cohort. A second commenter recommended HHS file the petition on behalf of the employee.

HHS agrees with the proposal to supply the claimant with information needed to file a petition with HHS, and has included this as a new provision in the final rule. HHS will not, however, file a petition to HHS on behalf of the claimant. EEOICPA requires that a petition be filed by a class of employees. 42 U.S.C. 7384q.

R. Definitions of Terms

One commenter recommended HHS provide a more specific definition in the rule for the term ''uncertainty distribution.''

This definition is intended to be general. Various forms of uncertainty distributions are relevant to the definition, including unique, unspecifiable forms derived from Monte Carlo simulations.

S. Special Exposure Cohort

HHS received several comments that provide recommendations, criteria, or concerns related to adding members to the *Special Exposure Cohort* established under EEOICPA. These comments fall outside the scope of this rule and address related but separate procedures to be established by HHS.

As discussed above, HHS is proposing procedures by which it will consider petitions by classes of employees at DOE or AWE facilities to be added to the cohort, with the advice of the Advisory Board on Radiation and Worker Health. These procedures will be published soon in the **Federal Register**. The proposed HHS procedures and their accompanying explanation will address the comments received and directly solicit additional public comments, which HHS will fully consider in establishing final procedures.

III. Review and Recommendations of the Advisory Board on Radiation and Worker Health

HHS requested the Advisory Board on Radiation and Worker Health to review these HHS methods of dose reconstruction. The Board reviewed the methods during public meetings on January 22–23 and February 13–14, 2002. In preparation for the meetings, the Board members individually reviewed the interim final rule as well as the HHS notice of proposed

rulemaking proposing guidelines for determining probability of causation (42 CFR Part 81), which will be applied by DOL using the radiation doses estimated under these methods. The members also reviewed public comments on these rules. In addition, NIOSH staff members gave formal presentations on the HHS rules, implementation procedures, and related issues during the Board meetings. The transcripts and minutes of these meetings are included in the NIOSH docket for this rule and are available to the public.

All of the Board members participated in the review of these guidelines and they unanimously concurred in establishing the Board findings and recommendations. The Board provided general findings addressing the general questions for public comment HHS identified in the notice for proposed rulemaking. The Board also provided recommendations addressing details of the rule. The findings and recommendations are provided below, together with responses by HHS to the recommendations:

A. General Comments of the Board Responding to HHS Questions

''Interim proposed rule 42 CFR, part 82, makes appropriate use of current science in reconstruction of radiation dose scenarios to the extent practicable. The Board recognizes that if the efficient and expeditious consideration of claims is to be made, absolute precision is not possible. The methods proposed are intended to result in dose estimates favorable to the claimants and are appropriate to the occupational illness compensation program envisioned by the Energy Employees Occupational Illness Compensation Program Act (EEOICPA).

The process for involving the claimant is fair and provides multiple opportunities for interaction with the involved agencies. Indeed, in cases where acceptably dependable personal exposure data do not exist, NIOSH will utilize other sources of information as the basis for dose reconstruction. This approach unavoidably introduces additional uncertainty into the calculation of dose. However, we view the proposed methods as being appropriate for the available information. There will be circumstances where NIOSH will not be able to estimate the dose with sufficient accuracy. Those circumstances need to be clarified in the implementation of the regulation and in the Board's review of NIOSH's dose reconstruction work. Groups whose exposure cannot be estimated with sufficient accuracy may be candidates for the Special Exposure Cohort.''

B. Specific Comments and Recommendations of the Board:

Board Comment #1: ''The Advisory Board recommends that Section K of Part III, 'background' concerning changes to scientific elements underlying the dose reconstruction process be moved to the main body of the Rule so as to formalize the updating process including the role of the Advisory Board. The rule does an admirable job of providing an objective process for conducting dose reconstruction. However, the assessment of the adequacy of the exposure information will involve professional judgment, and thus, some subjectivity. The Board plays an important role through its review of such decisions on dose reconstructions, and that role needs to be included in the main body of the Rule. Although this role is included in the Preamble 'Background' (Section III, Subsection K) of 42 CFR Part 82, making it part of the rule itself would formalize the change process, significantly strengthening assurance that review by the Advisory Board of proposed changes will occur.''

HHS Response: HHS accepts this recommendation by the Board. Accordingly, as discussed above in response to public comments on peer-review, HHS has moved provisions for peer-review involving the Board from the preamble of the notice of proposed rulemaking into the body of the rule itself. These provisions can be found at 42 CFR 82.30–82.33 (Subpart E).

Board Comment #2: ''The Advisory Board requests that the term 'validated', as used in Section 82.10(j), be either defined or clarified.''

HHS Response: HHS has clarified this section by eliminating any reference to validation, which has a specific meaning in scientific work which was not intended. The point of the text, which is now revised, was to indicate that NIOSH would determine that these data are assigned correctly and complete, before developing the exposure matrix discussed under the provision.

Board Comment #3: ''The Advisory Board recommends that NIOSH clarify 82.10(m), (n), and (o) in regards to the steps and timeline required for the claimants, or authorized representatives of the claimants, to provide information to NIOSH and to sign or submit form OCAS–1. NIOSH should ensure that the claimants, or authorized representatives of the claimants, have adequate time to obtain and submit additional information to NIOSH.''

HHS Response: HHS has revised §§ 82.10(l), (m), and (n) to clarify the procedure and time for the claimants or their authorized representatives to provide final information and sign and submit form OCAS–1, permitting NIOSH to complete the dose reconstruction. The new provisions clarify that NIOSH may allow claimants time to obtain and provide NIOSH with additional relevant information, after NIOSH has provided to the claimant OCAS–1, and before the 60 day deadline to submit OCAS–1 is applied. The public should also note that claimants will not receive OCAS–1 for signature before they have completed their initial interview session or sessions, received a summary of their initial interview for their review and revisions, and received for review a draft dose reconstruction report.

Board Comment #4: ''The Advisory Board recommends that § 82.18, concerning the use of ICRP models, be clarified so as to clearly indicate that NIOSH intends to use current ICRP models.''

HHS Response: HHS has clarified its intent to use current ICRP models in the text of this section, consistent with discussion of this provision in the preamble of the interim final rule and this final rule.

Board Comment #5: ''The Advisory Board recommends that the last sentence in § 82.28 (b), be clarified in regards to the coverage of the Privacy Act.''

HHS Response: The Board was concerned that the rule does not clearly indicate that certain researchers who follow specific procedures under the Privacy Act to protect confidential information may have access to names of claimants, covered employees, and other confidential information. HHS has clarified the text of this provision accordingly.

IV. Summary of the Rule

Congress, in enacting EEOICPA, created a new Energy Employees Occupational Illness Compensation Program to ensure an efficient, uniform, and adequate compensation system for certain employees. Under Executive Order 13179, the President assigned primary responsibility for administering the program to DOL. The President assigned various technical responsibilities for policymaking and assistance to HHS. Included among these is promulgation of this rule to establish methods NIOSH will apply to conduct dose reconstructions for covered employees seeking compensation for cancer, other than as members of the Special Exposure Cohort

seeking compensation for a specified cancer. NIOSH dose reconstructions will be used by DOL to estimate the probability that the cancers of these covered employees were related to radiation exposures at covered facilities.

Introduction

Sections 82.0 and 82.1 briefly describe how these regulations relate to DOL authorities under EEOICPA and the assignment of authority for these regulations to HHS. In § 82.2, HHS provides a general introduction to dose reconstruction and describes the hierarchy of information to be relied upon for dose reconstructions. This hierarchy gives preference to individual radiation monitoring data, if complete and adequate, and provides for use of information on the workplace environment and radiation exposures for interpretation and as a secondary source of data, and provides for use of reasonable and scientific assumptions in lieu of certain data when the workplace environment cannot be fully characterized. HHS believes this approach would give due weight to the potentially most precise data, but would take into account the limitations of such data and its availability.

Section 82.3 summarizes the specific provisions of EEOICPA directing HHS in the development of this regulation and NIOSH in the conduct of dose reconstructions under this regulation. Section 82.4 describes how DOL will use the results of NIOSH dose reconstructions for the adjudication of claims.

Definitions

Section 82.5 defines the principal terms used in this part. It includes terms specifically defined in EEOICPA that, for the convenience of the reader of this part, are repeated in this section. It clarifies the definition of radiation. Section 3621(16) of EEOICPA defines radiation as ionizing radiation in the form of alpha or beta particles, neutrons, gamma rays, or accelerated ions or subatomic particles from accelerator machines. The rule elaborates upon this definition, specifically including x rays, protons and other particles capable of producing ions in the body, which are components of ionizing radiation exposures experienced by nuclear weapons production workers. In addition, for clarity the definition in this rule explicitly excludes non-ionizing forms of radiation, such as radio-frequency radiation and microwaves.

