AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

Federal Register

6–5–02 Wednesday
Vol. 67 No. 108 June 5, 2002
Pages 38583–38840

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Presidential Documents

Title 3—

The President

Proclamation 7568 of May 31, 2002

Black Music Month, 2002

By the President of the United States of America

A Proclamation

America's diverse and extraordinary musical heritage reflects the remarkable cultural and artistic history of our Nation. From gospel, blues, and jazz to rock and roll, rap, and hip-hop, our Nation's musical landscape offers an astounding array of uniquely American styles. During Black Music Month, we celebrate a critically important part of this heritage by highlighting the enduring legacy of African American musicians, singers, and composers, and urging every American to appreciate and enjoy the fabulous achievements of this highly creative community.

Early forms of black American music developed out of the work song, which had its roots in African tribal chants. Through this music, slaves shared stories, preserved history, and established a sense of community. As many African slaves in early America became Christians, they adapted their music into the songs and life of the church. These spirituals eventually evolved into a genre that remains vibrant and very meaningful today—gospel music. This great musical tradition developed under the leadership of people like Thomas Dorsey, who was known as the Father of Gospel Music. He composed many great gospel songs that have become standards, and he established the tradition of the gospel music concert.

Following emancipation, African Americans enjoyed unprecedented opportunities but also faced many new and frequently oppressive challenges. Frustrations from these struggles for freedom and equality found expression in a style of music that came to be known as the blues. Innovative musical geniuses like W.C. Handy, Robert Johnson, the Reverend Gary Davis, and Mamie Smith were among the legendary pioneers of blues music.

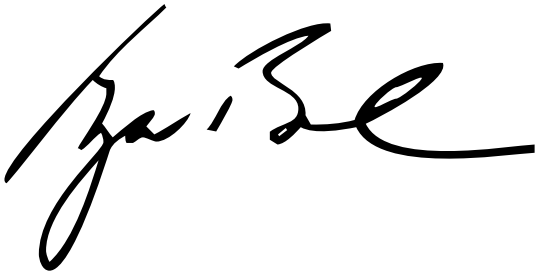
As blacks migrated throughout the United States in the early 1900s, they tapped into their collective experience and creativity to develop new expressions of music. New Orleans became the center for a particularly American form of music—jazz. This novel genre combined unique rhythms and melodies with the sounds of stringed, brass, and woodwind instruments. Jazz captured the interest of 20th century America, making household names of great African American artists like Louis Armstrong, Charlie Parker, Ella Fitzgerald, and Miles Davis. The unparalleled brilliance of these and other great jazz musicians had an extraordinary effect upon the American musical tradition, while bringing great pleasure to millions of fans.

In the 1940s, rhythm and blues emerged, synthesizing elements from gospel, blues, and jazz; and from these styles came the birth of rock and roll. A fabulous array of artists helped to pioneer this modern musical transformation, including Chuck Berry, Ray Charles, Marvin Gaye, Aretha Franklin, and Stevie Wonder.

As we reflect on the rich and distinctive history of so many talented artists, we celebrate the incredible contributions that black musicians have made to the history of American music and their influence on countless forms of music around the world.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim June 2002 as Black Music Month. I call on Americans of all backgrounds to learn more about the rich heritage of black music and how it has shaped our culture and our way of life, and urge them to take the opportunity to enjoy the great musical experiences available through the contributions of African American music.

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



[FR Doc. 02–14239
Filed 6–4–02; 8:45 am]
Billing code 3195–01–P

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Presidential Documents

Proclamation 7569 of May 31, 2002

National Fishing and Boating Week, 2002

By the President of the United States of America

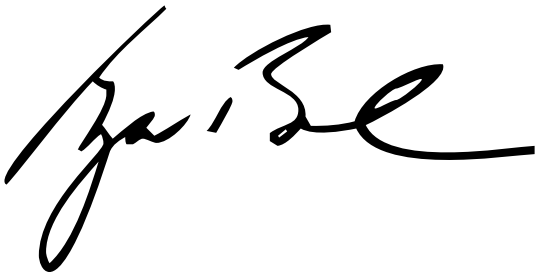
A Proclamation

Our Nation's landscape contains thousands of bodies of water that offer endless opportunities for recreational boating and fishing. Every year, millions of Americans, including me, look forward to enjoying these popular pastimes.

In addition to providing opportunities for recreation, fishing and boating play important roles in our Nation's economy. They support thousands of American jobs and generate millions of dollars that go directly back to protecting and conserving resources at the local level. Since 1950, State fish and wildlife agencies have received nearly $4 billion through the Federal Aid in Sport Fish Restoration Act. These funds have helped to purchase over 322,000 acres for boating, fishing and fish production, and research. In addition, funding has been used to help educate the public about fish and their habitats. These measures enhance the quality of life for people of all ages and continue a vital legacy of environmental stewardship.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim June 2 through June 8, 2002, as National Fishing and Boating Week. During this week, I encourage people of the United States to participate in the thousands of local events scheduled in communities throughout the United States, offering hands-on opportunities for families and friends to share in these recreational activities.

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



[FR Doc. 02–14240
Filed 6–4–02; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–35–AD; Amendment 39–12767; AD 2002–11–06]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 777 series airplanes, that currently requires repetitive inspections to detect cracking of the cove skin on the outboard leading edge slats, and corrective actions, if necessary. The existing AD also provides for an optional modification that significantly increases the repetitive inspection interval. This amendment expands the applicability of the existing AD by mandating the currently required inspections, and corrective actions, if necessary, for additional airplanes. Also, for airplanes on which the optional modification has been accomplished, this action requires a new one-time inspection for undersized seal inserts in the spanwise bulb seals on certain slats, and replacement of seal assemblies with new assemblies, if necessary. The actions specified by this AD are intended to detect and correct cracking or missing pieces of the cove skin, or undersized seal inserts installed in the spanwise bulb seals, on the outboard leading edge slats on the wings, which could result in skin separation or structural damage to the leading edge slats and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective July 10, 2002.

The incorporation by reference of Boeing Alert Service Bulletin 777–57A0034, Revision 5, dated January 25, 2001, as listed in the regulations, is approved by the Director of the Federal Register as of July 10, 2002.

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of October 10, 2000 (65 FR 57282, September 22, 2000).

The incorporation by reference of Boeing Alert Service Bulletin 777–57A0034, Revision 2, dated November 19, 1998, as listed in the regulations, was approved previously by the Director of the Federal Register as of March 8, 1999 (64 FR 8230, February 19, 1999).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Suzanne Masterson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2772; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2000–19–08, amendment 39–11909 (65 FR 57282, September 22, 2000), which is applicable to certain Boeing Model 777 series airplanes, was published in the **Federal Register** on November 28, 2001 (66 FR 59387). The existing AD requires repetitive inspections to detect cracking of the cove skin on the outboard leading edge slats, and corrective actions, if necessary. The existing AD also provides for an optional modification that significantly increases the repetitive inspection interval. The action proposed to expand the applicability of the existing AD by mandating the currently required inspections, and corrective actions, if necessary, for additional airplanes. Also, for airplanes on which the optional modification has been accomplished, the action proposed to require a new one-time inspection for undersized seal inserts in the spanwise bulb seals on certain slats, and replacement of seal assemblies with new assemblies, 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 comments received.

Change Paragraph (f)

Two commenters ask that paragraph (f) of the proposed rule be changed to specify that the one-time inspection is not necessary if the kits used to install the inserts contain the correct size inserts, and note that the manufacturer verified that undersize seal inserts were limited to kits supplied before October 6, 2000. The commenters add that seal inserts obtained from the manufacturer AFTER October 6, 2000, should be acceptable for compliance with paragraph (f) of the proposed rule.

The FAA agrees with the commenter. We received substantiating data from the manufacturer that verifies the commenters' data, and have changed paragraph (f) of this final rule accordingly.

Limit Applicability

One commenter (the manufacturer) asks that the applicability in the proposed rule be limited to line numbers 1 through 369 for Group 3 airplanes. The commenter states that Production Provision Report (PRR) 61777–119, Part B, changes the material and attachment of the cove skin and trailing edge wedge for airplanes having line numbers 370 and on.

We agree with the commenter. We have reviewed PRR 61777–119, Part B, and find that it justifies limiting the applicability of this final rule. The applicability in this final rule has been changed accordingly.

Change Paragraph (f)(2)

One commenter asks that an option be added to paragraph (f)(2) of the proposed rule as an alternative to replacement of any undersized seal insert or any seal insert that cannot be conclusively determined to be of correct size. The option would allow accomplishment of the initial inspection per Part 1, Cove Skin Inspection, as

specified in Revision 5 of the referenced service bulletin, and repeat that inspection every 100 flight cycles.

We do not agree with the commenter. The commenter did not provide sufficient technical data justifying the increased risk associated with requiring repetitive inspections instead of replacement. However, we would consider this option under the provisions for requesting approval of an alternative method of compliance, as provided in paragraph (h)(1) of this final rule. No change is made to the final rule in this regard.

Revised Service Information

One commenter asks that a new requirement be added to the proposed rule to allow installation of seal insert segments in the ends of the seal assembly if the inserts have receded into the ends of the slats, as specified in Boeing Alert Service Bulletin 777–57A0034, Revision 6. The commenter adds that the addition of Group 4 airplanes as specified in Boeing Alert Service Bulletin 777–57A0034, Revision 6, presents an additional hardship and additional rulemaking may be necessary.

We cannot revise this final rule to add new requirements per Revision 6 of the service bulletin because we have not yet received and approved that revision. However, the commenter may request approval of an alternative method of compliance as provided in paragraph (h)(1) of this final rule, if appropriate technical data are submitted. No change is made to the final rule in this regard.

Conclusion

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 previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 184 airplanes of the affected design in the worldwide fleet.

The detailed inspection for cracking that is currently required by AD 2000–19–08, which is applicable to approximately 81 airplanes of U.S. registry, takes approximately 7 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on the figures discussed above, the cost impact of the current requirements of that AD on U.S. operators is estimated to be $34,020, or $420 per airplane, per inspection cycle.

This new action requires accomplishment of the detailed inspection for cracking on approximately 33 additional airplanes of U.S. registry. Based on the figures discussed above, the new costs to U.S. operators as imposed by this AD are estimated to be $13,860.

The cost impact figures discussed above are 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.

Should an operator be required to accomplish the new one-time inspection for undersized seal inserts, it will take approximately 2 work hours per airplane, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this new inspection is estimated to be $120 per airplane.

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 removing amendment 39–11909 (65 FR 57282, September 22, 2000), and by adding a new airworthiness directive (AD), amendment 39–12767, to read as follows:

2002–11–06 Boeing: Amendment 39–12767. Docket 2001–NM–35–AD. Supersedes AD 2000–19–08, Amendment 39–11909.

Applicability: Model 777 series airplanes, line numbers 1 through 369 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 (h)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking or missing pieces of the cove skin, or undersized seal inserts installed in the spanwise bulb seals, on the outboard leading edge slats on the wings, which could result in skin separation or structural damage to the leading edge slats and consequent reduced controllability of the airplane, accomplish the following:

Restatement of Requirements of AD 2000–19–08

Inspection

(a) For airplanes having line numbers 2 through 265 inclusive: At the applicable time specified by paragraph (a)(1) or (a)(2) of this AD, perform detailed inspections to detect cracking of the cove skin on the outboard leading edge slats of the left and right wings at slat numbers 1 through 6 inclusive, and 9 through 14 inclusive; in accordance with Boeing Alert Service Bulletin 777–57A0034, Revision 2, dated November 19, 1998; Revision 3, dated May 4, 2000; Revision 4, dated July 20, 2000; or Revision 5, dated January 25, 2001. Repeat the inspections

thereafter at intervals not to exceed 100 flight cycles or 400 flight hours, whichever occurs first.

(1) For airplanes on which the repetitive inspections required by paragraph (a) of AD 99–04–19 HAVE been initiated prior to October 10, 2000 (the effective date of AD 2000–19–08, amendment 39–11909): Inspect at the earlier of the times specified by paragraphs (a)(1)(i) and (a)(1)(ii) of this AD.

(i) Within 350 flight cycles after the most recent inspection.

(ii) At the later of the times specified by paragraphs (a)(1)(ii)(A) and (a)(1)(ii)(B) of this AD.

(A) Within 100 flight cycles or 400 flight hours, whichever occurs first, after the most recent inspection.

(B) Within 30 days after October 10, 2000.

(2) For airplanes on which the repetitive inspections required by paragraph (a) of AD 99–04–19 have NOT been initiated prior to October 10, 2000: Inspect at the earlier of the times specified by paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Prior to the accumulation of 500 total flight cycles.

(ii) Prior to the accumulation of 2,000 total flight hours, or within 30 days after October 10, 2000, whichever occurs later.

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

Corrective Action

(b) If any cracking is detected during any inspection required by paragraph (a) of this AD, prior to further flight, accomplish all applicable corrective actions specified by and in accordance with Boeing Alert Service Bulletin 777–57A0034, Revision 2, dated November 19, 1998; Revision 3, dated May 4, 2000; Revision 4, dated July 20, 2000; or Revision 5, dated January 25, 2001. The corrective actions include stop drilling and repairing the crack and performing detailed inspections, slat adjustment checks, and replacement of the slats. Where the alert service bulletin specifies to contact Boeing for appropriate action: Prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD. After October 10, 2000, only Revision 4 or 5 of the alert service bulletin may be used.

Optional Modification

(c) Accomplishment of the actions specified by paragraphs (c)(1) and (c)(2) of this AD extends the repetitive inspection interval specified by paragraph (a) of this AD to 8,000 flight cycles.

(1) Install a seal insert into the spanwise bulb seals for the slats in accordance with Part 4 of Boeing Alert Service Bulletin 777–57A0034, Revision 3, dated May 4, 2000; Revision 4, dated July 20, 2000; or Revision 5, dated January 25, 2001.

(2) Within 750 days or 4,000 flight cycles, whichever occurs first, after installing the seal insert as specified by paragraph (c)(1) of this AD: Perform a detailed inspection of the interior structure of the cove skin at slat numbers 1 through 6 inclusive, and 9 through 14 inclusive, in accordance with Part 2 of the Accomplishment Instructions of the alert service bulletin.

New Requirements of This AD

Repetitive Inspections (Certain Airplanes)

(d) For airplanes having line numbers 1 and 266 and subsequent: Prior to the accumulation of 8,000 total flight cycles, or within 500 flight cycles after the effective date of this AD, whichever occurs later, perform a detailed inspection to detect cracking of the cove skin on the outboard leading edge slats of the left and right wings at slat numbers 1 through 6 inclusive, and 9 through 14 inclusive; in accordance with Boeing Alert Service Bulletin 777–57A0034, Revision 5, dated January 25, 2001. Repeat the inspection thereafter at intervals not to exceed 8,000 flight cycles.

Corrective Action

(e) If any cracking is detected during any inspection required by paragraph (d) of this AD, prior to further flight, accomplish all applicable corrective actions specified by and in accordance with Boeing Alert Service Bulletin 777–57A0034, Revision 5, dated January 25, 2001. The corrective actions include stop drilling and repairing the crack and performing detailed inspections, slat adjustment checks, and replacement of the slats. Where the alert service bulletin specifies to contact Boeing for appropriate action: Prior to further flight, repair in accordance with a method approved by the Manager, Seattle ACO. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

One-Time Inspection—Undersized Seal Inserts

(f) For airplanes on which the optional modification described in paragraph (c) of this AD was accomplished prior to the effective date of this AD, in accordance with Part 4 of Boeing Alert Service Bulletin 777–57A0034, Revision 3, dated May 4, 2000; or Revision 4, dated July 20, 2000, using kits shipped before October 6, 2000: Within 500 flight cycles after the effective date of this AD, do a one-time detailed inspection for undersized seal inserts installed in the spanwise bulb seals of slat numbers 4, 5, 10, and 11, in accordance with Part 5 of Boeing Alert Service Bulletin 777–57A0034, Revision 5, dated January 25, 2001.

Note 3: An inspection accomplished prior to the effective date of this AD in accordance with Boeing Telegraphic Message M–7200–00–02516, ''Incorrect Insert Part Numbers in SB 777–57A0034,'' dated October 13, 2000, is considered acceptable for compliance with paragraph (f) of this AD.

(1) For any seal insert of the correct size as specified in Revision 5 of the service bulletin: No further action is required by this paragraph.

(2) For any undersized seal insert as specified in Revision 5 of the service bulletin, or for any seal insert that cannot be conclusively determined to be of correct size: Prior to further flight, replace the existing seal assembly with a new seal assembly, in accordance with Revision 5 of the service bulletin.

Spares

(g) As of the effective date of this AD, no one may install a seal insert into the spanwise bulb seals of slat numbers 4, 5, 10, and 11, unless it is inspected in accordance with Part 4 of Boeing Alert Service Bulletin 777–57A0034, Revision 5, dated January 25, 2001, and found to be of correct size.

Alternative Methods of Compliance

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

(2) Alternative methods of compliance, approved previously in accordance with AD 99–04–19, amendment 39–11044, are approved as alternative methods of compliance with paragraph (b) of this AD.

Special Flight Permits

(i) 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 accomplished.

Incorporation by Reference

(j) Except as provided by paragraphs (b) and (e) of this AD: The actions shall be done in accordance with Boeing Alert Service Bulletin 777–57A0034, Revision 2, dated November 19, 1998; Boeing Alert Service Bulletin 777–57A0034, Revision 3, dated May 4, 2000; Boeing Alert Service Bulletin 777–57A0034, Revision 4, dated July 20, 2000; or Boeing Alert Service Bulletin 777–57A0034, Revision 5, dated January 25, 2001; as applicable.

(1) The incorporation by reference of Boeing Alert Service Bulletin 777–57A0034, Revision 5, dated January 25, 2001, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Alert Service Bulletin 777–57A0034, Revision 3, dated May 4, 2000; and Boeing Alert Service Bulletin 777–57A0034, Revision 4, dated July 20, 2000; was approved previously by the Director of the Federal Register as of October 10, 2000 (65 FR 57282, September 22, 2000).

(3) The incorporation by reference of Boeing Alert Service Bulletin 777–57A0034, Revision 2, dated November 19, 1998, was approved previously by the Director of the

Federal Register as of March 8, 1999 (64 FR 8230, February 19, 1999).

(4) Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(k) This amendment becomes effective on July 10, 2002.

Issued in Renton, Washington, on May 23, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–13608 Filed 6–4–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–031]

RIN 2115–AA97

Safety Zone; Fore River Channel—Weymouth Fore River—Weymouth, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Weymouth Fore River in Weymouth, MA, in the main shipping channel, for four six-day periods, for the construction of a temporary bridge. The safety zones temporarily close all waters approximately 200 yards upstream and 100 yards downstream of the Route 3A (Fore River) Bridge. The safety zone prohibits entry into or movement within this area during the effective periods.

DATES: This rule is effective from June 10 to August 30, 2002.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Dave Sherry, Marine Safety Office Boston, Waterways Safety and Response Division, at (617) 223–3030.

SUPPLEMENTARY INFORMATION:

Regulatory History

On April 10, 2002, a notice of proposed rulemaking (NPRM) was published for this regulation at 67 FR 17314. The comment period for that NPRM expired on May 10, 2002. The Coast Guard is now proceeding to implement a final rule taking into account all comments received.

Good cause exists for making this rule effective in less than 30 days after **Federal Register** publication. Delaying this rule's effective date would be unnecessary and contrary to public interest, since the completion of the temporary bridge construction is deemed necessary to avoid a major disruption in landside transportation, which could potentially occur if the temporary bridge is not completed soon and the current Route 3A bridge becomes unsafe for road traffic. In addition, mariners and the surrounding communities have been prepared for this construction work to occur for over two years. The work was previously delayed due to fabrication and contractual problems.

During these delays it was determined by Massachusetts Highway inspectors that the current Route 3A bridge is beyond repair and must be replaced. During the replacement project the temporary bridge will allow road traffic to continue unimpeded through this area. The current Route 3A Bridge has already exceeded its scheduled useable lifespan and construction of the temporary bridge has already been delayed by over one year. Further delay places the ability of transportation to continue over the Fore River at risk, and means the work would most likely have to be rescheduled for the same time period in 2003, since the May–August time period offers the most favorable working conditions on the bridge. Thus, it is in the best interest of all parties that the work be accomplished in the prescribed time periods herein.

Background and Purpose

The Massachusetts Highway Department is currently involved in a project to erect a temporary bridge adjacent to the existing bridge over the Weymouth Fore River. The temporary bridge was deemed necessary as part of the overall Route 3A refurbishment project. The construction of the temporary bridge is in its final stages, which involves erection of two bridge gantries as well as the roadway sections.

To accomplish this work, it is necessary to position a crane barge in the main shipping channel in the vicinity of the bridges. During the construction periods, the crane barge will obstruct the main shipping channel. Additionally, the work from the crane barge involves lifting large segments of heavy materials, thereby creating a safety hazard to mariners and the public in the vicinity of the crane barge and the construction operation during these periods. A safety zone is necessary to ensure public safety while the construction work is taking place.

Discussion of Rule

This regulation establishes a safety zone 200 yards upstream and 100 yards downstream of the Route 3A bridge on all waters within the Weymouth Fore River main shipping channel, which is bounded by 42°14′34″ N, 070°58′03″ W; 42°14′44″ N, 070°57′59″ W; 42°14′45″ N, 070°58′03″ W; and 42°14′35″ N, 070°58′05″ W, for four six-day construction periods during the effective times of the zone. These safety zones will close all waters within the points above for the construction periods. Although each closure period is for six days, Middlesex will only be authorized to work for a total of four days within each closure. Middlesex previously stated they only need four days within each closure, but the six day closure periods will aid Middlesex in keeping to their overall schedule, by accounting for potentially unworkable time within each safety zone period which may occur due to unfavorable weather conditions. If Middlesex is not working on a particular day within a safety zone period, the Captain of the Port (COTP) will allow entry of vessels into the zone area during that time to aid in further alleviating burdens on the maritime community.

Within the effective period the zone will be enforced during the following closure times: from sunrise Monday June 10, 2002 until sunset on Saturday June 15, 2002, sunrise Monday June 24, 2002 until sunset on Saturday June 29, sunrise Monday July 15, 2002 until sunset on Saturday July 20, 2002, and sunrise Monday July 29, 2002 until sunset on Saturday August 3, 2002. In the event that the contractor is unable to complete the prescribed work during these times due to unforeseen conditions, the zone may be enforced during two planned contingency periods from sunrise Monday August 12, 2002 until sunset Saturday August 17, 2002 and from sunrise Monday August 26, 2002 until noon Friday August 30, 2002. The safety and security zones are deemed necessary for the protection of life and property within the COTP Boston zone. Public notifications will be made prior to the effective period via safety marine information broadcasts and local notice to mariners.

Discussion of Comments and Changes Implemented in the Final Rule

The Coast Guard received seven (7) written comments during the comment period for the NPRM. All comments received were considered in the development of this final rule. Changes implemented in the final rule are the result of inter-Coast Guard evaluations of how to better employ and enforce the regulation and comments and recommendations of stakeholders in the COTP Boston zone. These stakeholders include the maritime industry, commercial contractors, the maritime law community, local yacht clubs, and recreational boaters. Changes from the NPRM are specified below and include a shift of the proposed June 24, 2002 contingency closure to a scheduled closure and a shortening of the proposed August 24, 2002 contingency closure to alleviate burdens recreational mariners could potentially encounter due to the proximity of Labor Day weekend.

I. Use of the Alternate Route

The Coast Guard received comments from local yacht clubs and maritime industry regarding the alternate route identified in the NPRM outside the Federal Channel in the vicinity of the safety zone. Comments emphasized the importance of this alternate route being implemented in the final rule as a means of alleviating burdens on the recreational boating community. Recreational boater representatives stated that 85 percent of the recreational boaters potentially impacted by the safety zone would be able to transit unimpeded around the safety zone through the alternate route. As a result, the Coast Guard has determined it is essential that the alternate route remain available under this final rule.

The NPRM stated that the alternate route would be marked with aids to navigation. Marine industry representatives expressed concerns over use of the aids to navigation while the Federal Channel was open, citing the potential to confuse commercial shipping. As a result, the aids to navigation will be removed each time the Federal Channel is re-opened after a safety zone period ends. The First Coast Guard District aids to navigation branch will supervise all aspects of the alternate channel navigation aids placement. Mariners are advised that the alternate route has the following dimensions: Maximum vertical clearance (channel margin) at high tide is 30 feet; maximum vertical clearance (channel margin) at low tide is 39 feet; maximum water depth at low tide is 14 feet, maximum horizontal clearance between fenders is 75 feet. The availability of this alternate route does not preclude mariners from exercising good judgment when determining if their vessel can safely transit this route.

II. The Maximum Time Allowed for Work in the Six Day Periods Should Be Four Total Days

Some comments related concerns that Middlesex should only be permitted to work for a total of four out of the six days scheduled for each effective time of the safety zone, since Middlesex has stated they only need four out of the six days to complete each portion of work. Limiting Middlesex to the four days they need will help further alleviate the burden on mariners in the area. We have determined it is beneficial to maintain the six day periods because it will aid Middlesex in keeping to their overall schedule, by accounting for potentially unworkable time within each safety zone period which may occur due to unfavorable weather conditions. If Middlesex is not working on a particular day within a safety zone period due to unforeseen circumstances, the COTP will allow entry of vessels into the zone area during that time to further alleviate burdens on the maritime community.

III. The Contingency Closure Adjacent to Labor Day Weekend May Significantly Impact Holiday Activities

The Coast Guard received many comments from local yacht clubs and marinas strongly objecting to the contingency closure which would end on August 31 during Labor Day weekend. Despite the presence of the alternate route, recreational mariners still had concerns. To eliminate any possibility of a negative impact on recreational activities over Labor Day weekend, the Coast Guard will shorten the last contingency closure so that it ends at noon on Friday, August 30, 2002. Middlesex has stated that this will still allow enough time to complete any remaining work if needed after the first contingency closure.

IV. The Massachusetts Water Resource Authority (MWRA) Needs Close Contact With the Coast Guard to Ensure Its Operations Are Not Put in Jeopardy

The Coast Guard received comments from MWRA regarding the potential impacts of this regulation upon their operations. The MWRA runs barges of sewage sludge from Deer Island across Boston Harbor to Quincy, MA through the Route 3A Bridge. It is essential to the operations of the large sewage treatment plant on Deer Island that these barges continue to make trips to Quincy, MA. MWRA has stated that their operations will be able to continue in conjunction with this regulation, but at the same time have requested the ability to stay in close contact with the Coast Guard should the output of the Deer Island plant drastically increase due to heavy rains or other unforeseen circumstances, thus creating a need to send a barge over to Quincy during one of the scheduled safety zone periods. The Coast Guard will arrange for Middlesex to temporarily stop work to permit MWRA to send a barge through the safety zone to alleviate these strains on the Deer Island plant.

V. Contingency Closures Need To Be Modified to Better Accommodate the Construction Schedule

We received comments from Middlesex stating that due to unforeseen material fabrication problems, the first proposed contingency closure needs to be modified to a scheduled closure because all the materials to be used in the first closure will not be ready by June 10, 2002. In an effort to ensure the project keeps on schedule, the Coast Guard will convert the first proposed contingency closure date (June 24, 2002) in the NPRM to a scheduled closure for the purposes of the final rule. The Coast Guard understands that marine construction is a highly fluid business and unforeseen circumstances other than poor weather conditions may arise, and these reasons are why the contingency closure dates were proposed. The use of this one contingency date still leaves two contingency dates remaining.

Regulatory Evaluation

Although this proposed regulation will prevent vessel traffic from transiting a portion of the Weymouth Fore River main shipping channel during the effective periods, the impact will not be ''significant'' for several reasons. Entities which may experience some impacts include one commercial oil transfer facility that receives large tank vessels, the Massachusetts Water Resources Authority (MWRA), which barges sludge to a facility in Quincy, Massachusetts, and numerous marinas, yacht clubs, and boat yards upstream of the Route 3A bridge. The Massachusetts Highway Department and its contractor, Middlesex Corporation, have met with these stakeholders to attempt to minimize impacts. Both the oil terminal and MWRA are able to, and have agreed to, work their vessel transit schedules around the six-day periods during which the safety zones are in effect

without significant negative economic impact.

Marinas, yacht clubs, boat yards, and the boating public will not be severely impacted because an alternate water route has been identified and is available for use on the western (Quincy) side of the main channel during the periods which the safety zones are in effect. This alternate route will provide an alternative for the majority of the recreational waterway users to transit outside of the safety zone and under the western (Quincy) side of both the temporary bridge span and the existing Route 3A bridge span during the periods that the safety zones will be in effect. The alternate water route is limited by the following characteristics: maximum vertical clearance (channel margin) at high tide is 30 ft; maximum vertical clearance (channel margin) at low tide is 39 ft; minimum water depth at low tide is 14 ft; maximum horizontal clearance between pier fenders is 75 ft.

Additionally, stakeholders are being provided advanced notice of these safety zones well in advance, through this rulemaking process, enabling them to make alternate arrangements in lieu of transiting the restricted area during the effective periods. Notifications will also be made to the local maritime community by safety marine information broadcasts and local notice to mariners.

For the reasons cited above, 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). The Coast Guard expects the economic impact of this proposed rule to be minimal enough that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the Fore River main shipping channel during the periods which the safety zones are in effect; or marinas, yacht clubs, and boat yards that service these vessels. For reasons outlined in the *Regulatory Evaluation* and *Discussion of Comments* sections, this impact is not expected to be significant.

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 (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this 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 rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Dave Sherry at the address listed under **ADDRESSES.**

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This 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 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

The Coast Guard 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 pose an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

Environment

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

Energy Effects

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. From June 10 until August 30, 2002, add temporary § 165.T02–031 to read as follows:

§ 165.T02–031 Safety Zone: Fore River Channel, Weymouth Fore River, Weymouth, MA.

(a) *Location.* The following area is a safety zone: 200 yards upstream and 100 yards downstream of the Route 3A bridge on all waters within the Weymouth Fore River main shipping channel, which is bounded by 42°14′34″ N, 070°58′03″ W; 42°14′44″ N, 070°57′59″ W; 42°14′45″ N, 070°58′03″ W; and 42°14′35″ N, 070°58′05″ W.

(b) *Effective Date.* This section is effective from June 10 to August 30, 2002. Within this period the zone will be enforced during the following closure periods: from sunrise Monday June 10, 2002 until sunset on Saturday June 15, 2002, sunrise Monday June 24, 2002 until sunset on Saturday June 29, 2002, sunrise Monday July 15, 2002 until sunset on Saturday July 20, 2002, and sunrise Monday July 29, 2002 until sunset on Saturday August 3, 2002. In the event that the contractor is unable to complete the prescribed work during these times, two contingency closures may be enforced if needed from sunrise Monday August 12, 2002 until sunset Saturday August 17, 2002, and from sunrise Monday August 26, 2002 until noon on Friday August 30, 2002. If the Captain of the Port (COTP) determines that a safety zone in effect cannot be used due to unforeseen conditions (prompting the need to use a contingency closure), the COTP will discontinue the safety zone for that period and issue a broadcast notice to mariners (BNTM) so informing the public.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone will be prohibited unless authorized by the Captain of the Port Boston. Requests to enter the safety zone can be made by calling Marine Safety Office Boston at (617) 223–3000. (2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

Dated: May 29, 2002.

M.E. Landry,

Commander, U.S. Coast Guard, Acting Captain of the Port, Boston, Massachusetts.

[FR Doc. 02–14055 Filed 6–4–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Juan–02–049]

RIN 2115–AA97

Safety Zone; Swimming Across San Juan Harbor, San Juan, Puerto Rico

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary fixed safety zone for the Swimming Across San Juan Harbor event in San Juan Harbor, San Juan, Puerto Rico. This safety zone is necessary to protect swimmers and provide for the safety of life on navigable waters by excluding vessels from transiting in the swimming area.

DATES: This rule is effective from 9 a.m. on Sunday July 21, 2002 until 12 (noon) on Sunday July 21, 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 [COTP San Juan, Puerto Rico 02–049] and are available for inspection or copying at Marine Safety Office San Juan, #5 La Puntilla Final, Old San Juan, PR 00901–1800 between 7 a.m. and 3:30 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John Reyes, Greater Antilles Section, at (787) 729–5381.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM, which would incorporate a comment period before a final rule could be issued, would be contrary to the public interest since immediate action is needed to protect the public and waterways of the United States.

Background and Purpose

This rule is required to provide for the safety of life on navigable waters because numerous swimmers will be crossing navigable channels in the commercial port of San Juan. This rule creates a safety zone area that will prohibit non-participating vessels from entering the safety zone during the event without the authorization of the Captain of the Port of San Juan, Puerto Rico. The safety zone area is a rectangular shape starting at point 1, La Puntilla Final, Coast Guard Base at position 18°27′33″ N, 066°07′00″ W, then South to point 2, Catano Ferry Pier at position 18°26′36″ N, 066°07′00″ W, then East to point 3, Punta Catano at position 18°26′40″ N, 066°06′48″ W, then North to point 4 at position 18°27′40″ N, 066°06′49″ W and back west to the origin, point 1.

Law enforcement vessels can be contacted on VHF Marine Band Radio, Channel 16 or telephone number (787) 729–2040. The United States Coast Guard Communications Center will notify the public via Broadcast Notice to Mariners VHF Marine Band Radio, Channel 22 when the zone is activated.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this safety zone to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary because entry into the safety zone is prohibited for a limited time and vessels may be allowed to enter the safety zone with the express permission of the Captain of the Port of San Juan or his designated representative.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic effect upon a substantial number of small entities.