The definition of EEOICPA has been revised to reflect the codification of the Act in the United States Code.

Dose Reconstruction Process

Section 82.10 provides an overview of the major elements of the dose reconstruction process that NIOSH will implement under EEOICPA. It describes the steps in the process, the sources and types of information that will be collected and analyzed, the role of the claimants in developing a factual basis for dose reconstruction, the types of analyses, and criteria that will direct NIOSH to ensure dose reconstructions produce reasonable dose estimates and serve claimants efficiently.

NIOSH will obtain available monitoring data and information on the workplace environment and practices from DOE and other sources. NIOSH will interview the claimant to obtain information and to report to the claimant on dose reconstruction results and the methods and data used to produce the results. NIOSH will take measures to produce results as efficiently as possible, so that adjudication of the claim by DOL can be resumed and completed in a timely fashion. These measures include limiting the dose reconstruction process to use less detailed or precise estimates for claims for which it is evident that further research and analysis will not affect the outcome of the claim.

For example, under these regulations, if it is evident from the record of external radiation dose alone that an employee incurred a sufficiently high level of dose to have the claim accepted by DOL for compensation (a dose that would result in a probability of causation of 50% or higher), NIOSH would conclude the process without continuing with time consuming research and analysis to estimate internal dose. Instead, NIOSH would immediately report the limited dose estimate, based on external dose only, to the claimant and DOL, along with an explanation of the reason for limiting the dose reconstruction process.

Similarly, if, for example, records and information establish that an employee incurred radiation doses evidently below a level that could result in compensation, NIOSH would substitute worst-case assumptions for additional research and analysis, to complete and report on the dose reconstruction without delay.

This approach will provide more timely compensation for claims for which it is evident the claimant will qualify for compensation, and more timely results and adjudication for claims for which it is evident further research and analysis will not produce a compensable level of radiation dose.

Section 82.10(j) has been revised, as indicated above in the discussion of public comments, to remove Table 1—Radiation Weighting Factors from the rule. Instead, this section simply indicates NIOSH will use current ICRP weighting factors. Inclusion of this table in the rule would require HHS to re-promulgate this section of the rule and the table as these weighting factors are updated by ICRP.

Sections 82.10(l), (m), and (n) have been revised, as indicated above in the discussion of recommendations by the Advisory Board on Radiation and Worker Health, to clarify the opportunity for the claimant to provide additional information to NIOSH after NIOSH has provided the claimant with a draft dose reconstruction report. The revisions also clarify the application of a 60 day deadline for the claimant to certify that they have completed providing information, such that NIOSH can conclude the dose reconstruction.

Section 82.11 defines the subset of claimants under EEOICPA for whom NIOSH will conduct dose reconstructions. NIOSH will attempt to conduct dose reconstructions for all claims forwarded to NIOSH from DOL. This includes all covered employees seeking compensation for cancer, other than as members of the Special Exposure Cohort seeking compensation for a specified cancer, as determined by DOL.

Section 82.12 describes NIOSH procedures for notifying any claimants for whom a dose reconstruction cannot be completed because of insufficient information to reasonably estimate the dose potentially incurred by the covered employee. NIOSH will notify the claimant and DOL that a dose reconstruction cannot be completed and describe the basis for this finding. In these cases, the claimant would have the opportunity to seek administrative review of this result after DOL produces a recommended decision to deny the claim, based on the report from NIOSH that there is insufficient evidence to complete a dose reconstruction. For a claim in which the employee has a specified cancer, the claimant might still be eligible for compensation under EEOICPA. Classes of covered employees have the option to petition HHS to be added to the Special Exposure Cohort. NIOSH will provide claimants for whom it cannot complete a dose reconstruction any information and forms provided by HHS for classes of employees to petition HHS. HHS is establishing procedures to consider such petitions, as required under Section 7384q of EEOICPA and Section 2(b) of E.O. 13179. Proposed

procedures will be published soon in the **Federal Register**.

Sections 82.13 and 82.14 describe in detail the sources and examples of the types of information NIOSH will use in dose reconstructions. DOE and claimants will be the primary sources of information. Information types include: subject and employment information, worker monitoring data, monitoring program data, workplace monitoring data, workplace characterization data, and process descriptions for each work location. The actual use of this wide range of information will be determined for each claim individually, based on the types of information available and necessary. HHS has revised these sections in response to public comments discussed above to ensure the types of information that might be used in dose reconstructions under this rule include any possibilities HHS has not specified.

Sections 82.15–82.17 describe how NIOSH will evaluate the completeness and adequacy of monitoring data and how NIOSH would remedy limitations, applying the general approach described in § 82.2 and making use of the data sources and types described in §§ 82.13 and 82.14. NIOSH will evaluate the completeness and adequacy of monitoring data by various means, such as evaluating associated information on the workplace environment and practices, evaluating the monitoring technology, and evaluating other sources of information. NIOSH will remedy data limitations using established dose reconstruction practices, such as interpolating from recorded doses to estimate unrecorded doses, and substituting monitoring data from comparably exposed workers.

Sections 82.18–82.19 describe how NIOSH will address salient technical issues of calculating internal dose and taking into account uncertainty with respect to dose information. Internal dose is the radiation dose received by radioactive materials taken into the body, such as by inhalation or ingestion. It is important because it accumulates year after year, increasing the risk of certain cancers over time. NIOSH will use current ICRP models for calculating internal dose and accompany dose estimates with uncertainty distributions. DOL will use these distributions with appropriate statistical methods to take into account uncertainty about the dose when calculating probability of causation for a claim.

As discussed in response to public comments above, HHS has added new language to § 82.18 to specify how NIOSH will select from among existing ICRP models to calculate internal dose for a cancer site that has not been addressed by ICRP.

Reporting and Review of Dose Reconstruction Results

Sections 82.25 and 82.26 describe in detail NIOSH procedures for reporting the results of dose reconstructions to claimants and DOL, specifying the timing, content, and form of the dose reconstruction reports.

Section 82.27 describes how and when claimants can obtain reviews of NIOSH dose reconstructions. NIOSH will review dose reconstructions upon request by DOL under DOL procedures for claimants seeking review of dose reconstructions. These procedures also allow for DOL to request reviews of dose reconstruction upon its own initiative; for example, to request review of previously completed dose reconstructions to reflect updated scientific methods.

As discussed above in response to public comments, HHS has revised this section to allow NIOSH to review completed dose reconstructions on its own initiative, in response to new information or scientific updates that could substantially increase the radiation doses NIOSH had estimated. HHS also revised this section to clarify that NIOSH will report to claimants, DOL, and DOE on NIOSH reviews of completed dose reconstructions conducted under this section.

Updating the Scientific Elements Underlying Dose Reconstructions

Section 82.30–82.33 describe the procedures NIOSH will follow to update the scientific elements underlying NIOSH dose reconstructions to maintain a dose reconstruction program that is reasonably current with progress in science. An example of such an update would be the incorporation of a newly published ICRP model for estimating internal dose. Updates may also be recommended by the public at any time.

The Advisory Board on Radiation and Worker Health will consider all proposals for updates in its public meetings, and the public will have an opportunity to comment on the proposals. To facilitate public participation, NIOSH will periodically publish a notice in the **Federal Register** informing the public of proposed updates, as well as notifying the public of proposed updates to be considered at upcoming meetings of the Advisory Board. NIOSH will also publish a notice in the **Federal Register** notifying the public of the completion of updates. In the notice, NIOSH will address relevant public comments and recommendations from the Advisory Board.

V. Significant Regulatory Action (Executive Order 12866)

This rule is being treated as a ''significant regulatory action'' within the meaning of Executive Order (E.O.) 12866 because it raises novel or legal policy issues arising out of the legal mandate established by EEOICPA. The rule is designed to establish practical methods, grounded in current science, to fairly and efficiently assist claimants and support DOL in the adjudication of applicable claims seeking compensation for cancer under EEOICPA. NIOSH will apply the methods to produce reasonable, scientifically supported estimates of the radiation doses incurred by covered employees subject to the claims, as permitted by available data and information. The financial cost to the federal government of producing these estimates is expected to be several thousand dollars per claim, on average.

The rule carefully explains the manner in which the regulatory action is consistent with the mandate for this action under section 3623(d) of EEOICPA and implements the detailed requirements concerning this action under this section of EEOICPA. The rule does not interfere with State, local, and tribal governments in the exercise of their governmental functions.