The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because the safety zone will only be in effect for a limited time and vessels may be allowed to enter the safety zone with the express permission of the Captain of the Port of San Juan, Puerto Rico or his designated representative.

Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small 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 requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule will not affect 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.

Environmental

The Coast Guard considered the environmental impact of this rule and concluded under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation.

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationships 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 Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs as a significant energy action has not designated it. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. From 9 a.m. until 12 (noon) on July 21, 2002, a new temporary § 165.T07–049 is added to read as follows:

§ 165.T07–049 Safety Zone; Swimming Across San Juan Harbor, San Juan, Puerto Rico.

(a) *Location.* The safety zone area is a rectangular shape starting at point 1, La Puntilla Final, Coast Guard Base at position 18°27′33″ N, 066°07′00″ W, then South to point 2, Catano Ferry Pier at position 18°26′36″ N, 066°07′00″ W, then East to point 3, Punta Catano at position 18°26′40″ N, 066°06′48″ W, then North to point 4 at position 18°27′40″ N, 066°06′49″ W and back west to the origin, point 1. All coordinates referenced use Datum: NAD 83.

(b) *Regulations.* All vessels, with the exception of event participant vessels, are prohibited from entering the safety zone without the express permission of the Captain of the Port of San Juan, Puerto Rico or his designated representative. After the termination of the Swimming Across San Juan Harbor, San Juan, Puerto Rico, all vessels may resume normal operations.

(c) *Effective Dates.* The safety zone is effective from 9 a.m. on Sunday July 21, 2002 until 12 (noon) on Sunday July 21, 2002.

Dated: May 26, 2002.

J.A. Servidio,

Commander, Coast Guard, Captain of the Port.

[FR Doc. 02–14057 Filed 6–4–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–064]

RIN 2115–AA97

Safety Zone; Portland Harbor, Oilrig Construction Project

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the waters of Portland Harbor within a one hundred (100) yard radius of a large oilrig under construction at the former Bath Iron Works (BIW) Pier 2. This safety zone is needed to protect persons, facilities, vessels and others in the maritime community from the safety hazards associated with the limited maneuverability of vessels working during this construction process, and the safety concerns associated with fastening together two sections of this large oilrig. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: This rule is effective from June 3, 2002 until June 19, 2002.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Marine Safety Office Portland, Maine, 103 Commercial Street, Portland, Maine between 8 a.m. and 4 p.m. Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) R. F. Pigeon, Waterways Safety Branch, Port Operations Department, at (207) 780–3251.

SUPPLEMENTARY INFORMATION:

Regulatory History

Under 5 U.S.C. 553(b)(3), we find that good cause exists for not publishing a notice of proposed rulemaking (NPRM) for this regulation. Due to the complex planning and coordination involved, final details of construction were not provided to the Coast Guard until May 20, 2002, leaving insufficient time to draft and publish a NPRM or to publish the rule 30 days prior to its effective date.

Under 5 U.S.C. 553(d)(3), we find that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay in implementing this regulation would be contrary to the public interest since immediate action is needed to protect the maritime community from the hazards associated with the limited maneuverability of vessels working during this construction process, and the safety concerns associated with fastening together two sections of this large oilrig. The barge L400 will be loaded with a large oilrig deck box (tower section). The barge L400 will have to be maneuvered between the columns of the pontoon section (hull) of the oilrig that will be ballasted down in the former dry-dock basin southeast of the former BIW Pier 2. A loaded barge of this size will have limited maneuverability, and will involve precise movements while positioning the barge between the columns of the pontoon section of the rig. There will be less than two feet of clearance between the barge and the pontoon columns.

Background and Purpose

Cianbro Corporation, of Pittsfield, Maine is completing construction of two large oilrigs known as Amethyst 4 and Amethyst 5. The work is being conducted at the former Bath Iron Works Shipyard in Portland, Maine. The first of these rigs has been transported to Portland, Maine in two sections from a shipyard in Pascagoula, Mississippi. The pontoon section, which is the hull of the oilrig, arrived in April 2002. It has been undergoing preparation work for mating with the larger deck box section, which is the tower of the oilrig, which arrived May 18, 2002.

The mating operation will be conducted in two phases. First, the pontoon section, measuring 250 by 180 feet, will be moved into the deep basin (formerly used by the BIW floating dry-dock) on June 3, 2002. Several vessels will be involved with properly mooring and anchoring the pontoons in the basin. Once in place, the pontoon section will be ballasted and partially submerged.

The second phase will involve placing the deck box of the oilrig, measuring 250 feet square, on top of the columns of the pontoon section. The barge L400, which is loaded with the deck box section, will be maneuvered between the columns of the pontoon section. This is expected to take place on June 5 or 6, 2002 and will take approximately four hours to complete. The deck box section will then be partially welded to the pontoon columns. The welding is expected to take approximately one to two weeks to complete.

Due to the precise movements necessary to complete this maneuver, the limited maneuverability of the barge while loaded with the deck box, the need of the barge to maneuver in the main channel for a short duration, and the safety concerns while fastening the deck box to the columns of the pontoon section, this safety zone will be needed to ensure safety during all portions of this evolution. This safety zone covers all waters of Portland Harbor within a one hundred yard (100 yard) radius of the barge L400, the pontoon section of the oilrig Amethyst 4 (under construction), assist tugs and participating vessels during the movement of the pontoons and barge from the former Bath Iron Works Pier 2, Portland, Maine to the former dry-dock basin on the southeast edge of Pier 2, and during fastening of the deck box, loaded on the barge L400, to the pontoon section.

Regulatory Evaluation

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

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The effect of this regulation will not be significant for several reasons: the impact on the federal channel should only last for approximately four hours, there is ample room for vessels to navigate around the zone and broadcast notifications will be made to the local maritime community informing the public of the boundaries of the zone.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. For the reasons enumerated in the *Regulatory Evaluation* section above, this safety zone will not have a

significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offered to assist small entities in understanding this temporary final rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business, organization or governmental jurisdiction would be affected by this rule, and you have questions concerning its provisions or options for compliance, please call Lieutenant (Junior Grade) R. F. Pigeon, Marine Safety Office Portland, Maine, at (207) 780–3251.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Environment

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

Energy Effects

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

List of Subjects in 33 CFR Part 165

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

Regulation

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add temporary § 165.T01–064 to read as follows:

§ 165.T01–064 Safety Zone; Portland Harbor, Oilrig Construction Project.

(a) *Location.* All waters of Portland Harbor within a one hundred yard (100 yard) radius of the barge L400, the pontoon section of the oilrig Amethyst 4 (under construction), assist tugs and participating vessels during the movement of the pontoons and barge from the former Bath Iron Works Pier 2, Portland, Maine to the former dry-dock basin on the southeast edge of Pier 2, and during fastening of the deck box, loaded on the barge L400, to the pontoon section.

(b) *Effective date.* This rule is effective from June 3, 2002 until June 19, 2002.

(c) *Regulations.* (1) The general regulations contained in § 165.23 of this part apply. (2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene personnel. U.S. Coast Guard personnel include commissioned, warrant and petty officers of the Coast Guard. Upon being hailed by U.S. Coast Guard personnel via siren, radio, flashing light, bullhorn or other means, the operator of the vessel shall proceed as directed.

Dated: May 29, 2002.

M.P. O'Malley,

Commander, Coast Guard, Captain of the Port.

[FR Doc. 02–14054 Filed 6–4–02; 8:45 am]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR Part 20

Changes in International Special Service Fees

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: Pursuant to its authority under 39 U.S.C. 407, the Postal Service is changing fees for international special mail services to become effective simultaneously with changes to domestic rates and fees.

EFFECTIVE DATE: 12:01 A.M., June 30, 2002.

FOR FURTHER INFORMATION CONTACT: John Alepa, 703–292–3589.

SUPPLEMENTARY INFORMATION: The United States Postal Service is a member of the Universal Postal Union (UPU). By virtue of that membership, the Postal Service adheres to the agreements of the UPU to which it is signatory. Specifically, the Universal Postal Convention (Convention) contains provisions concerning the fees member countries can charge for special mail services.

The Convention provides charges for nonstandard letters, return receipts, registered mail service, restricted delivery, recorded delivery, and insured parcel mail service. The charges provided in these agreements are generally less than the Postal Service charges for the equivalent domestic service. The agreements authorize member countries whose internal service charges are higher than those that are fixed in the agreements to apply their domestic charges in the international service. The Postal Service charges international special service fees that are the same as the equivalent domestic special service fees to avoid having international fees that are less than those charged domestically. In addition, there are domestic services such as certificate of mailing, money order inquiry fee, and pickup fee that can be used in conjunction with international mail.

The definition of nonstandard surcharge for letter-post items is changed to be the same as the monmachinable criteria and the new term is adopted for international mail.

Accordingly, the Postal Service is adjusting the following international special service fees concurrently with changes adopted by the Governors of the Postal Service as a result of the current proceedings before the Postal Rate Commission (Docket R2001–1):

A. Certificate of Mailing:

Quantity	Fee
Individual Pieces:	
Basic service (PS Form 3817).	$0.90 (per article)
Firm mailing book (PS Form 3877).	0.30 (per article listed)
Duplicate of PS Form 3817 or 3877.	0.90 (per page)
Bulk Mailings:	
Up to 1,000 identical pieces.	$4.50
Each additional 1,000 pieces.	0.50
Duplicate copy	0.90

B. Insured Mail:

Canada

Limit of Indemnity	Fee
$50	$1.30
100	2.20
200	3.20
300	4.20
400	5.20
500	6.20
600	7.20
675	8.20

(The insured mail fees for all countries other than Canada are unchanged.)

C. Global Express Mail:

Fee in addition to postage, for additional Express Mail merchandise insurance:

Insurance Coverage	Fee
$0.01 to $100.00	None
100.01 to 5,000.00	$1.00 for each $100 or fraction thereof over $100
Express Mail merchandise maximum liability: $5,000	
Document reconstruction maximum liability: $100	

D. Pickup Fee (for Global Express Guaranteed, Global Express Mail, Global Priority Mail, and parcel post): $12.50.

E. Recorded Delivery: $2.30.

F. Registered Mail:

1. Canada

Limit of Indemnity	Fee
$100.00	$8.00
500.00	8.85
1,000.00	9.70

2. All Other Countries

Limit of Indemnity	Fee
$40.45	$7.50

G. Restricted Delivery: $3.50.

H. Return Receipt: $1.75.

I. Nonmachinable Surcharge: $0.12.

J. International Money Order Inquiry Fee: $3.00.

This notice does not address charges for services that do not have a corresponding domestic service. These charges will be addressed in a separate notice in conjunction with anticipated adjustments in international postage rates.

The Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administration Procedure Act regarding proposed rulemaking (5 U.S.C. 553).

List of Subjects in 39 CFR Part 20

Foreign relations, Incorporation by reference, International postal services.

PART 20—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. The *International Mail Manual* which is incorporated by reference in §20.1 is amended, effective June 30, 2002, as follows:

International Mail Manual (IMM)

1 International Mail Services

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140 International Mail Categories

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141 Definitions

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141.3 Global Express Mail

The next level of service, in terms of speed and value-added features, is Global Express Mail (EMS). EMS is an expedited mail service that can be used to send documents and merchandise to most of the country locations that are individually listed in this publication. EMS insurance coverage against loss, damage, or rifling, up to a maximum of $100, is provided at no additional charge. Additional merchandise insurance coverage up to $5,000 may be purchased at the sender's option. However, document reconstruction insurance coverage is limited to a maximum of $100 per shipment. Return receipt service is available, at no additional charge, for EMS shipments that are sent to a limited number of countries. See 221.4. Country specific maximum weight limits range from 22 pounds to 70 pounds. See the Individual Country Listings. Although EMS shipments are supposed to receive the most expeditious handling available in the destination country, they are not subject to a postage refund guarantee if a delivery delay occurs.

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2 Conditions for Mailing

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210 Global Express Guaranteed

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213 Service Areas

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213.3 Pickup Service

On-call and scheduled pickup services are available for an added charge of $12.50 for each pickup stop, regardless of the number of pieces picked up. Only one pickup fee will be charged if domestic Express Mail, International Express Mail, domestic Priority Mail, International Parcel Post, and/or domestic Parcel Post is picked up at the same time. No pickup fee will be charged when Global Express Guaranteed is picked up during a delivery stop or during a scheduled stop made to collect other mail not subject to a pickup fee. Pickup service is provided in accordance with DMM D010.

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216 Postage

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216.3 Discounted Rates

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216.35 Shipment Preparation and Deposit

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216.352 Deposit

The following choices are available for depositing Global Express Guaranteed shipments prepared online:

a. On-call and scheduled pickup services are available for an added charge of $12.50 for each pickup stop, regardless of the number of pieces picked up. Only one pickup fee will be charged if domestic Express Mail, International Express Mail, domestic Priority Mail, International Parcel Post, and/or domestic Parcel Post is picked up at the same time.

No pickup fee will be charged when Global Express Guaranteed is picked up during a delivery stop or during a scheduled stop made to collect other mail not subject to a pickup fee. Pickup service is provided in accordance with DMM D010. A complete listing of participating Global Express Guaranteed Post Offices is available on the Web site at *http://www.usps.com/gxg.*

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220 Global Express Mail

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221 Description

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221.3 Insurance and Indemnity

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221.31 EMS Merchandise Insurance

Global Express Mail merchandise insurance coverage against loss, damage, or rifling is provided up to $100 at no additional charge. Additional insurance coverage above $100 may be purchased at the sender's option. The fee for optional Global Express Mail merchandise insurance coverage is $1.00 for each $100 or fraction thereof, up to a maximum of $5,000 per shipment. See the Individual Country Listings for the applicable Global Express Mail insurance fees.

221.32 Purchase of Additional Insurance

When a mailer wants to insure an EMS merchandise shipment in an amount more than $100, the insurance fee is entered in the block marked ''Insurance'' on the mailing label. Coverage is limited to the actual value of the contents, regardless of the fee paid, or the highest insurance value increment for which the fee is fully paid, whichever is lower. See DMM S500.

221.33 Document Reconstruction Insurance

Nonnegotiable EMS documents are insured against loss, damage, or rifling at no additional cost to the mailer. Document reconstruction insurance coverage is limited to a maximum of $100 per shipment. Additional coverage beyond the $100 indemnity limit is not available. See DMM S010 and S500.

Note: EMS indemnity payments are subject to the provisions of DMM S010, DMM S500, and IMM 935. Neither indemnity payments nor postage refunds are payable for delayed delivery.

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222 Postage

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222.2 Payment of Postage

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222.24 Pickup Service

On-call and scheduled pickup services are available for an added charge of $12.50 for each pickup stop, regardless of the number of pieces picked up. Only one pickup fee will be charged if domestic Express Mail, domestic Priority Mail, international parcel post, Global Express Guaranteed, and/or domestic Parcel Post is picked up at the same time. No pickup fee will be charged when international Express Mail is picked up during a delivery stop or during a scheduled stop made to collect other mail not subject to a pickup fee. Pickup service is provided in accordance with DMM D010.

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230 Global Priority Mail

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236 Mail Entry

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236.3 Pickup Service

On-call and scheduled pickup services are available for Global Priority Mail acceptance cities. There is a charge of $12.50 for each pickup stop, regardless of the number of pieces picked up. (See DMM D010 for standards of pickup service.) Pickup service is *not* available for GPM items that bear a permit imprint and that are paid for through an advance deposit account.

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240 Letter-post

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243 Weight and Size Limits

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243.2 Size Limits

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243.24 Nonmachinable Surcharge

A $0.12 per-piece surcharge is applied to airmail letter-post items (but not to economy (surface) letter-post items) that weigh 1 ounce or less, if any of the following apply:

a. Has an aspect ratio (length divided by height) of less than 1.3 or more than 2.5.

b. Is polybagged, polywrapped, or enclosed in any plastic material.

c. Has clasps, strings, buttons, or similar closure devices.

d. Contains items such as pens, pencils, or loose keys or coins that cause the thickness of the mailpiece to be uneven.

e. Is too rigid (does not bend easily when subjected to a transport belt tension of 40 pounds around an 11-inch diameter turn).

f. For pieces more than 4¼ inches high or 6 inches long, the thickness is less than 0.009 inch.

g. Has a delivery address parallel to the shorter dimension of the mailpiece.

h. For folded self-mailers, the folded edge is perpendicular to the address, regardless of the use of tabs, wafer seals, or other fasteners.

i. For booklet-type pieces, the bound edge (spine) is the shorter dimension of the piece or is at the top, regardless of the use of tabs, wafer seals, or other fasteners.

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280 Parcel Post

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282 Postage

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282.3 Pickup Service

Scheduled pickup service is available for an added charge of $12.50 for each pickup stop regardless of the number of pieces picked up. Only one pickup fee will be charged if domestic Express Mail, Global Express Mail, domestic Priority Mail, Global Priority Mail, Global Express Guaranteed, and/or domestic Parcel Post is also picked up at the same time. No pickup fee will be charged when international parcel post is picked up during a delivery stop or during a scheduled stop made to collect other mail not subject to a pickup fee. Pickup service is provided in accordance with DMM D010.

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3 Special Services

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310 Certificate of Mailing

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313 Fees

313.1 Individual Pieces

The fee for certificates of mailing for ordinary letter-post and ordinary parcel post is $0.90 per piece, whether the item is listed individually on PS Form 3817, *Certificate of Mailing,* or on firm mailing bills. Additional copies of PS Form 3817 or firm mailing bills are available for $0.90 per page. PS Form 3877, *Firm Mailing Book for Accountable Mail,* or forms printed at the mailer's expense may be used for certificates of three or more pieces of mail of any class presented at one time. If mailer-printed forms are used instead of PS Form 3877, these forms must contain, at a minimum, the same information as PS Form 3877. The fee is $0.30 per article.

313.2 Bulk Pieces

Identical pieces of ordinary letter-post mail that are paid for with regular postage stamps, precanceled stamps, or meter stamps are subject to the following certificate of mailing fees:

Up to 1,000 pieces—$4.50

Each additional 1,000 pieces or fraction—0.50

Duplicate copy—0.90

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330 Registered Mail

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333 Fees and Indemnity Limits

333.1 Registration Fees

The registry fee for all countries is $7.50.

Exception: See the Individual Country Listing for Canada.

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340 Return Receipt

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343 Fee

The fee for a return receipt is $1.75, and must be paid in addition to postage and other applicable charges. Return receipt service is available at no additional charge for Global Express Mail to certain countries.

Note: Include the weight of the return receipt when determining the postage for mailing the item.

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350 Restricted Delivery

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353 Fee

Fee is $3.50 and is in addition to postage and other applicable fees.

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360 Recorded Delivery

* * * * *

363 Recorded Delivery Fee

The recorded delivery fee is $2.30 and is in addition to postage and other special service fees, if applicable.

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370 Supplemental Services

371 International Money Orders

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371.7 Inquiries

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371.72 Inquiries Regarding Payment

371.721 Money Orders Issued Pursuant to an Authorization To Issue an International Money Order Form Set

To file an inquiry regarding a money order issued in the United States, send PS Form 6684, *Inquiry Concerning International Money Order Issued in the United States,* to: International Money Order Section, Accounting Service Ctr, U.S. Postal Service, PO Box 82412, St Louis, MO 63182–9421.

Inquiries should not be made before 30 days after the issue date of the money order. The charge for the inquiry is $3.00, which must be accounted for by affixing and canceling postage stamps on PS Form 6684.

* * * * *

5 Nonpostal Export Regulations

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550 Dried Whole Eggs

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552 Charges

A charge of $0.90 will be made for each certificate of mailing, or for each package if a single certificate covers more than one package. As prescribed in 553.21, postage stamps to cover the charge will be affixed to the certificate and canceled.

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560 Tobacco Seeds and Tobacco Plants

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562 Charges

A charge of $0.90 will be made for each permit presented by the sender and for each package when a single permit covers more than one package. Postage stamps to cover the charge should be affixed to the permit and canceled by the postmark of the office of mailing.

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7 Treatment of Inbound Mail

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710 U.S. Customs Information

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713 Treatment of Dutiable Mail at Delivery Office

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713.4 Payment of Duty

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713.43 Registration of Items To Be Returned to the United States

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713.432 Certification by Postal Service Personnel

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c. The postmaster or designated postal employee must check to see that the description of the item to be exported is the same on both Customs Form 4455 and the customs declaration form. If the description is the same, he or she certifies to the mailing (lading) by completing the ''Signature of Customs Officer'' space on both copies of Customs Form 4455. A Certificate of Mailing fee of $0.90 must be charged and accounted for by affixing postage stamps to the original and duplicate copies of Customs Form 4455 and canceling each stamp with the post office date stamp.

* * * * *

Individual Country Listings

[The appropriate fees will be amended as they apply to a specific country.]

* * * * *

An appropriate amendment to 39 CFR part 20 will be published.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–13950 Filed 6–4–02; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0067; FRL–7179–9]

Methyl Parathion and Ethyl Parathion; Tolerance Revocations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document revokes certain tolerances for residues found for methyl parathion and for ethyl parathion. The regulatory actions specified in this document are part of the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA). By law, EPA is required to reassess 66% of the tolerances in existence on August 2, 1996, by August 2002, or about 6,400 tolerances. These tolerances will be counted among reassessments made toward the August 2002 review deadline of FFDCA section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. The regulatory actions in this document pertain to the revocation of 66 tolerances which are counted among tolerance/exemption reassessments made toward the August 2002 review deadline.

DATES: This regulation is effective September 3, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0067, must be received by EPA on or before August 5, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit IV. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0067 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Laura Parsons, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460; telephone number: (703) 305–5776; e-mail address: parsons.laura@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0067. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background

A. What Action is the Agency Taking?

This final rule revokes certain tolerances for residues of methyl parathion and ethyl parathion. The Agency is amending 40 CFR 180.121 (whose tolerances previously covered both methyl parathion and ethyl parathion) to narrow its scope to the remaining tolerances for methyl parathion, and is creating 40 CFR 180.122 to list the remaining tolerances for ethyl parathion, which expire on December 31, 2005. In the **Federal Register** of February 6, 2002 (67 FR 5553) (FRL–6815–1), EPA issued a proposed rule to revoke the tolerances listed in this final rule.

Parathion (methyl and ethyl) tolerances that are revoked effective as of September 3, 2002 include: apricots; avocados; blackberries; blueberries; boysenberries; clover; cranberries; cucumbers; currants; dates; dewberries; eggplants; endive, escarole; figs; filberts, garlic; gooseberries; guavas; loganberries; mangos; melons; mustard seed; okra; olives; parsnips, with or without tops; parsnip greens; peppers; pineapples; pumpkins; quinces; radishes, with or without tops; radish tops; raspberries; safflower seed; squash; strawberries; summer squash; Swiss chard; and youngberries.

The tolerances for sorghum; sorghum, grain, stover; sorghum, grain, forage are

revoked from methyl are narrowed to cover only ethyl parathion, effective September 3, 2002. These expire on December 31, 2005.

On June 2, 2000 (65 FR 35307) (FRL–6491–9), EPA had proposed to revoke the tolerances for a number of commodities listed in 40 CFR 180.121. Although the tolerance for loganberries had not been proposed for revocation in that notice, the final rule on January 5, 2001 (66 FR 1241) (FRL–6752–6), inadvertently removed this tolerance from 40 CFR 180.121. EPA formally proposed revocation of the tolerance for loganberries on February 6, 2002. No comments were received requesting that the tolerance be retained.

Methyl parathion tolerances for guar beans and parsley are revoked effective September 3, 2002.

Ethyl parathion tolerances for apples; artichokes; beets, greens; beets, with or without tops; broccoli, Brussel sprouts; carrots; cauliflower; celery; cherries; collards; grapes; kale; kohlrabi; lettuce; mustard greens; nectarines; peaches; pears; plums, fresh prunes; rutabaga tops; rutabagas, with or without tops; spinach; tomatoes; turnip greens; turnips, with or without tops; and vetch are revoked effective September 3, 2002.

The tolerances for almonds; almond hulls; beets, sugar; beets, sugar, tops; cabbage; dried beans; dried peas; peas, forage; grass, forage; hops; oats; onions; peanuts; pecans; rice; sweet potatoes; walnuts; and white potatoes are narrowed to cover only methyl parathion, effective September 3, 2002.

The tolerances for alfalfa, fresh; alfalfa, hay; barley; corn; corn, forage; cotton, undelinted seed; rapeseed; sorghum; sorghum, grain, stover; sorghum, grain, forage; soybean; soybean, hay; sunflower, seed; and wheat expire on December 31, 2005. Except for the tolerances on sorghum products as noted above, these tolerances are also narrowed to cover only methyl parathion, effective September 3, 2002.

These tolerances in or on specified commodities listed above are being revoked because these pesticides are not registered under FIFRA for uses on those commodities. The tolerances revoked by this final rule are no longer necessary to cover residues of methyl or ethyl parathion in or on domestically treated commodities or commodities treated outside but imported into the United States. Methyl and ethyl parathion are no longer used on those specified commodities within the United States, and no one commented in response to the February 6, 2002 rule proposing these revocations that there was a need for EPA to retain any of the tolerances listed in the proposal to cover residues in or on imported foods.

The regulatory actions in this document pertain to the revocation of 73 tolerances of which 66 would be counted among tolerance/exemption reassessments made toward the August 2002 review deadline. The remaining seven tolerances are not found in the current baseline total of tolerances to be reassessed by the 2002 deadline.

B. What is the Agency's Authority for Taking this Action?

It is EPA's general practice to revoke tolerances for residues of pesticide active ingredients on crop uses for which FIFRA registrations no longer exist. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as ''import tolerances,'' are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

C. When Do These Actions Become Effective?

These actions become effective 90 days following publication of this final rule in the **Federal Register**, although some of the ethyl parathion tolerances will not expire until December 31, 2005. EPA has delayed the effectiveness of these revocations for 90 days following publication of this final rule to ensure that all affected parties receive notice of EPA's actions. Consequently, the effective date is September 3, 2002. For this final rule, tolerances that were revoked because registered uses did not exist concerned uses which have been canceled for many years. Therefore, commodities containing these pesticide residues should have cleared the channels of trade.

Any commodities listed in the regulatory text of this document that are treated with the pesticides subject to this final rule, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by the FQPA. Under this section, any residue of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of FDA that, (1) the residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from a tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

D. What is the Contribution to Tolerance Reassessment?

By law, EPA is required by August 2002 to reassess 66% or about 6,400 of the tolerances in existence on August 2, 1996. EPA is also required to assess the remaining tolerances by August 2006. As of April 29, 2002, EPA has reassessed over 4,140 tolerances. In this rule, EPA is revoking a total of 73 tolerances of which 66 will count as reassessments toward the August 2002 review deadline of FFDCA section 408(q), as amended by FQPA in 1996. The other 7 tolerances were not included in the baseline tolerance count of 6,400 tolerances.

III. Are There Any International Trade Issues Raised by this Final Action?

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. When possible, EPA seeks to harmonize U.S. tolerances with Codex MRLs. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain in a **Federal Register** document the reasons for departing from the Codex level. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual REDs. EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1, 2000) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at http://www.epa.gov/. On the Home Page select ''Laws and Regulations,'' then select ''Regulations and Proposed Rules'' and then look up the entry for this document under ''**Federal Register**—Environmental Documents.'' You can

also go directly to the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/.

IV. Objections and Hearing Requests

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0067 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before August 5, 2002.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Objection/hearing fee payment*. If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IV.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket ID number OPP–2002–0067, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

V. Regulatory Assessment Requirements

This final rule will revoke tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action (i.e., a tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866 due to its lack of significance, this final 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). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this rule, I certify that this action will not have a significant economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed

its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with canceled pesticides. Furthermore, the Agency knows of no extraordinary circumstances that exist as to the present revocations that would change EPA's previous analysis.

In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism*(64 FR 43255, August 10, 1999). 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.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VI. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 20, 2002.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.121 is amended by revising the section heading and paragraph (a) to read as follows:

§ 180.121 Methyl parathion; tolerances for residues.

(a) *General*. Tolerances are established for residues of the insecticide parathion *O*, *O*-Dimethyl-*O*-p-nitrophenyl thiophosphate (the methyl homolog of parathion) in or on the following raw agricultural commodities:

Commodity	Parts per million
Alfalfa, fresh	1.25
Alfalfa, hay	5.0
Almond	0.1
Almond, hull	3.0
Barley	1.0
Bean, dried	1.0
Beet, sugar	0.1
Beet, sugar, top	0.1
Cabbage	1.0
Corn	1.0
Corn, forage	1.0
Cotton, seed	0.75
Grass, forage	1.0
Hop	1.0
Oat	1.0
Onion	1.0
Peanut	1.0
Pea, dried	1.0
Pea, forage	1.0
Pecan	0.1
Potato	0.1
Rape, seed	0.2
Rice	1.0
Soybean	0.1
Soybean, hay	1.0
Sunflower, seed	0.2
Sweet potato	0.1
Walnut	0.1
Wheat	1.0

* * * * *

3. Section 180.122 is added to read as follows:

§ 180.122 Parathion; tolerances for residues.

(a) *General*. Tolerances are established for residues of the insecticide parathion (*O*, *O*-Diethyl-*O*-p-nitrophenyl thiophosphate) in or on the following raw agricultural commodities:

Commodity	Parts per million	Expiration/Revocation Date
Alfalfa, fresh	1.25	12/31/05
Alfalfa, hay	5.0	12/31/05
Barley	1.0	12/31/05
Corn	1.0	12/31/05
Corn, forage	1.0	12/31/05
Cotton, seed	0.75	12/31/05
Rape, seed	0.2	12/31/05
Sorghum	0.1	12/31/05
Sorghum, fodder	3.0	12/31/05
Sorghum, forage	3.0	12/31/05

Commodity	Parts per million	Expiration/Revocation Date
Soybean	0.1	12/31/05
Soybean, hay	1.0	12/31/05
Sunflower, seed	0.2	12/31/05
Wheat	1.0	12/31/05

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 02–13519 Filed 6–4–02; 8:45 am]

BILLING CODE 6560–50–S

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 301

[FTR Amendment 105]

RIN 3090–AH62

Federal Travel Regulation; Maximum Per Diem Rates

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: To improve the ability of the per diem rates to meet the lodging demands of Federal travelers to high cost travel locations, the General Services Administration (GSA) has integrated the contracting mechanism of the new Federal Premier Lodging Program (FPLP) into the per diem rate-setting process. An analysis of FPLP contracting actions and the lodging rate survey data reveals that the maximum per diem rate for the State of Maryland, city of Baltimore including Baltimore County, and Lexington Park/Leonardtown/Lusby, including St. Mary's and Calvert Counties; and the State of Tennessee, city of Memphis including Shelby County, should be increased; and the maximum per diem rate for State of Alabama, city of Montgomery, including Montgomery County, should be decreased to provide for the reimbursement of Federal employees' lodging expenses covered by the per diem. This final rule increases the maximum lodging amounts in the prescribed areas.

EFFECTIVE DATE: May 15, 2002.

FOR FURTHER INFORMATION CONTACT: Joddy P. Garner, Office of Governmentwide Policy, Travel Management Policy, at 202–501–4857.

SUPPLEMENTARY INFORMATION:

A. Background

In the past, properties in high cost travel areas have been under no obligation to provide lodging to Federal travelers at the prescribed per diem rate. Thus, GSA established the FPLP to contract directly with properties in high cost travel markets to make available a set number of rooms to Federal travelers at contract rates. FPLP contract results along with the lodging survey data are integrated together to determine reasonable per diem rates that more accurately reflect lodging costs in these areas. In addition, the FPLP will enhance the Government's ability to better meet its overall room night demand, and allow travelers to find lodging close to where they need to conduct business. After an analysis of this additional data, the maximum lodging amounts are being changed in Montgomery, Alabama; Memphis, Tennessee; Baltimore, Maryland; and Lexington Park/Leonardtown/Lusby, Maryland.

B. Executive Order 12866

GSA has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed revisions do not impose record keeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 501 *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects 41 CFR Chapter 301

Government employees, Travel and transportation expenses.

For the reasons set forth in the preamble, under 5 U.S.C. 5701–5709, 41 CFR chapter 301 is amended as follows:

CHAPTER 301—TEMPORARY DUTY (TDY) TRAVEL ALLOWANCES

1. In Chapter 301, amend the table in Appendix A as follows:

a. At the entry for Montgomery, Alabama, including Montgomery County, the column entitled ''Maximum lodging amount'' is revised to read ''57'' and the column entitled ''Maximum per diem rate'' is revised to read ''95''.

b. At the entry for Baltimore, Maryland, including Baltimore County, the column entitled ''Maximum lodging amount'' is revised to read ''137'' and the column entitled ''Maximum per diem rate'' is revised to read ''179''.

c. At the entries for Lexington Park/Leonardtown/Lusby, Maryland, including St. Mary's and Calvert Counties, the column entitled ''Maximum lodging amount'' is revised to read ''72'' and the column entitled ''Maximum per diem rate'' is revised to read ''106''.

d. At the entry for Memphis, Tennessee, city of Memphis, including Shelby County, the column entitled ''Maximum lodging amount'' is revised to read ''75'' and the column entitled ''Maximum per diem rate'' is revised to read ''113''.