The rule is not considered economically significant, as defined in section 3(f)(1) of the Executive Order 12866. It has a subordinate role in the adjudication of claims under EEOICPA, serving as one element of an adjudication process administered by DOL under 20 CFR Parts 1 and 30. DOL has determined that its rule fulfills the requirements of Executive Order 12866 and provides estimates of the aggregate cost of benefits and administrative expenses of implementing EEOICPA under its rule (see FR 28948, May 25, 2001). OMB has reviewed this rule for consistency with the President's priorities and the principles set forth in E.O. 12866.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires each agency to consider the potential impact of its regulations on small entities including small businesses, small governmental units, and small not-for-profit organizations. We certify that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. This rule affects only DOL, DOE, HHS, and some individuals filing compensation claims under EEOICPA. Therefore, a regulatory

flexibility analysis as provided for under RFA is not required.

VII. What Are the Paperwork and Other Information Collection Requirements (Subject to the Paperwork Reduction Act) Imposed Under This Rule?

Under the Paperwork Reduction Act of 1995, a Federal agency shall not conduct or sponsor a collection of information from ten or more persons other than Federal employees unless the agency has submitted a Standard Form 83, Clearance Request, and Notice of Action, to the Director of the Office of Management and Budget (OMB), and the Director has approved the proposed collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The Paperwork Reduction Act is applicable to the data collection aspects of this rule.

NIOSH has obtained clearance from OMB to collect data under EEOICPA.

In performance of its dose reconstruction responsibilities under the Act, NIOSH will interview claimants individually and provide them with the opportunity, through a structured interview, to assist NIOSH in documenting the work history of the employee (characterizing the actual work tasks performed), identifying incidents that may have resulted in undocumented radiation exposures, characterizing radiation protection and monitoring practices, and identifying co-workers, radiation protection management and staff, line managers, and other witnesses, if NIOSH determines this is necessary, to confirm undocumented information. In this process, NIOSH will use a computer assisted telephone interview (CATI) system, which will allow interviews to be conducted more efficiently and quickly than would be the case with a paper-based interview instrument.

NIOSH will use the data collected in this process to complete an individual dose reconstruction that accounts for radiation dose, including unmonitored or inadequately monitored dose, incurred by the employee in the performance of duty for DOE nuclear weapons production programs. After dose reconstruction, NIOSH will provide a draft of the dose reconstruction report to the claimant and perform a brief follow-up interview with the claimant to explain the results and to allow the claimant to confirm or question the record NIOSH has compiled. This will also be the final opportunity for the claimant to supplement the dose reconstruction record.

At the conclusion of the dose reconstruction process, the claimant will be requested to submit to NIOSH a form (OCAS–1) to confirm that the claimant has completed providing information to NIOSH for the dose reconstruction. The form will notify the claimant that signing the form allows NIOSH to provide a final dose reconstruction report to DOL and closes the record on data to be used for the dose reconstruction. DOL will use data from the dose reconstruction report to determine the probability that the cancer(s) of the covered employee may have been caused by radiation doses incurred in the performance of duty at a DOE or AWE facility.

There will be no cost to respondents for this data collection.

VIII. Small Business Regulatory Enforcement Fairness Act

As required by Congress under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), the Department will report to Congress promulgation of this rule prior to its effective date. The report will state that the Department has concluded that this rule is not a ''major rule'' because it is not likely to result in an annual effect on the economy of $100 million or more. However, this rule has a subordinate role in the adjudication of claims under EEOICPA, serving as one element of an adjudication process administered by DOL under 20 CFR parts 1 and 30. DOL has determined that its rule is a ''major rule'' because it will likely result in an annual effect on the economy of $100 million or more.

IX. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*) directs agencies to assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector, ''other than to the extent that such regulations incorporate requirements specifically set forth in law.'' For purposes of the Unfunded Mandates Reform Act, this rule does not include any Federal mandate that may result in increased annual expenditures in excess of $100 million by State, local or tribal governments in the aggregate, or by the private sector.

X. Executive Order 12988 (Civil Justice)

This rule has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform and will not unduly burden the Federal court system. Dose reconstruction may be an element in reviews of DOL adverse decisions in the United States District Courts pursuant to the Administrative Procedure Act. However, DOL has attempted to minimize that burden by providing claimants an opportunity to seek administrative review of adverse decisions, including those involving dose reconstruction. This rule provides a clear legal standard for HHS and DOL to apply regarding dose reconstruction. This rule has been reviewed carefully to eliminate drafting errors and ambiguities.

XI. Executive Order 13132 (Federalism)

The Department has reviewed this rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' The rule does not ''have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

XII. Executive Order 13045 (Protection of Children From Environmental, Health Risks and Safety Risks)

In accordance with Executive Order 13045, HHS has evaluated the environmental health and safety effects of this rule on children. The agency has determined that the rule will not affect children.

XIII. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)

In accordance with Executive Order 13211, HHS has evaluated the effects of this rule on energy supply, distribution or use, and has determined that this rule is not likely to have a significant adverse effect on them.

XIV. Effective Date and Information Collection Approval

The Secretary has determined, pursuant to 5 U.S.C. 553(d)(3), that there is good cause for this rule to be effective immediately to avoid undue hardship on and facilitate payment to eligible claimants.

The Office of Management and Budget (OMB) approved these information collection requirements on October 30, 2001, and assigned control number 0920–0530.

List of Subjects in 42 CFR Part 82

Cancer, Dose reconstruction, Government employees, Occupational safety and health, Nuclear materials,

Radiation protection, Radioactive materials, Workers' compensation.

Text of the Rule

For the reasons discussed in the preamble, the Department of Health and Human Services revises 42 CFR part 82 to read as follows:

PART 82—METHODS FOR CONDUCTING DOSE RECONSTRUCTION UNDER THE ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM ACT OF 2000

Subpart A—Introduction

Sec.
82.0 Background Information on this part.
82.1 What is the purpose of this part?
82.2 What are the basics of dose reconstruction?
82.3 What are the requirements for dose reconstruction under EEOICPA?
82.4 How will DOL use the results of the NIOSH dose reconstructions?

Subpart B—Definitions

82.5 Definition of terms used in this part.

Subpart C—Dose Reconstruction Process

82.10 Overview of the dose reconstruction process.
82.11 For which claims under EEOICPA will NIOSH conduct a dose reconstruction?
82.12 Will it be possible to conduct dose reconstructions for all claims?
82.13 What sources of information may be used for dose reconstructions?
82.14 What types of information could be used in dose reconstructions?
82.15 How will NIOSH evaluate the completeness and adequacy of individual monitoring data?
82.16 How will NIOSH add to monitoring data to remedy limitations of individual monitoring and missed dose?
82.17 What types of information could be used to supplement or substitute for individual monitoring data?
82.18 How will NIOSH calculate internal dose to the primary cancer site(s)?
82.19 How will NIOSH address uncertainty about dose levels?

Subpart D—Reporting and Review of Dose Reconstruction Results

82.25 When will NIOSH report dose reconstruction results, and to whom?
82.26 How will NIOSH report dose reconstruction results?
82.27 How can claimants obtain reviews of their NIOSH dose reconstruction results by NIOSH?
82.28 Who can review NIOSH dose reconstruction files on individual claimants?

Subpart E—Updating Scientific Elements Underlying Dose Reconstructions

82.30 How will NIOSH inform the public of any plans to change scientific elements underlying the dose reconstruction process to maintain methods reasonably current with scientific progress?
82.31 How can the public recommend changes to scientific elements underlying the dose reconstruction process?
82.32 How will NIOSH make changes in scientific elements underlying the dose reconstruction process, based on scientific progress?
82.33 How will NIOSH inform the public of changes to the scientific elements underlying the dose reconstruction process?

Authority: 42 U.S.C. 7384n(d) and (e); E.O. 13179, 65 FR 77487, 3 CFR, 2000 Comp., p. 321.

Subpart A—Introduction

§ 82.0 Background information on this part.

The Energy Employees Occupational Illness Compensation Program Act (EEOICPA), 42 U.S.C. 7384–7385 [1994, supp. 2001], provides for the payment of compensation benefits to covered employees and, where applicable, survivors of such employees, of the United States Department of Energy (''DOE''), its predecessor agencies and certain of its contractors and subcontractors. Among the types of illnesses for which compensation may be provided are cancers. There are two categories of covered employees with cancer under EEOICPA for whom compensation may be provided. The regulations that follow under this part apply only to the category of employees described under paragraph (a) of this section.

(a) One category is employees with cancer for whom a dose reconstruction must be conducted, as required under 20 CFR 30.115.

(b) The second category is members of the Special Exposure Cohort seeking compensation for a specified cancer, as defined under EEOICPA. The U.S. Department of Labor (DOL) which has primary authority for implementing EEOICPA, has promulgated regulations at 20 CFR 30.210 and 30.213 that identify current members of the Special Exposure Cohort and requirements for compensation. Pursuant to section 3626 of EEOICPA, the Secretary of HHS is authorized to add additional classes of employees to the Special Exposure Cohort.

§ 82.1 What is the purpose of this part?

The purpose of this part is to provide methods for determining a reasonable estimate of the radiation dose received by a covered employee with cancer under EEOICPA, through the completion of a dose reconstruction. These methods will be applied by the National Institute for Occupational Safety and Health (NIOSH) in a dose reconstruction program serving claimants under EEOICPA, as identified under § 82.0.

§ 82.2 What are the basics of dose reconstruction?

The basic principle of dose reconstruction is to characterize the radiation environments to which workers were exposed and to then place each worker in time and space within this exposure environment. Then methods are applied to translate exposure to radiation into quantified radiation doses at the specific organs or tissues relevant to the types of cancer occurring among the workers. A hierarchy of methods is used in a dose reconstruction, depending on the nature of the exposure conditions and the type, quality, and completeness of data available to characterize the environment.

(a) If found to be complete and adequate, individual worker monitoring data, such as dosimeter readings and bioassay sample results, are given the highest priority in assessing exposure. These monitoring data are interpreted using additional data characterizing the workplace radiation exposures. If radiation exposures in the workplace environment cannot be fully characterized based on available data, default values based on reasonable and scientific assumptions may be used as substitutes. For dose reconstructions conducted in occupational illness compensation programs, this practice may include use of assumptions that represent the worst case conditions. For example, if the solubility classification of an inhaled material can not be determined, the dose reconstruction would use the classification that results in the largest dose to the organ or tissue relevant to the cancer and that is possible given existing knowledge of the material and process.

(b) If individual monitoring data are not available or adequate, dose reconstructions may use monitoring results for groups of workers with comparable activities and relationships to the radiation environment. Alternatively, workplace area monitoring data may be used to estimate the dose. As with individual worker monitoring data, workplace exposure characteristics are used in combination with workplace monitoring data to estimate dose.

(c) If neither adequate worker nor workplace monitoring data are available, the dose reconstruction may rely substantially on process description information to analytically develop an exposure model. For internal exposures,

this model includes such factors as the quantity and composition of the radioactive substance (the source term), the chemical form, particle size distribution, the level of containment, and the likelihood of dispersion.

§ 82.3 What Are the Requirements for Dose Reconstruction Under EEOICPA?

(a) Dose reconstructions are to be conducted for the following covered employees with cancer seeking compensation under EEOICPA: An employee who was not monitored for exposure to radiation at DOE or Atomic Weapons Employer (AWE) facilities; an employee who was monitored inadequately for exposure to radiation at such facilities; or an employee whose records of exposure to radiation at such facility are missing or incomplete. Technical limitations of radiation monitoring technology and procedures will require HHS to evaluate each employee's recorded dose. In most, if not all cases, monitoring limitations will result in possibly undetected or unrecorded doses, which are estimated using commonly practiced dose reconstruction methods and would have to be added to the dose record.

(b) Section 7384(n)(e) of EEOICPA requires the reporting of radiation dose information resulting from dose reconstructions to the covered employees for whom claims are being adjudicated. DOE is specifically charged with this responsibility but the Department of Health and Human Services (HHS), which will be producing the dose reconstruction information, will report its findings directly to the claimant, as well as to DOL and DOE. HHS will also make available to researchers and the general public information on the assumptions, methodology, and data used in estimating radiation doses, as required by EEOICPA.

§ 82.4 How Will DOL Use the Results of the NIOSH Dose Reconstructions?

Under 42 CFR part 81, DOL will apply dose reconstruction results together with information on cancer diagnosis and other personal information provided to DOL by the claimant to calculate an estimated probability of causation. This estimate is the probability that the cancer of the covered employee was caused by radiation exposure at a covered facility of DOE or an Atomic Weapons Employer (AWE).

Subpart B—Definitions

§ 82.5 Definition of terms used in this part.

(a) *Atomic weapons employer* (AWE) means any entity, other than the United States, that:

(1) processed or produced, for use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining and milling; and,

(2) is designated by the Secretary of Energy as an atomic weapons employer for purposes of EEOICPA.

(b) *Bioassay* means the determination of the kinds, quantities, or concentrations, and in some cases, locations of radioactive material in the human body, whether by direct measurement or by analysis, and evaluation of radioactive material excreted or eliminated by the body.

(c) *Claimant* means the individual who has filed with the Department of Labor for compensation under EEOICPA.

(d) *Covered employee* means, for the purposes of this part, an individual who is or was an employee of DOE, a DOE contractor or subcontractor, or an atomic weapons employer, and for whom DOL has requested HHS to perform a dose reconstruction.

(e) *Covered facility* means any building, structure, or premises, including the grounds upon which such building, structure, or premise is located:

(1) In which operations are, or have been, conducted by, or on behalf of, the DOE (except for buildings, structures, premises, grounds, or operations covered by Executive Order 12344, dated February 1, 1982, pertaining to the Naval Nuclear Propulsion Program); and,

(2) With regard to which the DOE has or had:

(i) A proprietary interest; or,

(ii) Entered into a contract with an entity to provide management and operation, management and integration, environmental remediation services, construction, or maintenance services; or

(3) A facility owned by an entity designated by the Secretary of Energy as an atomic weapons employer for purposes of EEOICPA that is or was used to process or produce, for use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining or milling.

(f) *DOE* means the U.S. Department of Energy, and includes predecessor agencies of DOE, including the Manhattan Engineering District.

(g) *DOL* means the U.S. Department of Labor.

(h) *EEOICPA* means the Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. 7384–7385 [1994, supp. 2001].

(i) *Equivalent dose* is the absorbed dose in a tissue multiplied by a radiation weighting factor to account for differences in the effectiveness of the radiation in inducing cancer.

(j) *External dose* means that portion of the equivalent dose that is received from radiation sources outside of the body.

(k) *Internal dose* means that portion of the equivalent dose that is received from radioactive materials taken into the body.

(l) *NIOSH* means the National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

(m) *Primary cancer* means a cancer defined by the original body site at which the cancer was incurred, prior to any spread (metastasis) resulting in tumors at other sites in the body.

(n) *Probability of causation* means the probability or likelihood that a cancer was caused by radiation exposure incurred by a covered employee in the performance of duty. In statistical terms, it is the cancer risk attributable to radiation exposure divided by the sum of the baseline cancer risk (the risk to the general population) plus the cancer risk attributable to the radiation exposure. This concept is further explained under 42 CFR part 81, which provides guidelines by which DOL will determine probability of causation under EEOICPA.

(o) *Radiation* means ionizing radiation, including alpha particles, beta particles, gamma rays, x rays, neutrons, protons and other particles capable of producing ions in the body. For purposes of this rule, radiation does not include sources of non-ionizing radiation such as radio-frequency radiation, microwaves, visible light, and infrared or ultraviolet light radiation.

(p) *Specified cancer* is a term defined in Section 3621(17) of EEOICPA and 20 CFR 30.5(dd) that specifies types of cancer that, pursuant to 20 CFR part 30, may qualify a member of the Special Exposure Cohort for compensation. It includes leukemia (other than chronic lymphocytic leukemia), multiple myeloma, non-Hodgkin's lymphoma, and cancers of the lung (other than carcinoma in situ diagnosed at autopsy), thyroid, male breast, female breast, esophagus, stomach, pharynx, small intestine, pancreas, bile ducts, gall bladder, salivary gland, urinary bladder, brain, colon, ovary, liver (not associated

with cirrhosis or hepatitis), and bone. Pursuant to section 2403 of Public Law 107–20, this definition will include renal cancer effective October 1, 2001.

(q) *Uncertainty distribution* is a statistical term meaning a range of discrete or continuous values arrayed around a central estimate, where each value is assigned a probability of being correct.

(r) *Worst-case assumption* is a term used to describe a type of assumption used in certain instances for certain dose reconstructions conducted under this rule. It assigns the highest reasonably possible value, based on reliable science, documented experience, and relevant data, to a radiation dose of a covered employee.

Subpart C—Dose Reconstruction Process

§ 82.10 Overview of the dose reconstruction process.

(a) Upon receipt of a claims package from the Department of Labor, as provided under 20 CFR part 30, NIOSH will request from DOE records on radiation dose monitoring and radiation exposures associated with the employment history of the covered employee. Additionally, NIOSH may compile data, and information from NIOSH records that may contribute to the dose reconstruction. For each dose reconstruction, NIOSH will include records relevant to internal and external exposures to ionizing radiation, including exposures from medical screening x rays that were required as a condition of employment.