The revised pages containing the amendments to the table set forth above read as follows:

Appendix A to Chapter 301—Prescribed Maximum Per Diem Rates for CONUS

* * * * *

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Per diem locality:		Maximum lodging amount **(room rate only—no taxes)** (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Key city[1]	County and/or other defined location [2], [3]					
CONUS, Standard rate:		55		30		85
(Applies to all locations within CONUS not specifically listed below or encompassed by the boundary definition of a listed point. However, the standard CONUS rate applies to all locations within CONUS, including those defined below, for certain relocation subsistence allowances. See parts 302-2, 302-4, and 302-5 of this subtitle.)						
ALABAMA						
Birmingham	Jefferson	59		38		97
Decatur	Morgan	69		30		99
Gulf Shores	Baldwin					
(May 15-September 4)		101		34		135
(September 5-May 14)		64		34		98
Huntsville	Madison	70		38		108
Montgomery	Montgomery	57		38		95
ARIZONA						
Casa Grande	Pinal					
(January 1-April 30)		80		34		114
(May 1-December 31)		65		34		99
Chinle	Apache					
(May 1-October 31)		98		34		132
(November 1-April 30)		55		34		89
Flagstaff	All points in Coconino County not covered under Grand Canyon per diem area					
(May 1-October 31)		67		34		101
(November 1-April 30)		55		34		89
Grand Canyon	All points in the Grand Canyon National Park and Kaibab National Forest within Coconino County					
(May 1-October 21)		106		42		148
(October 22 –April 30)		94		42		136
Kayenta	Navajo					
(April 15-October 15)		98		30		128
(October 16-April 14)		65		30		95
Phoenix/Scottsdale	Maricopa					
(January 1-April 15)		107		42		149
(April 16-May 31)		79		42		121
(June 1-August 31)		59		42		101
(September 1-December 31)		90		42		132
Tucson	Pima County; Davis-Monthan AFB					
(January 1-April 15)		85		38		123
(April 16-December 31)		58		38		96
Yuma	Yuma	68		34		102
ARKANSAS						
Hot Springs	Garland	60		30		90

Per diem locality: Key city[1]	County and/or other defined location [2, 3]	Maximum lodging amount **(room rate only—no taxes)** (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Gonzales	Ascension Parish	59		34		93
Lake Charles	Calcasieu Parish	70		34		104
New Orleans/St. Bernard	Orleans, St. Bernard, Plaquemine and Jefferson Parishes					
(January 1-May 31)		139		42		181
(June 1-December 31)		89		42		131
Shreveport/Bossier City	Caddo	60		38		98
Slidell	St. Tammany	65		30		95
St. Francisville	West Feliciana	75		38		113
MAINE						
Bar Harbor	Hancock					
(June 15-October 15)		110		38		148
(October 16-June 14)		89		38		127
Bath	Sagadahoc					
(May 1-October 31)		61		34		95
(November 1-April 30)		55		34		89
Kennebunk/Kittery/Sanford	York					
(June 15-October 31)		129		38		167
(November 1-June 14)		69		38		107
Portland	Cumberland					
(July 1-October 31)		119		38		157
(November 1-June 30)		79		38		117
Rockport	Knox					
(July 1-August 26)		87		42		129
(August 27-June 30)		55		42		97
Wiscasset	Lincoln					
(July 1-October 31)		99		38		137
(November 1-June 30)		72		38		110
MARYLAND						
(For the counties of Montgomery and Prince George's, see District of Columbia.)						
Annapolis	Anne Arundel	90		42		132
Baltimore	Baltimore	137		42		179
Columbia	Howard	110		42		152
Frederick	Frederick	65		30		95
Grasonville	Queen Annes	75		38		113
Harford County	Harford County	104		38		142
Lexington Park/ Leonardtown/Lusby	St. Mary's and Calvert	72		34		106
Ocean City	Worcester					
(June 15-October 31)		144		46		190
(November 1-June 14)		59		46		105
St. Michaels	Talbot	100		42		142
MASSACHUSETTS						
Andover	Essex	109		38		147
Boston	Suffolk	159		46		205
Cambridge	Middlesex (except Lowell)	159		46		205

Per diem locality: Key city[1]	County and/or other defined location [2, 3]	Maximum lodging amount **(room rate only—no taxes)** (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
(April 1-December 31)						
(January 1-March 31)		79		42		121
North Kingstown	Washington	89		30		119
Providence	Providence	89		42		131
SOUTH CAROLINA						
Aiken	Aiken	65		30		95
Charleston/Berkeley County	Charleston and Berkeley	99		42		141
Columbia	Richland	65		30		95
Greenville	Greenville	65		38		103
Hilton Head	Beaufort					
(March 15-September 30)		95		42		137
(October 1-March 14)		75		42		117
Myrtle Beach	Horry County; Myrtle Beach AFB					
(March 1-November 30)		99		42		141
(December 1-February 28)		59		42		101
SOUTH DAKOTA						
Custer	Custer					
(June 15-August 19)		70		30		100
(August 20-June 14)		55		30		85
Hot Springs	Fall River					
(June 15-October 15)		108		30		138
(October 16-June 14)		79		30		109
Rapid City	Pennington					
(May 15-September 30)		99		34		133
(October 1-May 14)		55		34		89
Sturgis	Meade					
(June 15-August 15)		79		30		109
(August 16-June 14)		55		30		85
TENNESSEE						
Alcoa/Townsend	Blount	63		34		97
Gatlinburg	Sevier					
(May 1-October 31)		78		38		116
(November 1-April 30)		70		38		108
Memphis	Shelby	75		38		113
Murfreesboro	Rutherford	57		30		87
Nashville	Davidson	82		42		124
Williamson County	Willamson	60		30		90
TEXAS						
Amarillo	Potter	57		30		87
Arlington	Tarrant	77		34		111
Austin	Travis	80		38		118
Bryan	Brazos (except College Station)	60		30		90
College Station	City limits of College Station (see Brazos County)	69		34		103
Corpus Christi	Nueces	59		38		97
Dallas	Dallas	89		46		135
El Paso	El Paso	78		38		116

* * * * *

Dated: May 16, 2002.

Stephen A. Perry,

Administrator of General Services.

[FR Doc. 02–13166 Filed 6–4–02; 8:45 am]

BILLING CODE 6820–14–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 020409080–2134–03; I.D. 052402C]

RIN 0648–AP78

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery

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

ACTION: Interim final rule; request for comments.

SUMMARY: NMFS publishes this interim final rule to amend the regulations governing the Northeast multispecies fishery to bring them into compliance with a Court Order. On May 23, 2002, the U.S. District Court for the District of Columbia (Court) issued an Order in *Conservation Law Foundation, et al.* v. *Evans, et al.*, which granted the motions for reconsideration submitted to the Court by NMFS and several other parties to the lawsuit in response to the Court's April 26, 2002, Remedial Order. In granting the motion for reconsideration, the Court ordered NMFS to implement, by June 1, 2002, an amended interim rule to bring the regulations into conformance with the Settlement Agreement Among Certain Parties (Settlement Agreement) that was filed earlier with the Court. Therefore, NMFS is making the following changes to the regulations: The year-round Cashes Ledge East and Cashes Ledge West Area Closures (blocks 128 and 130) are removed; the requirement to use a minimum of 6–inch (15.2–cm) spacing between the fairlead rollers of de-hooking gear (''crucifiers'') is removed; and the minimum fish size for cod that may be lawfully sold is decreased from 22 inches (55.9 cm) to 19 inches (28.3 cm).

DATES: Effective June 1, 2002, except for an amendment to § 648.83 paragraph (a)(3), which is effective from June 1, 2002, through July 31, 2002. Comments on this interim final rule must be received no later than 5 p.m., local time, on July 5, 2002.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on the June Interim Final Rule for Groundfish.'' Comments also may be sent via facsimile (fax) to (978) 281–9135. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Thomas Warren, Fishery Policy Analyst, phone: 978–281–9347, fax: 978–281–9135; email: *thomas.warren@noaa.gov*

SUPPLEMENTARY INFORMATION:

Background

On December 28, 2001, a decision was rendered by the Court on a lawsuit brought by the Conservation Law Foundation (CLF), Center for Marine Conservation, National Audubon Society and Natural Resources Defense Council against NMFS (*Conservation Law Foundation, et al.*, v. *Evans*, Case No. 00CVO1134, (D.D.C., December 28, 2001)). The lawsuit alleged that Framework Adjustment 33 to the Fishery Management Plan for the Northeast Multispecies Fishery (FMP) violated the overfishing, rebuilding and bycatch provisions of the Magnuson-Stevens Fishery Conservation and Management Act (18 U.S.C. 1801 *et seq.*), as amended by the Sustainable Fisheries Act (SFA). The Court granted Plaintiffs' Motion for Summary Judgment on all counts. The Court had not yet imposed a remedy, but it did ask the parties to the lawsuit to propose remedies consistent with the Court's findings. Additional background on the lawsuit is contained in the preamble to the interim rules published by NMFS on April 29, 2002 (67 FR 21140) and May 6, 2002 (67 FR 30331) and is not repeated here.

From April 5–9, 2002, Plaintiffs, Defendants and Intervenors engaged in Court-assisted mediation to try to agree upon mutually acceptable short-term and long-term solutions to present to the Court as a possible settlement. Although these discussions ended with no settlement, several of the parties continued mediation and filed with the Court a Settlement Agreement on April 16, 2002. In addition to NMFS, the parties signing the agreement include CLF, which is one of the plaintiff conservation groups, all four state intervenors, and two of three industry intervenors.

In order to ensure the implementation of protective management measures by May 1, 2002, NMFS, notwithstanding that the Court had not yet issued its Remedial Order, filed an interim final rule with the Office of the **Federal Register** on April 25, 2002, for publication on April 29, 2002. The interim final rule that was published on April 29, 2002, implemented measures identical to the short-term measures contained in the Settlement Agreement filed with the Court.

On April 26, 2002, the Court issued a Remedial Order that ordered the promulgation of two specific sets of management measures--one to be effective from May 1, 2002, to July 31, 2002, and the other from August 1, 2002, until promulgation of Amendment 13 to the FMP. The Court-ordered measures for the first set of measures were, in the majority, identical with those contained in the Settlement Agreement and the measures contained in NMFS' April 29, 2002, interim final rule. However, the Court-ordered measures included additional provisions and an accelerated schedule of effectiveness for all measures, which were not contained in either the Settlement Agreement or the April 29, 2002, interim final rule. According to the Court, these additional provisions were included to strengthen the Settlement Agreement provisions ''in terms of reducing overfishing and minimizing bycatch without risking the lives of fishermen or endangering the future of their communities and their way of life'' (Remedial Order, p.13). Further, the Court ordered that NMFS publish in the *Federal Register*, as quickly as possible, an ''amended interim rule and an amended second interim rule'' that would ''include the departures from the Settlement Agreement incorporated in the Remedial Order.'' To comply with the Court Order, NMFS published a second interim final rule (''amended interim rule'') to modify the measures implemented through the April 29, 2002, interim final rule and to accelerate the effectiveness of the gear restrictions, as required by the Remedial Order.

Because the Court's Remedial Order was not entirely consistent with the terms of the Settlement Agreement, NMFS, CLF, and the Intervenors filed motions for reconsideration with the Court, requesting that the Court implement the terms of the Settlement Agreement without change. On May 23, 2002, the Court issued an Order granting the motions for reconsideration on the basis that ''the important changes made by the Court in the complex and carefully crafted Settlement Agreement

Among Certain Parties ... would produce unintended consequences.'' The Court ordered that the Settlement Agreement be implemented according to its terms; that the Secretary of Commerce (Secretary) publish an interim rule, effective no later than June 1, 2002, to reduce overfishing in the first quarter of the 2002–2003 fishing year; that the Secretary publish another interim rule to be effective no later than August 1, 2002, to reduce overfishing beginning with the second quarter of the 2002-2003 fishing year, and continuing until implementation of Amendment 13 to the FMP, which complies with the overfishing, rebuilding, and bycatch provisions of the SFA; and that, no later than August 22, 2003, the Secretary promulgate such an amendment to the FMP.

Changes to Management Measures

Through this interim final rule, NMFS, on behalf of the Secretary, makes the changes ordered by the Court to be implemented by June 1, 2002, and thus brings the regulations governing the Northeast multispecies fishery into full conformance with the terms of the Settlement Agreement. Specifically, three measures that were not in the Settlement Agreement, but that were ordered by the April 26, 2002, Remedial Order and implemented by the May 6, 2002, interim final rule, are removed from the regulations. They are:

1. The year-round Cashes Ledge East and Cashes Ledge West Area Closures (blocks 128 and 130);

2. The requirement to use a minimum of 6–inch (15.2–cm) spacing between the fairlead rollers of de-hooking gear (''crucifiers''); and

3. The 22–inch (55.9–cm) minimum fish size limit for cod that may be lawfully sold (the minimum size limit for cod that may be lawfully sold is decreased to 19 inches (28.3 cm), consistent with the regulations that were in place prior to the Court's Remedial Order).

Classification

This rulemaking is required to be made effective by June 1, 2002, by the May 23, 2002, Order issued by the Court in Conservation Law Foundation, et al., v. Evans, Case No. 00CV01134 (D.D.C., Dec. 28, 2001). This Order leaves NMFS with no discretion as to whether or when to promulgate this interim final rule.

This rule has been determined to be significant for purposes of Executive Order 12866. NMFS has not prepared an assessment of the potential costs and benefits of this rule as required by the Executive Order. However, in the April 29, 2002, interim final rule, which implemented the short-term measures contained in the Settlement Agreement, NMFS conducted an assessment of the potential costs and benefits of the measures contained in that rule. Accordingly, the analyses contained in the April 29, 2002, interim final rule continue to be pertinent as NMFS is implementing the management measures contained in the Settlement Agreement. This interim final rule will relieve restrictions on the fishing industry.

Because the Court mandated on May 23, 2002, that this rule must be made effective by June 1, 2002, it is impracticable for NMFS to provide prior notice and an opportunity for public comment. Such procedures would prevent NMFS from timely implementation of the Court's order. Accordingly, the Assistant Administrator for Fisheries (AA) finds that there exists good cause to waive the notice and comment requirements of the Administrative Procedure Act pursuant to 5 U.S.C. 553(b)(B). The AA is also waiving the 30 day delay in effective date under 5 U.S.C.(d)(1), as this rule relieves a restriction on the fishing industry.

Since notice and an opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, this rule is not subject to the analytical requirements of the Regulatory Flexibility Act. As such, no regulatory flexibility analysis is required for this rulemaking, and none has been prepared. 5 U.S.C. 603.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 31, 2002.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

§ 648.14 [Amended]

2. In § 648.14, paragraphs (a)(149) through (151) are removed.

§ 648.80 [Amended]

3. In § 648.80, paragraph (n)(6) is removed.

4. In § 648.81, the heading of paragraph (u) and paragraph (u)(1) are revised to read as follows:

§ 648.81 Closed areas.

* * * * *

(u) *Cashes Ledge Closure Area.* (1) No fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in, the area known as the Cashes Ledge Closure Area, as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (s) and (u)(2) of this section:

CASHES LEDGE CLOSURE AREA[1]

Point	N. Lat.	W. Long.
CL1	43°07′	69°02′
CL2	42°49.5′	68°46′
CL3	42°46.5′	68°50.5′
CL4	42°43.5′	68°58.5′
CL5	42°42.5′	69°17.5′
CL6	42°49.5′	69°26′
CL1	43°07′	69°02′

[1]A chart depicting this area is available from the Regional Administrator upon request (see Table 1 to § 600.502 of this chapter).

* * * * *

5. In § 648.83, paragraph (a)(3) is revised to read as follows (paragraph (a)(3) expires on July 31, 2002):

§ 648.83 Multispecies minimum fish sizes.

(a) * * *

(3) Minimum fish sizes for recreational vessels and charter/party vessels that are not fishing under a NE multispecies DAS are specified in § 648.89. Except as provided in § 648.17, all other vessels are subject to the following minimum fish sizes, determined by total length (TL):

MINIMUM FISH SIZES (TL) FOR COMMERCIAL VESSELS

Species	Sizes (inches)
Cod	19 (48.3 cm)
Haddock	19 (48.3 cm)
Pollock	19 (48.3 cm)
Witch flounder (gray sole)	14 (35.6 cm)
Yellowtail flounder	13 (33.0 cm)
American plaice (dab)	14 (35.6 cm)
Atlantic halibut	36 (91.4 cm)
Winter flounder (blackback)	12 (30.5 cm)
Redfish	9 (22.9 cm)

* * * * *

[FR Doc. 02–14050 Filed 5–31–02; 2:22 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 67, No. 108

Wednesday, June 5, 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.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–46002; File No. S7–18–02]

RIN 3235–AI52

Repeal of Options Trade-Through Disclosure Rule

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''SEC'' or ''Commission'') is proposing to repeal its rule that requires a broker-dealer to disclose to its customer when the customer's order for listed options is executed at a price inferior to a better published quote, unless the transaction was effected on a market that is a participant in an intermarket options linkage plan approved by the Commission or the customer order was executed as part of a block trade, because the Commission preliminary believes that, due to changed circumstances, this rule is no longer needed.

DATES: Comments should be submitted on or before July 22, 2002.