(b) NIOSH will evaluate the initial radiation exposure record compiled to: Reconcile the exposure record with the reported employment history, as necessary; complete preliminary calculations of dose, based upon this initial record, and prepare to consult with the claimant. Any discrepancies in the employment history information will be reconciled with the assistance of DOE, as necessary.

(c) NIOSH will interview the claimant. The interview may be conducted in one or more sessions. The purpose of the interview is to:

(1) Explain the dose reconstruction process;

(2) Confirm elements of the employment history transmitted to NIOSH by DOL;

(3) Identify any relevant information on employment history that may have been omitted;

(4) Confirm or supplement monitoring information included in the initial radiation exposure record;

(5) Develop detailed information on work tasks, production processes, radiologic protection and monitoring practices, and incidents that may have resulted in undocumented radiation exposures, as necessary;

(6) Identify co-workers and other witnesses with information relevant to the radiation exposures of the covered worker to supplement or confirm information on work experiences, as necessary.

(d) NIOSH will provide a report to the claimant summarizing the findings of the interview, titled: ''NIOSH Claimant Interview under EEOICPA.'' The report will also notify the claimant of the opportunity to contact NIOSH if necessary, by a specified date, to make any written corrections or additions to information provided by the claimant during the interview process.

(e) Information provided by the claimant will be accepted and used for dose reconstruction, providing it is reasonable, supported by substantial evidence, and is not refuted by other evidence. In assessing whether the information provided by the claimant is supported by substantial evidence, NIOSH will consider:

(1) Consistency of the information with other information in the possession of NIOSH, from radiation safety programs, research, medical screening programs, labor union documents, worksite investigations, dose reconstructions conducted by NIOSH under EEOICPA, or other reports relating to the circumstances at issue;

(2) Consistency of the information with medical records provided by the claimant;

(3) Consistency of the information with practices or exposures demonstrated by the dose reconstruction record developed for the claimant; and,

(4) Confirmation of information by co-workers or other witnesses.

(f) NIOSH will seek to confirm information provided by the claimant through review of available records and records requested from DOE.

(g) As necessary, NIOSH will request additional records from DOE to characterize processes and tasks potentially involving radiation exposure for which dose and exposure monitoring data is incomplete or insufficient for dose reconstruction.

(h) NIOSH will review the adequacy of monitoring data and completeness of records provided by DOE. NIOSH will request certification from DOE that record searches requested by NIOSH have been completed.

(i) As necessary, NIOSH will characterize the internal and external exposure environments for parameters known to influence the dose. For internal exposures, examples of these parameters include the mode of intake, the composition of the source term (i.e., the radionuclide type and quantity), the particle size distribution and the absorption type. When it is not possible to characterize these parameters, NIOSH may use default values, when they can be established reasonably, fairly, and based on relevant science. For external exposures, the radiation type (gamma, x-ray, neutron, beta, or other charged particle) and radiation energy spectrum will be evaluated. When possible, the effect of non-uniformity and geometry of the radiation exposure will be assessed.

(j) For individual monitoring records that are incomplete, NIOSH may assign doses using techniques discussed in § 82.16. Once the resulting data set is complete, NIOSH will construct an occupational exposure matrix, using the general hierarchical approach discussed in § 82.2. This matrix will contain the estimated annual equivalent dose(s) to the relevant organ(s) or tissue(s), for the period from the initial date of potential exposure at a covered facility until the date the cancer was diagnosed. The equivalent dose(s) will be calculated using the current, standard radiation weighting factors from the International Commission on Radiological Protection. [1]

(k) At any point during steps of dose reconstruction described in paragraphs (f) through (j) of this section, NIOSH may determine that sufficient research and analysis has been conducted to complete the dose reconstruction. Research and analysis will be determined sufficient if one of the following three conditions is met:

(1) From acquired experience, it is evident the estimated cumulative dose is sufficient to qualify the claimant for compensation (*i.e.,* the dose produces a probability of causation of 50% or greater);

(2) Dose is determined using worst-case assumptions related to radiation exposure and intake, to substitute for further research and analyses; or,

(3) Research and analysis indicated under steps described in paragraphs (f)–(j) of this section have been completed. Worst-case assumptions will be employed under condition 2 to limit further research and analysis only for claims for which it is evident that further research and analysis will not produce a compensable level of radiation dose (a dose producing a probability of causation of 50% or

[1] The current weighting factors of the International Commission on Radiological Protection are provided in ICRP 60: ''1990 Recommendations of the International Commission on Radiological Protection.'' Ann. ICRP 21 (1–3):6.

greater), because using worst-case assumptions it can be determined that the employee could not have incurred a compensable level of radiation dose. For all claims in which worst-case assumptions are employed under condition 2, the reasoning that resulted in the determination to limit further research and analysis will be clearly described in the draft of the dose reconstruction results reported to the claimant under § 82.25 and in the dose reconstruction results reported to the claimant under § 82.26.

(l) After providing the claimant with a copy of a draft of the dose reconstruction report to be provided to DOL, NIOSH will conduct a closing interview with the claimant to review the dose reconstruction results and the basis upon which the results were calculated. This will be the final opportunity during the dose reconstruction process for the claimant to provide additional relevant information that may affect the dose reconstruction. The closing interview may require multiple sessions, if the claimant requires time to obtain and provide additional information, and to allow NIOSH time to integrate the new information into a new draft of the dose reconstruction report. NIOSH will determine whether to grant requests for time to provide additional information, based on whether the requests are reasonable and the claimant is actively seeking the information specified.

(m) Subject to any additional information provided by the claimant and revision of the draft dose reconstruction report under § 82.10(l), the claimant is required to return form OCAS–1 to NIOSH, certifying that the claimant has completed providing information and that the record for dose reconstruction should be closed. Upon receipt of the form, NIOSH will forward a final dose reconstruction report to DOL, DOE, and to the claimant.

(n) NIOSH will not forward the dose reconstruction report to DOL for adjudication without receipt of form OCAS–1 signed by the claimant or a representative of the claimant authorized pursuant to 20 CFR 30.600. If the claimant or the authorized representative of the claimant fails to sign and return form OCAS–1 within 60 days, or 60 days following the claimant's final provision of additional information and receipt of a revised draft dose reconstruction report under § 82.10 (l), whichever occurs last, after notifying the claimant or the authorized representative, NIOSH may administratively close the dose reconstruction and notify DOL of this action. Upon receiving this notification by NIOSH, DOL may administratively close the claim.

(o) Once actions under § 82.10 (m) are completed, the record for dose reconstruction shall be closed unless reopened at the request of DOL under 20 CFR part 30.

§ 82.11 For which claims under EEOICPA will NIOSH conduct a dose reconstruction?

NIOSH will conduct a dose reconstruction for each claim determined by DOL to be a claim for a covered employee with cancer under DOL regulations at 20 CFR 30.210(b), subject to the limitation and exception noted in § 82.12. Claims for covered employees who are members of the Special Exposure Cohort seeking compensation for a specified cancer, as determined by DOL under 20 CFR 30.210(a), do not require and will not receive a dose reconstruction under this rule.

§ 82.12 Will it be possible to conduct dose reconstructions for all claims?

It is uncertain whether adequate information of the types outlined under § 82.14 will be available to complete a dose reconstruction for every claim eligible under § 82.11.

(a) NIOSH will notify in writing any claimants for whom a dose reconstruction cannot be completed once that determination is made, as well as in the closing interview provided for under § 82.10(l).

(b) Notification will describe the basis for finding a dose reconstruction cannot be completed, including the following:

(1) A summary of the information obtained from DOE and other sources; and, (2) a summary of necessary information found to be unavailable from DOE and other sources.

(c) NIOSH will notify DOL and DOE when it is unable to complete a dose reconstruction for the claimant. This will result in DOL producing a recommended decision to deny the claim, since DOL cannot determine probability of causation without a dose estimate produced by NIOSH under this rule.

(d) A claimant for whom a dose reconstruction cannot be completed, as indicated under this section, may have recourse to seek compensation under provisions of the Special Exposure Cohort (see 20 CFR part 30). Pursuant to section 7384q of EEOICPA, the Secretary of HHS is authorized to add classes of employees to the Special Exposure Cohort. NIOSH will provide the claimant with any information and forms that HHS provides to classes of employees seeking to petition to be added to the Special Exposure Cohort.

§ 82.13 What sources of information may be used for dose reconstructions?

NIOSH will use the following sources of information for dose reconstructions, as necessary:

(a) DOE and its contractors, including Atomic Weapons Employers and the former worker medical screening program;

(b) NIOSH and other records from health research on DOE worker populations;

(c) Interviews and records provided by claimants;

(d) Co-workers of covered employees, or others with information relevant to the covered employee's exposure, that the claimant identified during the initial interview with NIOSH;

(e) Labor union records from unions representing employees at covered facilities of DOE or AWEs; and,

(f) Any other relevant information.

§ 82.14 What types of information could be used in dose reconstructions?

NIOSH will obtain the types of information described in this section for dose reconstructions, as necessary and available:

(a) *Subject and employment information*, including:

(1) Gender;

(2) Date of birth; and,

(3) DOE and/or AWE employment history, including: job title held by year, and work location(s): including site names(s), building numbers(s), technical area(s), and duration of relevant employment or tasks.

(b) *Worker monitoring data*, including:

(1) External dosimetry data, including external dosimeter readings (film badge, TLD, neutron dosimeters); and,

(2) Pocket ionization chamber data.

(c) *Internal dosimetry data*, including:

(1) Urinalysis results;

(2) Fecal sample results;

(3) In Vivo measurement results;

(4) Incident investigation reports;

(5) Breath radon and/or thoron results;

(6) Nasal smear results;

(7) External contamination measurements; and

(8) Other measurement results applicable to internal dosimetry.

(d) *Monitoring program data*, including:

(1) Analytical methods used for bioassay analyses;

(2) Performance characteristics of dosimeters for different radiation types;

(3) Historical detection limits for bioassay samples and dosimeter badges;

(4) Bioassay sample and dosimeter collection/exchange frequencies;

(5) Documentation of record keeping practices used to record data and/or administratively assign dose; and,

(6) Other information to characterize the monitoring program procedures and evaluate monitoring results.

(e) *Workplace monitoring data*, including:

(1) Surface contamination surveys;

(2) General area air sampling results;

(3) Breathing zone air sampling results;

(4) Radon and/or thoron monitoring results;

(5) Area radiation survey measurements (beta, gamma and neutron); and,

(6) Fixed location dosimeter results (beta, gamma and neutron); and,

(7) Other workplace monitoring results.

(f) *Workplace characterization data*, including:

(1) Information on the external exposure environment, including: radiation type (gamma, x-ray, proton, neutron, beta, other charged particle); radiation energy spectrum; uniformity of exposure (whole body vs partial body exposure); irradiation geometry;

(2) Information on work-required medical screening x rays; and,

(3) Other information useful for characterizing workplace radiation exposures.

(g) *Information characterizing internal exposures*, including:

(1) Radionuclide(s) and associated chemical forms;

(2) Results of particle size distribution studies;

(3) Respiratory protection practices; and

(4) Other information useful for characterizing internal exposures.

(h) *Process descriptions for each work location*, including:

(1) General description of the process;

(2) Characterization of the source term (i.e., the radionuclide and its quantity);

(3) Extent of encapsulation;

(4) Methods of containment;

(5) Other information to assess potential for irradiation by source or airborne dispersion radioactive material.

§ 82.15 How will NIOSH evaluate the completeness and adequacy of individual monitoring data?

(a) NIOSH will evaluate the completeness and adequacy of an individual's monitoring data provided by DOE through one or more possible measures including, but not limited to:

(1) Comparisons with information provided by claimants, co-workers, and other witnesses;

(2) Comparisons with available information on area monitoring, production processes, and radiologic protection programs;

(3) Comparisons with information documented in the records of unions representing covered employees;

(4) Comparisons with data available on co-workers; and

(5) Reviews of DOE contractor record systems.

(b) NIOSH will evaluate the instruments and procedures used to collect individual monitoring data to determine whether they adequately characterized the radiation environments in which the covered employee worked, (adequately for the purpose of dose reconstruction,) based on present-day scientific understanding. For external dosimeter measurements, this includes an evaluation of the dosimeter response to the radiation types (gamma, x-ray, neutron, beta, or other charged particle) and the associated energy spectrum. For internal exposure, the methods used to analyze bioassay samples will be reviewed to determine their ability to detect the radionuclides present in the work environment. An analysis of the monitoring or exchange frequencies for the monitoring programs will also be conducted to determine the potential for undetected dose.

§ 82.16 How will NIOSH add to monitoring data to remedy limitations of individual monitoring and missed dose?

(a) For external dosimeter results that are incomplete due to historical record keeping practices, NIOSH will use commonly practiced techniques, such as those described in the NIOSH Research Issues Workshop,[2] to estimate the missing component of dose and to add this to the total dose estimate. For monitoring periods where external dosimetry data are missing from the records, NIOSH will estimate a claimant's dose based on interpolation, using available monitoring results from other time periods close to the period in question, or based on monitoring data on other workers engaged in similar tasks.

(b) NIOSH will review historical bioassay sample detection limits and monitoring frequencies to determine, when possible, the minimum detectable dose for routine internal dose monitoring programs. This ''missed dose'' will establish the upper limit of internal dose that a worker could have received for periods when bioassay sample analysis results were below the detection limit. Using ICRP biokinetic models, NIOSH will estimate the internal dose and include an associated uncertainty distribution.

[2] NIOSH [1995]. NIOSH research issues workshop: epidemiologic use of nondetectable values in radiation exposure measurements. Cincinnati, OH: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, DHHS (NIOSH) Publication No. 224647 (NTIS—PB 95189601).

§ 82.17 What types of information could be used to supplement or substitute for individual monitoring data?

Three types of information could be used:

(a) Monitoring data from co-workers, if NIOSH determines they had a common relationship to the radiation environment; or,

(b) A quantitative characterization of the radiation environment in which the covered employee worked, based on an analysis of historical workplace monitoring information such as area dosimeter readings, general area radiation and radioactive contamination survey results, air sampling data; or,

(c) A quantitative characterization of the radiation environment in which the employee worked, based on analysis of data describing processes involving radioactive materials, the source materials, occupational tasks and locations, and radiation safety practices.

§ 82.18 How will NIOSH calculate internal dose to the primary cancer site(s)?

(a) The calculation of dose from ingested, inhaled or absorbed radioactivity involves the determination of the types and quantities of radionuclides that entered the body. NIOSH will use the results of all available bioassay monitoring information as appropriate, based on assessment of the technical characteristics of the monitoring program. If bioassay monitoring data are unavailable or inadequate, the dose reconstruction will rely on the results of air sampling measurements, radiation sources, work processes and practices, and incidents involving radiation contamination, as necessary.

(b) NIOSH will calculate the dose to the organ or tissue of concern using the appropriate current metabolic models published by ICRP. Using data available to NIOSH, the models will be based on exposure conditions representative of the work environment. When NIOSH cannot establish exposure conditions with sufficient specificity, the dose calculation will assume exposure conditions that maximize the dose to the organ under consideration. When the cancer covered by a claim is in a tissue not covered by existing ICRP models, NIOSH will use the ICRP model that best approximates the model needed, while giving the benefit of the doubt to the claimant. For internal exposures, NIOSH will select the highest dose estimate from among the modeled organs or tissues that do not concentrate the radionuclide.

(c) Internal doses will be calculated for each year of exposure from the date of initial exposure to the date of cancer diagnosis.

§ 82.19 How will NIOSH address uncertainty about dose levels?

The estimate of each annual dose will be characterized with a probability distribution that accounts for the uncertainty of the estimate. This information will be used by DOL in the calculation of probability of causation, under HHS guidelines for calculating probability of causation estimates at 42 CFR 81. In this way, claimants will receive the benefit of the doubt in cases in which the actual dose may have exceeded the best estimate calculated by NIOSH.

Subpart D—Reporting and Review of Dose Reconstruction Results

§ 82.25 When will NIOSH report dose reconstruction results, and to whom?

NIOSH will report dose reconstruction results to DOL and to the claimant, as provided for under § 82.10. Draft results will be reported to the claimant upon tentative completion of the dose reconstruction. Final results will be reported to the claimant, DOL and DOE after NIOSH receives certification from the claimant that the claimant has completed providing information to NIOSH for the dose reconstruction (Form OCAS–1).

§ 82.26 How will NIOSH report dose reconstruction results?

(a) NIOSH will provide dose reconstruction results to the claimant, DOL, and DOE in a report: ''NIOSH Report of Dose Reconstruction under EEOICPA.'' The report itself will not provide information on probability of causation, which DOL must calculate to determine a recommended decision on the claim.

(b) The report will include the following information, as relevant:

(1) Annual dose estimates (or a fraction thereof) related to covered employment for each year from the date of initial radiation exposure at a covered facility to the date of cancer diagnosis;

(2) Separate dose estimates for acute and chronic exposures, different types of ionizing radiation, and internal and external doses, providing internal dose information only for the organ or tissue relevant to the primary cancer site(s) established in the claim;

(3) Uncertainty distributions associated with each dose estimated, as necessary;

(4) Explanation of each type of dose estimate included in terms of its relevance for estimating probability of causation;

(5) Identification of any information provided by the claimant relevant to dose estimation that NIOSH decided to omit from the basis for dose reconstruction, justification for the decision, and if possible, a quantitative estimate of the effect of the omission on the dose reconstruction results; and

(6) A summary and explanation of information and methods applied to produce the dose reconstruction estimates, including any factual findings and the evidence upon which those findings are based.