ADDRESSES: All comments should be submitted in triplicate and addressed to Jonathan G. Katz, Secretary, U.S. Securities and Exhange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–18–02; this file number should be included on the subject line if E-mail is used. Comment letters will be available for inspection and copying in the Commission's Public Reference Room at the same address. Electronically submitted comment letters will be posted on the Commission's Internet Web site (*http://www.sec.gov*). The Commission does not edit personal identifying information, such as names or e-mail addresses, from electronic submissions. Submit only the information you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Deborah Flynn, Assistant Director, at (202) 942–0075, Patrick Joyce, Special Counsel, at (202) 942–0779, and Jennifer Lewis, Attorney, at (202) 942–7951, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION:

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I. Discussion of Proposed Repeal of the Trade-Through Disclosure Rule

A.Background

Section 11A of the Securities Exchange Act of 1934 (''Exchange Act'')[1] sets forth Congress findings concerning the establishment of a national market system. Congress found that it was in the public interest, and appropriate for the protection of investors and the maintenance of fair and orderly markets, to assure the availability of quote and transaction information to brokers, dealers, and investors and ''the practicability of brokers executing investors'' orders in the best market.''[2] Congress believed that linking all of the markets for qualified securities would ''foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to best execution of such orders.''[3]

Recognizing that there were significant differences among the markets for various types of securities, Congress granted the Commission broad powers to implement a national market system without forcing all securities markets into a single mold.[4] Accordingly, the Commission recognized and classified markets, firms, and securities as appropriate or necessary in the public interest or for the protection of investors.[5]

Many of the national market system initiatives were implemented in the equities markets at a time when standardized options trading was relatively new.[6] Therefore, the Commission deferred applying many of the national market system initiatives to options to give options trading an opportunity to develop. With the onset of widespread multiple trading in options, beginning in August 1999, the Commission became increasingly concerned about customer orders that are sent to one exchange being executed at prices inferior to quotes published by another market. For that reason, the Commission took several actions described below, including adopting the

[1] 15 U.S.C. 78k-1.

[2] Section 11A(a)(1)(C) of the Exchange Act, 15 U.S.C. 78k–1(a)(1)(C).

[3] Section 11A(a)(1)(D) of the Exchange Act, 15 U.S.C. 78k–1(a)(1)(D).

[4] Senate Committee on Banking, Housing, and Urban Affairs, Report to Accompany S. 249, S. Rep. 94–75, 94th Cong., 1st Sess. 7 (1975) (''Senate Report''). *See also* Committee of Conference, Report to Accompany S. 249, H.R. Rep. No. 94–229, 94th Cong., 1st Sess. 2 (1975) (''Conference Report''). The Committee of Conference stated that the unique characteristics of securities other than common stocks may require different treatment in a national market system.

[5] Section 11A(a)(2) of the Exchange Act authorizes the Commission to designate, by rule, securities qualified for trading in the national market system. 15 U.S.C. 78k–1(a)(2).

[6] The trading of standardized options on securities exchanges began in 1973 with the organization of the Chicago Board Options Exchange (''CBOE'') as a national securities exchange. See Securities Exchange Act Release No. 9985 (February 1, 1973), 1 S.E.C. Doc. 11 (February 13, 1973). Currently, the American Stock Exchange (''Amex''), the CBOE, the International Securities Exchange (''ISE''), the Pacific Exchange (''PCX''), and the Philadelphia Stock Exchange (''Phlx'') (collectively, ''Options Exchanges'') are the only national securities exchanges that trade standardized options.

Trade-Through Disclosure Rule in November 2000.

B. Commission's Response to Intermarket Trade-Throughs of Customer Orders in the Options Markets

Because of concerns about the increasing likelihood of intermarket trade-throughs of customer orders in the options markets following the widespread expansion of multiple trading, in October 1999 the Commission ordered the Options Exchanges to work together to file a national market system plan for linking the options markets.[7] To comply with this order, Amex, CBOE, and ISE submitted identical linkage plans, and Phlx and PCX each submitted its own plan.

The Commission approved the plan filed by Amex, CBOE, and ISE in July 2000 (''Linkage Plan'').[8] Although PCX and Phlx subsequently joined the Linkage Plan,[9] the Commission did not mandate their participation in the Linkage Plan or require that any exchange that was a participant remain one.[10] However, to encourage market participants to obtain the best price for customer orders across markets without requiring that markets join the Linkage Plan, the Commission instead proposed,[11] and later adopted,[12] Rule 11Ac1–7 under the Exchange Act,[13] the ''Trade-Through Disclosure Rule.'' Rule 11Ac1–7 was adopted to encourage the Options Exchanges to develop mechanisms to reduce the frequency of intermarket trade-throughs and to require market participants to disclose to their customers when their orders have been traded through.

The Trade-Through Disclosure Rule requires a broker to disclose to its customer when the customer's order for listed options has been executed at a price inferior to a better published quote (''intermarket trade-through''), and to disclose the better published quote available at the time.[14] The Trade-Through Disclosure Rule provides, however, that a broker-dealer is not required to disclose this information to its customer if the transaction is effected on an exchange that participates in a Commission-approved linkage plan that includes provisions reasonably designed to limit trade-throughs of customer orders.[15]

Once implemented, the Linkage Plan would reasonably limit intermarket trade-throughs on each of the options markets,[16] provided that the Options Exchanges remain participants in the Linkage Plan. If all of the Options Exchanges remained participants in the Linkage Plan, broker-dealers always would be excepted from the disclosure requirements of the Trade-Through Disclosure Rule. If, however, an exchange were to withdraw from the Linkage Plan, and did not participate in another linkage plan with provisions reasonably designed to limit intermarket trade-throughs, broker-dealers effecting transactions on such exchange would be required to provide their customers with information about intermarket trade-throughs and customers would, therefore, be better able to evaluate the quality of executions achieved by their brokers.[17]

C. Amendments to the Linkage Plan

On April 15, 2002, the Options Exchanges filed proposed amendments to the Linkage Plan,[18] approved by the Commission today,[19] to permit an exchange to withdraw from participation in the Linkage Plan only if it can satisfy the Commission that it can accomplish, by alternative means, the same goals as the Linkage Plan of limiting intermarket trade-throughs of prices on other markets. The amendments also require the Options Exchanges to implement the linkage in two phases by specified dates.[20] These amendments establish clear deadlines by which a linkage must be implemented that reasonably limits trade-throughs of customer orders and requires each of the options exchanges to remain participants in the Linkage Plan, unless an alternative means is established for so limiting trade-throughs.[21] The Commission

[7] Securities Exchange Act Release No. 42029 (October 19, 1999), 64 FR 57674 (October 26, 1999). The Commission Order directed Amex, CBOE, PCX, and Phlx to act jointly in discussing, developing, and submitting for Commission approval an intermarket linkage plan for multiply traded options. The Commission also requested ISE, which had applied with the Commission to become a registered national exchange, to participate with the four options exchanges in developing an intermarket linkage plan. The Commission granted the ISE's registration as a national securities exchange for options trading on February 24, 2000. See Securities Exchange Act Release No. 42455, 65 FR 11387 (March 2, 2000).

[8] *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000).

[9] *See* Securities Exchange Act Release Nos. 43310 (September 20, 2000), 65 FR 58583 (September 29, 2000) (approving an amendment to the Linkage Plan adding the PCX as a participant); and 43311 (September 20, 2000), 65 FR 58584 (September 29, 2000) (approving an amendment to the Linkage Plan adding the Phlx as a participant).

[10] The Commission today is approving an amendment to the Linkage Plan proposed by the options exchanges that deletes the provision that permits any participant to withdraw after 30 days written notice and requires, instead, that a participant wishing to withdraw from the Linkage Plan first satisfy the Commission that it can accomplish, by alternative means, the same goals as the Linkage Plan of limiting trade-throughs of prices on other markets. Securities Exchange Act Release No. 46001 (May 30, 2002).

[11] Securities Exchange Act Release No. 43085 (July 28, 2000), 65 FR 47918 (August 4, 2000) (''Proposing Release'').

[12] Securities Exchange Act Release No. 43591 (November 17, 2000), 65 FR 75439 (December 1, 2000) (''Adopting Release'').

[13] 17 CFR 240.11Ac1–7.

[14] Exchange Act Rule 11Ac1–7(b)(1), 17 CFR 240.11Ac1–7(b)(1). This disclosure, which must be made to the customer in writing at or before the completion of the transaction, may be included on the confirmation statement routinely sent to investors. *Id.*

[15] Exchange Act Rule 11Ac1–7(b)(2)(i), 17 CFR 240.11Ac1–7(b)(2)(i). In the Adopting Release, the Commission noted that to reasonably limit trade-throughs of customer orders, a linkage plan must, at a minimum: (1) limit participants from trading through the quotes of all exchanges, including exchanges that are not participants in such plan; (2) require plan participants to actively surveil their markets for trades executed at prices inferior to those publicly quoted on other exchanges; and (3) make clear that the failure of a market with a better quote to complain within a specified period of time that its quote was traded through may affect potential liability, but does not signify that a trade-through has not occurred. *See* Adopting Release, *supra* note .

The Trade-Through Disclosure Rule specifically excludes block trades from coverage, Exchange Act Rule 11Ac1–7(b)(2)(ii), 17 CFR 240.11Ac1–7(b)(2)(ii), and identifies several circumstances, such as OPRA delays and systems malfunctions, under which a trade executed at a price inferior to a published price on another market would not be considered an intermarket trade-through for purposes of the rule, Exchange Act Rule 11Ac1–7(b)(4), 17 CFR 240.11Ac1–7(b)(4).

[16] The Linkage Plan, as approved by the Commission in July 2000, was not reasonably designed to limit trade-throughs of customer orders. Accordingly, the Options Exchanges proposed and the Commission, in June 2001, approved an amendment to the Linkage Plan. Securities Exchange Act Release No. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001).

[17] The initial compliance date of the Trade-Through Disclosure Rule was April 1, 2001. Because the Options Exchanges have not yet fully implemented the linkage, the Commission, at the request of broker-dealers, twice extended the compliance date of the Trade-Through Disclosure Rule for broker-dealers, most recently until April 1, 2002. Securities Exchange Act Release Nos. 44078 (March 15, 2001), 66 FR 15792 (March 21, 2001); and 44852 (September 26, 2001), 66 FR 50103 (October 2, 2001). On March 27, 2002, the Commission issued an order temporarily exempting for 90 days broker-dealers from compliance with the Trade-Through Disclosure Rule. Securities Exchange Act Release No. 45654 (March 27, 2002), 67 FR 15637 (April 2, 2002). In conjunction with this proposal to repeal the Trade-Through Disclosure Rule, the Commission today is extending for an additional 180 days the exemption from compliance with the Trade-Through Disclosure Rule. Securities Exchange Act Release No. .46003 (May 30, 2002).

[18] *See* Securities Exchange Act Release No. 45795 (April 22, 2002), 67 FR 21302 (April 30, 2002).

[19] *See supra* note 10.

[20] *Id.*

[21] Under the terms of the implementation schedule, intermarket testing will begin on December 1, 2002 and the linkage will be fully implemented no later than April 30, 2003. Any failure on the part of the Options Exchanges to meet the deadlines for implementing the Linkage Plan would be a violation of Commission rules. Exchange Act Rule 11Aa3–2(d), 17 CFR 240.11Aa3–2(d).

preliminarily believes that these amendments to the Linkage Plan render the Trade-Through Disclosure Rule unnecessary because all transactions would be executed on markets that reasonably limit trade-throughs of customer orders.

Without these amendments to the Linkage Plan, nothing would have prevented an exchange from withdrawing from the Linkage Plan and trading through the quotes of any other exchange. In view of the amendments to the Linkage Plan approved today, however, the Commission preliminarily believes that the Trade-Through Disclosure Rule is no longer needed and, accordingly, the Commission is proposing that the Trade-Through Disclosure Rule be repealed.

II. Request for Comment

The Commission invites comment from the public with respect to the proposed repeal of the Trade-Through Disclosure Rule described in this release. In particular, the Commission solicits comment on the following questions:

- Is the proposed repeal of the Trade-Through Disclosure Rule appropriate?
- Do the amendments to the Linkage Plan adequately address the concerns that resulted in the Commission's adoption of the Trade-Through Disclosure Rule?
- Is retaining the Trade-Through Disclosure Rule necessary to provide an incentive for any new options exchange to join a qualified, Commission-approved linkage plan, or to find an alternative means acceptable to the Commission to the accomplish the same goals of limiting intermarket trade-throughs of customer orders?

Commenters may also wish to discuss whether there are any reasons why the Commission should consider an approach other than the repeal of the Trade-Through Disclosure Rule.

- For instance, should the Commission exempt broker-dealers from compliance with the Trade-Through Disclosure Rule until such time as the participants have fully implemented the Linkage Plan?

III. Paperwork Reduction Act

If an agency's proposed rule would require a ''collection of information,''[22] the Paperwork Reduction Act of 1995 (''PRA'')[23] requires the agency to obtain approval of the collection of information from the Office of Management and Budget (''OMB''). 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 PRA does not apply in this instance because the proposed repeal of the Trade-Through Disclosure Rule would not impose recordkeeping or information collection requirements, or other collections of information that require the approval of OMB under the PRA. When the Commission adopted the Trade-Through Disclosure Rule, it estimated that broker-dealers complying with the Trade-Through Disclosure Rule would incur one-time paperwork costs of between $8,250,000 and $16,500,000, and that the total continuing paperwork burden of the disclosures required to be made by brokers would be ''nominal'' because it would merely require a small amount of additional information on customer confirmation statements. If the Commission repeals the Trade-Through Disclosure Rule, both the one-time and continual costs of complying with the collection of information imposed by the Trade-Through Disclosure Rule would be eliminated.

IV. Costs and Benefits of the Proposed Repeal of the Trade-Through Disclosure Rule

As discussed above, the Commission is proposing to repeal the Trade-Through Disclosure Rule. The Trade-Through Disclosure Rule was intended to provide an incentive for the Options Exchanges and their members to develop mechanisms to reduce the frequency of intermarket trade-throughs, without mandating the form of mechanism employed. Further, the rule was designed to inform customers of intermarket trade-throughs, permitting them to select a broker-dealer that effects transactions on a market that participates in an approved linkage plan with provisions reasonably designed to limit customer trade-throughs. As discussed above, the Commission today approved amendments to the Linkage Plan, which establish implementation dates for the linkage and prevent an exchange from withdrawing from the Linkage Plan unless it can satisfy the Commission that it can accomplish, by alternative means, the same goals as the Linkage Plan of limiting intermarket trade-throughs of prices on other markets. Therefore, the Commission preliminarily believes the Trade-Through Disclosure Rule is no longer necessary and is proposing to repeal the rule.

Under the Trade-Through Disclosure Rule, a broker-dealer is required to disclose to its customer in writing at or before the completion of the transaction when a trade-through has occurred, unless the trade was effected on a market that is a participant in a Commission-approved intermarket linkage plan that contains provisions reasonably designed to limit trade-throughs. The proposed repeal of the Trade-Through Disclosure Rule would eliminate this requirement for broker-dealers. No broker-dealers have yet been obligated to comply with the Trade-Through Disclosure Rule because initially, the effective date of the rule was extended by the Commission, and currently broker-dealers have been temporarily exempted from compliance with the rule, to permit the Options Exchanges time to develop and implement the Linkage Plan.[24]

The Commission has identified below certain costs and benefits of the proposed repeal of the Trade-Through Disclosure Rule. The Commission requests comment on all aspects of this cost-benefit analysis, including identification of additional costs or benefits of the proposed changes. The Commission encourages commenters to identify or supply any relevant data concerning the costs or benefits of the proposed repeal of the Trade-Through Disclosure Rule.

A. Costs

A trade-through is costly to an investor primarily because the investor receives an execution at a price that is not the best price available. A trade-through also has potential opportunity costs for the broker-dealer or customer responsible for the best quote because that quote or customer order does not receive the execution it would have if the order that was executed at a price inferior to the best quote were instead routed to it. Consequently, intermarket trade-throughs may increase the incidence of unexecuted customer limit orders.

The Commission adopted the Trade-Through Disclosure Rule to encourage the Options Exchanges to develop mechanisms to reduce the frequency of intermarket trade-throughs and to require that market participants disclose to customers when their orders are traded-through. The Trade-Through Disclosure Rule provides that a broker-dealer is not required to disclose to customers when a customer's order has been executed at a price inferior to a better published quote if the transaction is effected on an exchange that participates in a Commission-approved linkage plan that is reasonably designed to limit trade-throughs of customer

[22] *See* 44 U.S.C. 3502(3); 5 CFR 1320.3(c).

[23] 44 U.S.C. 3501 *et seq.*

[24] *See supra* note 17.

orders. All of the Options Exchanges are currently participants in the Linkage Plan; therefore, once the Linkage Plan is implemented, all broker-dealers effecting options transactions for their customers on those exchanges would be excepted from the disclosure requirements of the Trade-Through Disclosure Rule.