(c) As provided under § 82.10(l), NIOSH staff will conduct a closing interview with claimants to explain the dose reconstruction report.

§ 82.27 How can claimants obtain reviews of their NIOSH dose reconstruction results by NIOSH?

(a) Claimants can seek reviews of their dose reconstruction through the processes established by DOL under 20 CFR 30. DOL will request NIOSH to review dose reconstructions under the following conditions, as provided under 20 CFR 30.318:

(1) DOL may determine that factual findings of the dose reconstruction do not appear to be supported by substantial evidence; or,

(2) Although the methodology established by HHS under this Part is binding on DOL, DOL may determine that arguments concerning the *application* of this methodology should be considered by NIOSH.

(b) NIOSH may review completed dose reconstructions on its own initiative and with the assistance of DOL to identify denied claims when either of the following circumstances arise:

(1) NIOSH obtains records or information on radiation exposures of DOE or AWE employees that could substantially increase the level of radiation doses estimated in the completed dose reconstructions; or

(2) NIOSH changes a scientific element underlying dose reconstructions according to the provisions of Subpart E of this rule and the change could substantially increase the level of radiation doses estimated in the completed dose reconstructions.

(c) When NIOSH completes the review of a dose reconstruction, NIOSH will provide a report describing the basis for the review, the methods employed in the review, and the review findings to the claimant, DOL, and DOE.

§ 82.28 Who can review NIOSH dose reconstruction files on individual claimants?

(a) Claimants and DOL will be provided individual dose reconstruction files, upon request. Claimants should note, however, that a complete summary of the data and methods used in a dose reconstruction will be included in the ''NIOSH Report of Dose Reconstruction under EEOICPA''.

(b) Researchers and the public will be provided limited access to NIOSH dose reconstruction files, subject to provisions and restrictions of the Privacy Act for the protection of confidential information on individuals.

Subpart E—Updating the Scientific Elements Underlying Dose Reconstructions

§ 82.30 How will NIOSH inform the public of any plans to change scientific elements underlying the dose reconstruction process to maintain methods reasonably current with scientific progress?

Periodically, NIOSH will publish a notice in the **Federal Register** notifying the public of plans to change scientific elements underlying the dose reconstruction process under EEOICPA to reflect scientific progress. Notice will include a summary of the planned changes and the expected completion date for such changes.

§ 82.31 How can the public recommend changes to scientific elements underlying the dose reconstruction process?

(a) At any time, the public can submit written recommendations to NIOSH for changes to scientific elements underlying the dose reconstruction process, based on relevant new research findings and technological advances. NIOSH will provide these recommendations to the Advisory Board on Radiation and Worker Health to be addressed at a public meeting of the Advisory Board, with notification provided to the source of the recommendations. Recommendations should be addressed to: Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, MS–R45, Cincinnati, Ohio 45226.

(b) The public can also submit recommendations by e-mail. Instructions will be provided on the NIOSH Internet homepage at www.cdc.gov/niosh/ocas.

§ 82.32 How will NIOSH make changes in scientific elements underlying the dose reconstruction process, based on scientific progress?

NIOSH will present proposed changes to the Advisory Board on Radiation and

Worker Health prior to implementation. These proposed changes will be summarized in a notice published in the **Federal Register**. The public will have the opportunity to comment on proposed changes at the meeting of the Advisory Board and/or in written comments submitted for this purpose. NIOSH will fully consider the comments of the Advisory Board and of the public before deciding upon any changes.

§ 82.33 How will NIOSH inform the public of changes to the scientific elements underlying the dose reconstruction process?

(a) NIOSH will publish a notice in the **Federal Register** informing the public of changes and the rationale for the changes. This notice will also provide a summary of the recommendations and comments received from the Advisory Board and the public, as well as responses to the comments.

(b) NIOSH may take into account other factors and employ other procedures than those specified in this subpart, if circumstances arise that require NIOSH to implement a change more immediately than the procedures in this subpart allow.

Dated: April 10, 2002.

Tommy G. Thompson,

Secretary, Department of Health and Human Services.

[FR Doc. 02–10763 Filed 5–1–02; 8:45 am]

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Federal Register

Vol. 67, No. 85

Thursday, May 2, 2002

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FEDERAL REGISTER PAGES AND DATE, MAY

21559–21974 1
21975–22336 2

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7547 21559

7 CFR

301 21561
Proposed Rules:
929 21854

9 CFR

Proposed Rules:
53 21934

10 CFR

430 21566

14 CFR

23 21975
39 ..... 21567, 21569, 21572, 21803, 21975, 21976, 21979, 21981, 21983, 21985, 21987, 21988
71 ..... 21575, 21990
97 ..... 21990, 21992
Proposed Rules:
33 22019
71 22020
121 22020
125 22020
135 22020

18 CFR

388 21994
Proposed Rules:
35 22250

20 CFR

Proposed Rules:
416 22021

21 CFR

520 21996
558 21996

30 CFR

948 21904

33 CFR

165 21576

33 CFR

117 21997
Proposed Rules:
100 22023

38 CFR

17 21998

39 CFR

Proposed Rules:
501 22025

40 CFR

51 21868
52 ..... 21868, 22168
63 21579
96 21868
97 21868
Proposed Rules:
52 ..... 21607, 22242
63 21612
89 21613
90 21613
91 21613
94 21613
1048 21613
1051 21613
1065 21613
1068 21613

42 CFR

81 22296
82 22314
1001 21579
Proposed Rules:
414 21617

47 CFR

22 21999
24 21999
63 21803
64 21999
73 ..... 21580, 21581, 21582
Proposed Rules:
73 ..... 21618, 22027

49 CFR

1511 21582
Proposed Rules:
107 22028
171 22028
172 22028
177 22028
571 21806

50 CFR

222 21585
223 21585
224 21586
622 21598
679 ..... 21600, 22008
Proposed Rules:
600 21618
635 22165
648 22035

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MAY 2, 2002

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Record requests fees; revision; published 5-2-02

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Animal drugs, feeds, and related products:
Sponsor name and address changes—
Virbac AH, Inc.; published 5-2-02
Tilmicosin; published 5-2-02

HEALTH AND HUMAN SERVICES DEPARTMENT
Energy Employees Occupational Illness Compensation Program Act; implementation:
Probable cause determination guidelines; published 5-2-02
Radiation dose reconstruction methods; published 5-2-02

PERSONNEL MANAGEMENT OFFICE
Employment:
Firefighter pay and training; published 4-2-02

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Bell; published 4-17-02
Enstrom Helicopter Corp.; published 4-17-02
Class E airspsace; published 5-2-02

VETERANS AFFAIRS DEPARTMENT
Medical benefits:
Inpatient hospital care and outpatient medical care; copayments; published 5-2-02

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Cotton classing, testing, and standards:
Classification services to growers; 2002 user fees; comments due by 5-6-02; published 4-19-02 [FR 02-09784]

AGRICULTURE DEPARTMENT
Agricultural Research Service
National Arboretum; schedule of fees; comments due by 5-10-02; published 4-10-02 [FR 02-08589]

AGRICULTURE DEPARTMENT
Rural Utilities Service
Electric loans:
Useful life of facility determination; comments due by 5-9-02; published 4-9-02 [FR 02-08484]

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD
Government in the Sunshine Act; implementation; comments due by 5-8-02; published 4-8-02 [FR 02-08437]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Atlantic highly migratory species—
Pelagic longline management; comments due by 5-10-02; published 4-10-02 [FR 02-08689]
Caribbean, Gulf of Mexico, and South Atlantic fisheries—
Gulf of Mexico and South Atlantic coastal migratory pelagic resources; comments due by 5-9-02; published 3-25-02 [FR 02-07128]
Northeastern United States fisheries—
Atlantic hagfish; comments due by 5-6-02; published 4-5-02 [FR 02-08335]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
West Coast States and Western Pacific fisheries—
West Coast salmon; comments due by 5-9-02; published 4-24-02 [FR 02-10083]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Marine mammals:
Incidental taking—
Gulf of Mexico; oil and gas structure removal activities; bottlenose and spotted dolphins; comments due by 5-6-02; published 4-19-02 [FR 02-09519]

CONSUMER PRODUCT SAFETY COMMISSION
Poison prevention packaging:
Child-resistant packaging requirements—
Hormone replacement therapy products containing progestogen and estrogen substances; exemption; comments due by 5-6-02; published 2-19-02 [FR 02-03999]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA
Freedom of Information Act, Privacy Act, et al.; implementation; comments due by 5-7-02; published 3-15-02 [FR 02-06091]