The repeal of the Trade-Through Disclosure Rule would mean that there would be no regulatory obligation that a broker-dealer inform its customer when the customer's order is executed at a price inferior to the best available price. The Commission notes, however, that the Commission today has approved amendments to the Linkage Plan that establish implementation dates and restrict the ability of exchanges to withdraw from the Linkage Plan, which will ensure that all options exchanges either remain in the Linkage Plan or find an alternative means acceptable to the Commission to accomplish the same goals as the Linkage Plan of limiting intermarket trade-throughs of customer orders. When adopting the Trade-Through Disclosure Rule, the Commission stated that investors would benefit from the Trade-Through Disclosure Rule because they would be informed when their orders are executed at a price inferior to the best available price. With that information, investors would have the opportunity to reduce the likelihood that their orders would be executed at a price inferior to a price displayed by another market by selecting broker-dealers that effect their transactions on markets that are participants in an approved linkage plan with provisions reasonably designed to limit trade-throughs. However, because the Commission preliminarily believes that the amendments to the Linkage Plan approved today will achieve the same goals as the Trade-Through Disclosure Rule, the costs to the investor of not receiving from its broker-dealer the disclosures required by the Trade-Through Disclosure Rule should be minimized.

The Commission requests comment on the costs of the repeal of the Trade-Through Disclosure Rule. The Commission also requests commenters' views on the effect on investors of the proposed repeal of the Trade-Through Disclosure Rule.

B. Benefits

The proposed repeal of the Trade-Through Disclosure Rule would eliminate the possibility that broker-dealers would incur both one-time and ongoing costs to comply with the Trade-Through Disclosure Rule, such as one-time costs to modify existing systems. For example, the Trade-Through Disclosure Rule would impose one-time costs on broker-dealers that must modify systems to provide the functionality to determine when trade-throughs have occurred and to issue notifications to customers of trade-throughs.

In addition, the Trade-Through Disclosure Rule requires broker-dealers to incur ongoing costs associated with the rule's requirement that broker-dealers provide customer notifications at or before the completion of the transaction. Under the Trade-Through Disclosure Rule, a broker-dealer may provide this disclosure to its customers in conjunction with the confirmation statements routinely sent to customers. The Commission notes, however, pursuant to the Trade-Through Disclosure Rule, an alternative to modifying customer confirmation statements is for broker-dealers to route orders to exchanges participating in an approved linkage plan. Although the Trade-Through Disclosure Rule does not require the implementation of such a plan, it does envision that an approved plan could be implemented. Currently, all five of the Options Exchanges are participants in an approved Linkage Plan, which contains provisions reasonably designed to limit the incidence of intermarket trade-throughs of customer orders. Therefore, arguably, any benefits that could be achieved by repealing the Trade-Through Disclosure Rule may be achieved even if the rule is not repealed provided the Linkage Plan is implemented in a manner consistent with the amendments approved by the Commission today.

V. Consideration of the Burden on Competition, and Promotion of Efficiency, Competition and Capital Formation

Exchange Act Section 3(f) requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation.[25] The Trade-Through Disclosure Rule was adopted to encourage the Options Exchanges to develop mechanisms to reduce trade-throughs and to require market participants to disclose to customers when their orders have been traded through. The Commission notes that the proposed repeal of the Trade-Through Disclosure Rule should enhance efficiency because it would eliminate a disclosure requirement for broker-dealers, while the Linkage Plan would benefit investors because it is designed to limit trade-throughs of customer orders.

In addition, Exchange Act Section 23(a) requires the Commission, when adopting rules under the Exchange Act, to consider the anti-competitive effects of any rule it adopts.[26] Because the proposed repeal of the Trade-Through Disclosure Rule would apply equally to all relevant market participants, the Commission does not believe that the proposal would have any anti-competitive effects. The Commission requests comment on any anti-competitive effects of the proposal.

VI. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis (''IRFA'') has been prepared in accordance with the Regulatory Flexibility Act.[27] It relates to the proposed repeal of Exchange Act Rule 11Ac1–7.

The proposed repeal of the Trade-Through Disclosure Rule, Rule 11Ac1–7, would eliminate the requirement that a broker-dealer disclose to its customer when a trade-through has occurred unless the trade was effected on a market that participates in an approved linkage plan that includes provisions reasonably designed to limit customers' orders from being executed at prices that trade through better published price (''intermarket trade-throughs'').

A. Reasons for the Proposed Action

The Trade-Through Disclosure Rule was implemented to provide an incentive to the Options Exchanges and their members to develop mechanisms to reduce the frequency of intermarket trade-throughs and to inform customers of trade-throughs. Because the Options Exchanges have proposed to amend the Linkage Plan to restrict the ability of exchanges to withdraw from the Linkage Plan, absent an alternative means acceptable to the Commission by which the exchange can achieve the same goals as the Linkage Plan of limiting intermarket trade-throughs, the Commission preliminarily believes that the Trade-Through Disclosure Rule is no longer necessary.

B. Objectives and Legal Basis

As noted above, the proposed repeal of the Trade-Through Disclosure Rule is

[25] 15 U.S.C. 78c(f).

[26] 15 U.S.C. 78w(a).

[27] 5 U.S.C. 601. Pursuant to 5 U.S.C. 603 when an agency is engaged in a proposed rulemaking, ''the agency shall prepare and make available for public comment an initial regulatory flexibility analysis.''

intended to eliminate the requirement that broker-dealers disclose to their customers when a customer's order for listed options has been executed at a price inferior to a better published quote.

The Commission is proposing to repeal the Trade-Through Disclosure Rule under the authority set forth in Exchange Act Sections 3(b), 15, 11A, 17, and 23(a).

C. Small Entities Subject to the Rules

Commission rules generally define a broker-dealer as a small entity for purposes of the Exchange Act and the Regulatory Flexibility Act if the broker-dealer had a total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared, and it is not affiliated with any person (other than a natural person) that is not a small entity.[28] The Commission estimates that as of December 31, 2000, approximately 900 Commission-registered broker-dealers were small entities under the Regulatory Flexibility Act.[29] However, the Commission estimates that none of the 900 registered broker-dealers that would be considered small entities for purposes of the statute regularly represent options orders on behalf of their customers. As of December 31, 2000, data indicates that only one broker-dealer that was a small entity was an options specialist or market maker.

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission is also requesting information regarding the potential impact of the proposed repeal of the Trade-Through Disclosure Rule on the economy on an annual basis. Commenters should provide empirical data to support their views.

D. Reporting, Recordkeeping, and other Compliance Requirements

The Trade-Through Disclosure Rule requires a broker-dealer to disclose to its customer when its order has been executed at a price inferior to a published price on another exchange, unless the options trade is executed on an exchange that participates in an approved linkage plan that has rules reasonably designed to limit intermarket trade-throughs. The proposed repeal of the Trade-Through Disclosure Rule would eliminate this requirement.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission believes there are no rules that duplicate, overlap, or conflict with the proposed repeal of the Trade-Through Disclosure Rule.

F. Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entity issuers. In connection with the proposed repeal of the Trade-Through Disclosure Rule, the Commission considered the application of the proposed repeal of the Trade-Through Disclosure Rule to small entities.

The Commission believes that the application of the proposed repeal of the Trade-Through Disclosure Rule to small entities would achieve the primary goal of limiting trade-throughs or providing information to customers when their orders are traded-through.

G. Solicitation of Comments

The Commission encourages the submission of comments with respect to any aspect of this IRFA. In particular, the Commission requests comments regarding: (1) The number of small entities that may be affected by the proposed repeal of the Trade-Through Disclosure Rule; (2) the existence or nature of the potential impact of the proposed repeal of the Trade-Through Disclosure Rule on small entities discussed in the analysis; and (3) how to quantify the impact of the proposed repeal of the Trade-Through Disclosure Rule. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed rules are adopted, and will be placed in the same public file as comments on the proposed repeal of the Trade-Through Disclosure Rule.

VII. Statutory Authority

We are proposing to repeal the Trade-Through Disclosure Rule pursuant to our authority under Exchange Act Sections 3(b), 15, 11A, 17, and 23(a).

List of Subjects in 17 CFR Part 240

Brokers, Brokers-dealers, Fraud, Issuers, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

§ 240.11Ac1–7 [Removed]

2. Section 240.11Ac1–7 is removed.

Dated: May 30, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–14010 Filed 6–4–02; 8:45 am]

BILLING CODE 8010–01–P

INTERNATIONAL TRADE COMMISSION

19 CFR parts 201, 204, 206 and 207

Rules of General Application; Investigations of Effects of Imports on Agricultural Programs; Investigations Relating to Global and Bilateral Safeguard Actions, Market Disruption, and Review of Relief Actions; and Investigations of Whether Injury to Domestic Industries Results From Imports Sold at Less Than Fair Value or From Subsidized Exports to the United States

AGENCY: International Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States International Trade Commission (Commission) proposes to amend its Rules of Practice and Procedure concerning rules of general application, safeguard investigations, and antidumping and countervailing duty investigations and reviews.The amendments are necessary to make certain technical corrections, to clarify certain provisions, to harmonize different parts of the Commission's rules, and to address concerns that have arisen in Commission practice. The intended effect of the proposed amendments is to facilitate compliance with the Commission's Rules and improve the administration of agency proceedings.

DATES: To be assured of consideration, written comments must be received no later than 5:15 p.m. on August 5, 2002.

[28] 17 CFR 240.0–10(c).

[29] The Commission's estimate of 900 small entities includes all of the registered broker-dealers that do not have relationships with clearing firms.

ADDRESSES: A signed original and 8 copies of each set of comments on these proposed amendments to the Commission's Rules, along with a cover letter, should be submitted by mail or hand delivery to Marilyn R. Abbott, Secretary, United States International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Paul R. Bardos, Esq., Office of the General Counsel, United States International Trade Commission (telephone 202–205–3102). Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its World Wide Web site (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION:

This preamble provides background information, a regulatory analysis of the proposed amendments, and then a detailed section-by-section analysis of the proposed amendments to the rules.

Background

Section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) authorizes the Commission to adopt such reasonable procedures, rules, and regulations as it deems necessary to carry out its functions and duties. To carry out its functions and duties, the Commission has issued Rules of Practice and Procedure. The passage of time has rendered some provisions of the rules outdated. In addition, Commission practice has revealed the need for improvements in certain rules. This rulemaking seeks to update certain outdated provisions and improve other provisions.

The Commission invites the public to comment on all of these proposed rules. In any comments, please also consider addressing whether the proposed amendments are in language that is plain, clear and easy to understand.

Consistent with its ordinary practice, the Commission is issuing these proposed amendments in accordance with the rulemaking procedure in section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553). This procedure entails the following steps: (1) Publication of a notice of proposed rulemaking; (2) solicitation of public comments on the proposed amendments; (3) Commission review of such comments prior to developing final amendments; and (4) publication of final amendments at least thirty days prior to their effective date.

Regulatory Analysis

The Commission has determined that these proposed amendments do not meet the criteria described in section 3(f) of Executive Order 12866 (58 FR 51735, Oct. 4, 1993) and thus do not constitute a significant regulatory action for purposes of the Executive Order.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is inapplicable to this rulemaking because it is not one for which a notice of proposed rulemaking is required under 5 U.S.C. 553(b) or any other statute. Although the Commission has chosen to publish a notice, these proposed amendments are ''agency rules of procedure and practice,'' and thus are exempt from the notice requirement imposed by 5 U.S.C. 553(b).

These proposed amendments do not contain federalism implications warranting the preparation of a federalism summary impact statement pursuant to Executive Order 13132 (64 FR 43255, Aug. 4, 1999).

No actions are necessary under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et. seq.*) because the proposed amendments will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments.

The proposed amendments are not major rules as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et. seq.*). Moreover, they are exempt from the reporting requirements of the Contract With America Advancement Act of 1996 (5 U.S.C. 801 *et. seq.*) because they concern rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.

The proposed amendments are not subject to § 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*), since they do not contain any new information collection requirements.

Section-by-Section Analysis of the Proposed Amendments

Part 201—Rules of General Application

Subpart A—Miscellaneous

The Commission proposes to amend § 201.1 regarding the applicability of part 201 to correctly reference parts 210, 212 and 213 in the reference to rules of special application.

The Commission proposes to amend paragraph (c) of § 201.2, which defines the term ''Tariff Act,'' to include citations to 19 U.S.C. 1677m and 1677n.

The Commission proposes to amend paragraph (c) of § 201.3 regarding Commission business hours to clarify that any document filed after Commission business hours will be considered filed the next business day.

The Commission proposes to amend paragraph (a) of § 201.3a regarding missing children information, to update the Commission's designated point of contact for using its penalty mail in locating and recovering missing children.

The Commission proposes amending paragraph (d) of § 201.4 concerning matters that may come within the purview of other laws. This proposal will correctly cite to section 202 of the Trade Act of 1974 (19 U.S.C. 2252), eliminate the citation to the former 19 U.S.C. 1303, which has been repealed, and will add ''*et seq.*'' to the citation to 19 U.S.C. 1673 to correctly refer to all of the antidumping provisions.

The Commission proposes to correct paragraph (a)(2) of § 201.6 to include § 206.17 as a section having special rules for the handling of nondisclosable confidential business information. The Commission also proposes amending paragraph (d) of § 201.6 regarding the approval or denial of requests for confidential treatment. The proposed amendment would provide for consistency by stating that approvals, like denials, would be in writing. The Commission also proposes updating paragraph (e)(3) of § 201.6 by replacing ''his consideration'' with ''consideration.'' The Commission proposes amending paragraph (g) of § 201.6 regarding granting confidential status to business information to clarify when business information deemed not entitled to confidential treatment will be treated as public information. The proposed amendment would impose a five day deadline for withdrawing such business information after which time it would become public.

Subpart B—Initiation and Conduct of Investigations

The Commission proposes to amend paragraph (a) of § 201.8 regarding where to file documents and the date of filed documents. The proposed amendment would state that filings made within the Commission's official hours of operation will be deemed filed on the date received by the Commission, consistent with the proposed amendment to paragraph (c) of § 201.3 regarding Commission hours.

Additionally, the Commission proposes to amend paragraph (c) of § 201.8 regarding specifications for documents, to provide that all documents filed, other than one or two-

page documents, must be double-spaced, to improve the readability of documents.

The Commission proposes to amend paragraph (f) of § 201.13 to provide, for ease of consideration, that supplementary materials in nonadjudicative hearings must be marked with the name of the organization submitting them. The Commission proposes to amend paragraph (h)(i)(1) of § 201.13, to delete the unnecessary reference to the requirement to file 14 copies of briefs with the Secretary, since paragraph (d) of § 201.8 already contains a requirement concerning the requisite number of copies to be filed.

The Commission proposes to amend paragraph (a) of § 201.14, regarding the computation of time, to simplify filing requirements. In the event of an early or all-day closing of the Commission on a business day, the amendment would allow the Secretary to accept filings due the day of the early or all-day closing on the next business day, without requiring the submitter to file a request for an extension of time.

Subpart C—Availability of Information to the Public Pursuant to 5 U.S.C. 552

The Commission proposes to amend paragraph (a)(1) of § 201.17, regarding requests, to permit the filing of requests electronically. Similarly, paragraph (b) of § 201.18 is proposed to be amended to permit the filing of appeals by such means.

The Commission currently has the capability of accepting electronic filing of requests at its World Wide Web site, at http://www.usitc.gov/foia.htm. In order to give requesters the opportunity to avail themselves of this capability, the Commission, pursuant to § 201.4(b), is waiving the provisions of §§ 201.17 and 201.18 to the extent of permitting electronic filing as of the date of publication of this notice. All other requirements of those rules remain in force.

The Commission proposes amending paragraphs (d) and (e) of § 201.18 regarding denials of requests for inspection or copying of records under the Freedom of Information Act (FOIA) and appeals of such denials. Such proposed amendment would correct the rule to state that paragraph (c), and not paragraphs (a) and (b), provides for extension of time for deciding appeals of denials.

The Commission proposes to amend paragraph (b) of § 201.19 concerning notification regarding requests for confidential business information under FOIA. The proposed amendment would clarify that the term ''(s)ubmitter'' includes contractors, bidders, vendors and others who have an administrative relationship with the Commission, and who provide confidential business information to the Commission. Under the amended provision, persons or entities having an administrative relationship to the Commission would qualify to receive notice before release of their confidential submission under FOIA.

The Commission proposes amending paragraph (a) of § 201.21, regarding availability of specific records, to provide information about the Commission's World Wide Web site, consistent with the electronic reading room provisions of the FOIA.

Subpart D—Safeguarding Individual Privacy Pursuant to 5 U.S.C. 552a

The Commission proposes amending § 201.31, regarding fees, to include employee conduct as part of the section and to rename the section heading to reflect this change. Consequently, the Commission proposes to remove § 201.33, which currently deals with employee conduct, and add its text to § 201.31. This will eliminate the current duplication of section numbers.