DEFENSE DEPARTMENT
Army Department
Corps Regulatory Program and new Historic Preservation Advisory Council regulations; comments due by 5-7-02; published 3-8-02 [FR 02-05653]

DEFENSE DEPARTMENT
Acquisition regulations:
Multiple award contracts; competition requirements for purchase of services; comments due by 5-6-02; published 4-1-02 [FR 02-07785]

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Federal and federally-funded construction projects; government contractors' labor relations; open competition and government neutrality preservation; comments due by 5-6-02; published 3-7-02 [FR 02-05385]

ENERGY DEPARTMENT
Personnel Security Assistance Program; security police officer positions; eligibIlitiy requirements; comments due by 5-6-02; published 4-4-02 [FR 02-08134]

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Pesticide active ingredient production; comments due by 5-10-02; published 4-10-02 [FR 02-07223]

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Portland cement manufacturing industry; comments due by 5-6-02; published 4-5-02 [FR 02-08161]

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Portland cement manufacturing industry; comments due by 5-6-02; published 4-5-02 [FR 02-08162]

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Vegetable oil production; solvent extraction; comments due by 5-6-02; published 4-5-02 [FR 02-05862]

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Vegetable oil production; solvent extraction; comments due by 5-6-02; published 4-5-02 [FR 02-05863]
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Puerto Rico; comments due by 5-10-02; published 4-10-02 [FR 02-08686]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Alabama; comments due by 5-10-02; published 4-10-02 [FR 02-08531]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Alabama; comments due by 5-10-02; published 4-10-02 [FR 02-08532]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 5-8-02; published 4-8-02 [FR 02-08293]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 5-8-02; published 4-8-02 [FR 02-08294]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 5-8-02; published 4-8-02 [FR 02-08291]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 5-8-02; published 4-8-02 [FR 02-08292]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 5-8-02; published 4-8-02 [FR 02-08287]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 5-8-02; published 4-8-02 [FR 02-08288]
South Carolina; comments due by 5-10-02; published 4-10-02 [FR 02-08685]
Water supply:
National primary and secondary drinking water regulations—
Aeromonas hydrophilia in drinking water distribution systems; analytical method approval; comments due by 5-6-02; published 3-7-02 [FR 02-05447]

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Numbering resource optimization; comments due by 5-6-02; published 4-5-02 [FR 02-08250]
Digital television stations; table of assignments:
Virginia; comments due by 5-9-02; published 4-9-02 [FR 02-08497]
Radio broadcasting:
World Radiocommunication Conferences; frequency bands below 28000 kHz; comments due by 5-8-02; published 4-8-02 [FR 02-07727]
Radio services, special:
Private land mobile radio services—
Public safety communications improvement in 800 MHz band, and 900 MHz industrial/land transportation and business port channels consolidation; comments due by 5-6-02; published 4-5-02 [FR 02-08304]
Radio stations; table of assignments:
Louisiana; comments due by 5-6-02; published 4-5-02 [FR 02-08196]

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Federal and federally-funded construction projects; government contractors' labor relations; open competition and government neutrality preservation; comments due by 5-6-02; published 3-7-02 [FR 02-05385]

HEALTH AND HUMAN SERVICES DEPARTMENT
Centers for Medicare & Medicaid Services
Medicare:
Medicare-Endorsed Prescription Drug Card Assistance Initiative
Correction; comments due by 5-6-02; published 3-15-02 [FR C2-05129]
Medicare-endorsed prescription drug card assistance initiative
Cross-reference; comments due by 5-6-02; published 3-6-02 [FR 02-05129]
Medicare-endorsed prescription drug discount card assistance initiative for State sponsors
Cross-reference; comments due by 5-6-02; published 3-6-02 [FR 02-05130]
State Children's Health Insurance Program:
Allotments and grants to States—
Prenatal care for unborn children; eligibility; comments due by 5-6-02; published 3-5-02 [FR 02-05217]

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Medical devices:
General hospital and personal use devices—
Medical washer and medical washer-disinfector; classification; comments due by 5-8-02; published 2-7-02 [FR 02-03019]
Orthopedic devices—
Resorbable calcium salt bone void filler device; classification; comments due by 5-8-02; published 2-7-02 [FR 02-03017]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Federal claims collection:
Administrative wage garnishment; comments due by 5-7-02; published 3-8-02 [FR 02-05524]

INTERIOR DEPARTMENT
Fish and Wildlife Service
Migratory bird hunting:
Alaska; spring/summer migratory bird subsistence harvest; comments due by 5-8-02; published 4-8-02 [FR 02-08384]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Federal and federally-funded construction projects; government contractors' labor relations; open competition and government neutrality preservation; comments due by 5-6-02; published 3-7-02 [FR 02-05385]

INTERIOR DEPARTMENT
National Indian Gaming Commission
Electronic or electromechanical facsimile; games similar to bingo; and electronic, computer, or other technologic aids to Class II games; definitions; comments due by 5-6-02; published 4-29-02 [FR 02-10396]

POSTAL SERVICE
Domestic Mail Manual:
Automated flats; new specifications; comments due by 5-6-02; published 4-17-02 [FR 02-09306]

STATE DEPARTMENT
Visas; nonimmigrant documentation:
Automatic visa revalidation; comments due by 5-6-02; published 3-7-02 [FR 02-05325]

TRANSPORTATION DEPARTMENT
Coast Guard
Commercial vessels; liferaft servicing intervals; comments due by 5-6-02; published 3-5-02 [FR 02-05211]
Ports and waterways safety:
Fore River Channel, Weymouth, MA; safety zone; comments due by 5-10-02; published 4-10-02 [FR 02-08591]
Naval Vessel Protection Zones; comments due by 5-6-02; published 3-20-02 [FR 02-06766]

TRANSPORTATION DEPARTMENT
International charter flights; approval standards; rulemaking petition; comments due by 5-6-02; published 3-21-02 [FR 02-06820]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Air carrier certification and operations:
Light-sport aircraft; comments due by 5-6-02; published 2-5-02 [FR 02-02302]
Airworthiness directives:
de Havilland Inc.; comments due by 5-10-02; published 3-28-02 [FR 02-07417]
Air Tractor, Inc.; comments due by 5-10-02; published 3-11-02 [FR 02-05690]
Bombardier; comments due by 5-6-02; published 4-4-02 [FR 02-08174]
Dornier; comments due by 5-6-02; published 4-5-02 [FR 02-08285]
Fokker; comments due by 5-6-02; published 4-5-02 [FR 02-08284]
McDonnell Douglas; comments due by 5-6-02; published 3-21-02 [FR 02-06795]
Textron Lycoming; comments due by 5-10-02; published 3-11-02 [FR 02-05691]
Airworthiness standards:
Special conditions—
Airbus Industrie Model A340-500 and -600

series airplanes; comments due by 5-8-02; published 4-8-02 [FR 02-07963]

Class D airspace; comments due by 5-6-02; published 4-2-02 [FR 02-07853]

Class E airspace; comments due by 5-6-02; published 4-2-02 [FR 02-07854]

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Fuel economy standards:

Light trucks; 2005-2010 model years; comments due by 5-8-02; published 2-7-02 [FR 02-02874]

Light trucks; 2005-2010 model years; correction; comments due by 5-8-02; published 4-22-02 [FR 02-09736]

Motor vehicle safety standards:

Tires; performance requirements; comments due by 5-6-02; published 3-5-02 [FR 02-05151]

Correction; comments due by 5-6-02; published 4-3-02 [FR 02-08078]

TREASURY DEPARTMENT

Alcohol, Tobacco and Firearms Bureau

Alcohol, tobacco, and other excise taxes:

Firearms disabilities for nonimmigrant aliens and import permit requirements for nonimmigrant aliens bringing firearms and ammunition into U.S.; comments due by 5-6-02; published 2-5-02 [FR 02-02715]

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Unit-livestock-price method; public hearing; comments due by 5-6-02; published 2-4-02 [FR 02-02625]

TREASURY DEPARTMENT

Thrift Supervision Office

Mutual savings associations, mutual holding company reorganizations, and conversions from mutual to stock form; comments due by 5-9-02; published 4-9-02 [FR 02-07979]

VETERANS AFFAIRS DEPARTMENT

Adjudication; pensions, compensation, dependency, etc.:

De novo review; time limit for requests; comments due by 5-10-02; published 3-11-02 [FR 02-05785]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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S. 2248/P.L. 107–168

To extend the authority of the Export-Import Bank until May 31, 2002. (May 1, 2002; 116 Stat. 131)

Last List April 23, 2002

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