Subpart G—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the U.S. International Trade Commission

The Commission proposes amending paragraph (c) of § 201.170 to provide an updated contact point.

Subpart H—Debt Collection

The Commission proposes amending subpart H, regarding debt collection, to update all references to ''Office of Finance and Budget'' to read ''Office of Finance.'' The Commission would make this change in paragraphs (f) and (m) of § 201.201 and paragraphs (g)(1), (g)(2), (h)(1)(iii), (h)(3), and (h)(4)(ii) of § 201.204.

Part 204—Investigations of Effects of Imports on Agricultural Programs

The Commission proposes to amend § 204.1 by renumbering footnote 5 as footnote 1, and to amend § 204.2 by renumbering footnote 6 as footnote 2. These changes would correct a misnumbering of those footnotes. The Commission also proposes to simplify the authority citation.

Part 206—Investigations Relating to Global and Bilateral Safeguard Actions, Market Disruption, and Review of Relief Actions

Subpart A—General

The Commission proposes amending paragraph (b) of § 206.3 regarding the contents of a notice of institution of an investigation under part 206. Under the proposed amendment, the notice of institution would include any limits on page lengths for posthearing briefs.

The Commission proposes amending paragraph (b) of § 206.8 regarding service to provide that the Secretary shall promptly notify a petitioner of approval of an application for disclosure of confidential business information under administrative protective order (APO), and that the petitioner shall then serve a copy of the confidential petition on those approved applicants within two (2) calendar days of receiving that notification. Under this proposed amendment, which is consistent with § 207.10(b)(1)(i), approved applicants will receive a copy of the confidential petition more quickly, and without having to wait for the Secretary's issuance of the service list.

The Commission proposes amending paragraphs (a)(2), (g)(1) and (3) of § 206.17. The Commission proposes to amend paragraph (a)(2), regarding applications for disclosure of confidential business information under APO, to require only a signed APO application and five (5) copies to be filed with the Commission. Filing a signed original and fourteen (14) copies pursuant to § 201.8 (d) provides the Commission with unnecessary copies. The Commission proposes amending paragraph (g)(1) to include the definition of nondisclosable confidential business information from § 201.6(a)(2) to make the rule easier to understand. The Commission also proposes amending paragraph (g)(3) regarding required bracketing procedures if a request for exemption from disclosure of business proprietary information is approved. This proposed amendment would make this provision consistent with existing § 207.7(g)(3), the analogous provision in part 207.

Part 207—Investigations of Whether Injury to Domestic Industries Results From Imports Sold at Less Than Fair Value or From Subsidized Exports to the United States

Subpart A—General Provisions

The Commission proposes to remove § 207.6 regarding reports of progress of investigation as unnecessary and

inconsistent with Commission practice. The section number will be reserved.

The Commission proposes to amend paragraph (a)(2) of § 207.7 regarding applications for disclosure of business proprietary information under APO, to require only a signed APO application and five (5) copies to be filed with the Commission, consistent with the proposed changes in part 206. The Commission further proposes to amend paragraph (a)(2) of § 207.7 for consistency to include a deadline for adding attorneys under the APO in remanded investigations.

Subpart F—Five-Year Reviews

The Commission proposes to amend paragraph (b)(2) of § 207.62, regarding rules on adequacy and nature of Commission review, to delete the reference to ''per group,'' as unnecessary, since a grouped review only involves one ''group.''

The Commission proposes to amend paragraph (b) of § 207.64, regarding staff reports, to conform with agency practice by providing that the final staff report will be placed in the record.

List of Subjects in 19 CFR Parts 201, 204, 206, and 207

Administrative practice and procedure, Investigations.

For the reasons stated in the preamble, the Commission proposes to amend 19 CFR parts 201, 204, 206 and 207 as set forth below:

PART 201—RULES OF GENERAL APPLICATION

1. The authority citation for part 201 continues to read as follows:

Authority: Sec. 335 of the Tariff Act of 1930 (19 U.S.C. 1335), and sec. 603 of the Trade Act of 1974 (19 U.S.C. 2482), unless otherwise noted.

2. Revise § 201.1 to read as follows:

§ 201.1 Applicability of part.

This part relates generally to functions and activities of the Commission under various statutes and other legal authority. Rules having special application appear separately in parts 202 through 207, inclusive, and parts 210, 212 and 213, of this chapter. In case of inconsistency between a rule of general application and a rule of special application, the latter is controlling.

3. Amend § 201.2 to revise paragraph (c) to read as follows:

§ 201.2 Definitions.

* * * * *

(c) *Tariff Act* means the Tariff Act of 1930, 19 U.S.C. §§ 1202–1677j, §§ 1677m–n;

* * * * *

4. Amend § 201.3 to revise paragraph (c) to read as follows:

§ 201.3 Commission offices, mailing address, and hours.

* * * * *

(c) *Hours.* The business hours of the Commission are from 8:45 a.m. to 5:15 p.m., eastern standard or daylight savings time, whichever is in effect in Washington, DC. Any document filed with the Secretary of the Commission after 5:15 p.m. will be considered filed the next business day.

5. Amend § 201.3a to revise paragraph (a) to read as follows:

§ 201.3a Missing children information.

(a) Pursuant to 39 U.S.C. 3220, penalty mail sent by the Commission may be used to assist in the location and recovery of missing children. This section establishes procedures for such use and is applicable on a Commission-wide basis. The Commission's Office of Facilities Management, telephone 202–205–2741, shall be the point of contact for matters related to the implementation of this section.

* * * * *

6. Amend § 201.4 to revise paragraph (d) to read as follows:

§ 201.4 Performance of functions.

* * * * *

(d) *Presentation of matter that may come within the purview of other laws.* Whenever any party or person, including the Commission staff, has reason to believe that a matter under investigation pursuant to section 337 of the Tariff Act of 1930, or a matter under an investigation pursuant to section 202 of the Trade Act of 1974 (19 U.S.C. 2252), which is causing increased imports may come within the purview of another remedial provision of law not the basis of such investigation, including but not limited to the antidumping provisions (19 U.S.C. 1673 *et. seq.*) or the countervailing duty provisions (19 U.S.C. 1671 *et. seq.*) of the Tariff Act of 1930, then the party or person may file a suggestion of notification with the Commission that the appropriate agency be notified of such matter or circumstances, together with such information as the party or person has available. The Secretary shall promptly thereafter publish notice of the filing of such suggestion and information, and make them available for inspection and copying to the extent permitted by law. Any person may comment on the suggestion within 10 days after the publication of said notice. Thereafter, the Commission shall determine whether notification is appropriate under the law and, if so, shall notify the appropriate agency of such matters or circumstances. The Commission may at any time make such notification in the absence of a suggestion under this rule when the Commission has reason to believe, on the basis of information before it, that notification is appropriate under law.

7. Amend § 201.6 to revise paragraphs (a)(2), (d), (e)(3) and (g) to read as follows:

§ 201.6 Confidential business information.

(a) * * *

(2) *Nondisclosable confidential business information* is privileged information, classified information, or specific information (*e.g.,* trade secrets) of a type for which there is a clear and compelling need to withhold from disclosure. Special rules for the handling of such information are set out in § 206.17 and § 207.7 of this chapter.

* * * * *

(d) *Approval or denial of requests for confidential treatment.* Approval or denial of requests shall be made only by the Secretary or Acting Secretary. An approval or a denial of a request for confidential treatment shall be in writing. A denial shall specify the reason therefor, and shall advise the submitter of the right to appeal to the Commission.

(e) * * *

(3) The justification submitted to the Commission in connection with an appeal shall be limited to that presented to the Secretary with the original or amended request. When the Secretary or Acting Secretary has denied a request on the ground that the submitter failed to provide adequate justification, any such additional justification shall be submitted to the Secretary for consideration as part of an amended request. For purposes of paragraph (e)(1) of this section, the twenty (20) day period for filing an appeal shall be tolled on the filing of an amended request and a new twenty (20) day period shall begin once the Secretary or Acting Secretary has denied the amended request, or the approval or denial has not been forthcoming within ten (10) days of the filing of the amended request. A denial of a request by the Secretary on the ground of inadequate justification shall not obligate a requester to furnish additional justification and shall not preclude a requester from filing an appeal with the Commission based on the justification earlier submitted to the Secretary.

* * * * *

(g) *Granting confidential status to business information.* Any business information submitted in confidence and determined to be entitled to confidential treatment shall be maintained in confidence by the Commission and not disclosed except as required by law. In the event that any business information submitted to the Commission is not entitled to confidential treatment, the submitter will be permitted to withdraw the tender within five days of its denial of confidential treatment unless it is the subject of a request under the Freedom of Information Act or of judicial discovery proceedings. After such five day period, the business information deemed not entitled to confidential treatment, and not withdrawn, will be treated as public information.

* * * * *

8. Amend § 201.8 to revise paragraphs (a) and (c) to read as follows:

§ 201.8 Filing of Documents.

(a) *Where to file; date of filing.* Documents shall be filed at the office of the Secretary of the Commission in Washington, DC. Such documents, if properly filed within the hours of operation specified in § 201.3 (c), will be deemed to be filed on the date on which they are actually received in the Commission.

* * * * *

(c) *Specifications for documents.* Each document filed under this chapter shall be double-spaced, clear and legible, except that a document of two pages or less in length need not be double-spaced.

* * * * *

9. Amend § 201.13 to revise paragraphs (f) and (i)(1) to read as follows:

§ 201.13 Conduct of nonadjudicative hearings.

* * * * *

(f) *Supplementary material.* Up to five double-spaced pages of supplementary material, other than remarks read into the record, will be accepted for the record. Supplementary material exceeding five pages may be accepted upon a showing of such cause as may be deemed sufficient by the presiding officials. Supplementary materials must be marked with the name of the organization submitting it. As used herein, the term *supplementary material* refers to:

(1) Additional graphic material such as charts and diagrams used to illuminate an argument or clarify a position and

(2) Information not available to a party at the time its prehearing brief was filed.

* * * * *

(i) *Briefs*—(1) *Parties.* Briefs of the information produced at the hearing and arguments thereon may be presented to the Commission by parties to the investigation. Time to be allowed for submission of briefs will be set after conclusion of testimony and oral argument, if any.

* * * * *

10. Amend § 201.14 to revise paragraph (a) to read as follows:

§ 201.14 Computation of time, additional hearings, postponements, continuances, and extensions of time.

(a) *Computation of time.* Computation of any period of time prescribed or allowed by the rules in this chapter, by order of the Commission, or by order of the presiding officer under part 210 of this chapter shall begin with the first business day following the day on which the act or event initiating such period of time shall have occurred. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or Federal legal holiday, in which event the period runs until the end of the next business day. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and Federal legal holidays shall be excluded from the computation. As used in this rule, a Federal legal holiday refers to any full calendar day designated as a legal holiday by the President or the Congress of the United States. In the event of an early or all-day closing of the Commission on a business day, the Secretary is authorized to accept on the next full business day filings due the day of the early or all-day closing, without requiring the granting of an extension of time by the Chairman of the Commission, or such other person designated to conduct the investigation.

* * * * *

11. Amend § 201.17 to revise paragraph (a)(1) to read as follows:

§ 201.17 Procedures for requesting access to records.

(a) *Requests for records.* (1) A request for any information or record shall be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436 and shall indicate clearly in the request, and if the request is in paper form on the envelope, that it is a ''Freedom of Information Act Request.'' A written request may be made either in paper form, or Electronically by contacting the Commission at *http://www.usitc.gov/foia.htm.*

* * * * *

12. Amend § 201.18 to revise paragraphs (b), (d), introductory text, and (e) to read as follows:

§ 201.18 Denial of requests, appeals from denial.

* * * * *

(b) An appeal from a denial of a request must be received within sixty days of the date of the letter of denial and shall be made to the Commission and addressed to the Chairman, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. Any such appeal shall be in writing, and shall indicate clearly in the appeal, and if the appeal is in paper form on the envelope, that it is a ''Freedom of Information Act Appeal.'' An appeal may be made either:

(1) In paper form, or

(2) Electronically by contacting the Commission at *http://www.usitc.gov/foia.htm.*

* * * * *

(d) The extensions of time mentioned in paragraph (c) of this section shall be made only for one or more of the following reasons:

* * * * *

(e) The extensions of time mentioned in paragraph (c) of this section shall not exceed ten working days in the aggregate.

13. Amend § 201.19(b) to revise the definition of *Submitter* to read as follows:

§ 201.19 Notification regarding requests for confidential business information.

* * * * *

(b) *Definitions.* * * *

Submitter means any person or entity who provides confidential business information, directly or indirectly, to the Commission. The term includes, but is not limited to, corporations, producers, importers, and state and federal governments, as well as others who have an administrative relationship with the Commission such as contractors, bidders and vendors.

* * * * *

14. Amend § 201.21 to revise paragraph (a) to read as follows:

§ 201.21 Availability of specific records.

(a) *Records available.* The following information, on request to the Secretary of the Commission, is available for public inspection and copying: final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases; those statements of policy and interpretations which have been adopted by the agency;

and administrative staff manuals and instructions to staff that affect a member of the public. Available information includes, but is not limited to: Applications, petitions, and other formal documents filed with the Commission, notices to the public concerning Commission matters, transcripts of testimony taken and exhibits submitted at hearings, reports to the President, to either or both Houses of Congress, or to Committees of Congress, release of which has been authorized by the President or the legislative body concerned, reports and other documents issued for general distribution. Much of the information described above also is available on the Commission's World Wide Web site. The Commission's home page is at http://www.usitc.gov. The web site also includes information subject to repeated Freedom of Information Act requests. Persons accessing the web site can find instructions on how to locate Commission information by following the ''Freedom of Information Act'' link on the home page.

* * * * *

15. Amend § 201.31 to revise the section heading and add paragraph (c) to read as follows:

§ 201.31 Fees and employee conduct.

* * * * *

(c) The Privacy Act Officer shall establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and periodically instruct each such person with respect to such rules and the requirements of the Privacy Act including the penalties for noncompliance.

§ 201.33 [Removed]

16. Remove § 201.33.

17. Amend § 201.170 to revise paragraph (c) to read as follows:

§ 201.170 Compliance procedures.

* * * * *

(c) The Director, Office of Equal Employment Opportunity, shall be responsible for coordinating implementation of this section. Complaints may be sent to the Director, Office of Equal Employment Opportunity, United States International Trade Commission, 500 E Street SW., Washington, DC 20436.

* * * * *

18. Amend § 201.201 to revise paragraphs (f) and (m) to read as follows:

§ 201.201 Definitions.

* * * * *

(f) Director means the Director, Office of Finance of the Commission or an official designated to act on the Director's behalf.

* * * * *

(m) Office of Finance means the Office of Finance of the Commission.

* * * * *

19. Amend § 201.204 to revise paragraphs (g), introductory text, (g)(1), (g)(2), (h)(1)(iii), (h)(3), and (h)(4)(ii) to read as follows:

§ 201.204 Salary offset.

* * * * *

(g) Notice of salary offset where the Commission is the paying agency.

(1) Upon issuance of a proper certification by the Director (for debts owed to the Commission) or upon receipt of a proper certification from another creditor agency, the Office of Finance shall send the employee a written notice of salary offset. Such notice shall advise the employee:

(i) Of the certification that has been issued by the Director or received from another creditor agency;

(ii) Of the amount of the debt and of the deductions to be made; and

(iii) Of the initiation of salary offset at the next officially established pay interval or as otherwise provided for in the certification.

(2) The Office of Finance shall provide a copy of the notice to the creditor agency and advise such agency of the dollar amount to be offset and the pay period when the offset will begin.

* * * * *

(h) * * *

(1) * * *

(iii) Deductions shall begin the pay period following the issuance of the certification by the Director or the receipt by the Office of Finance of the certification from another agency or as soon thereafter as possible.

* * * * *

(3) Multiple debts. Where two or more creditor agencies are seeking salary offset, or where two or more debts are owed to a single creditor agency, the Office of Finance may, at its discretion, determine whether one or more debts should be offset simultaneously within the 15 percent limitation.

(4) * * *

(ii) In the event that a debt to the Commission is certified while an employee is subject to salary offset to repay another agency, the Office of Finance may, at its discretion, determine whether the debt to the Commission should be repaid before the debt to the other agency, repaid simultaneously, or repaid after the debt to the other agency.

* * * * *

PART 204—INVESTIGATIONS OF EFFECTS OF IMPORTS ON AGRICULTURAL PROGRAMS

1. Revise the authority citation for part 204 to read as follows:

Authority: 19 U.S.C. 1335.

2. In § 204.1, redesignate footnote 5 as footnote 1.

3. In § 204.2, redesignate footnote 6 as footnote 2.

PART 206—INVESTIGATIONS RELATING TO GLOBAL AND BILATERAL SAFEGUARD ACTIONS, MARKET DISRUPTION, AND REVIEW OF RELIEF ACTIONS

1. The authority citation for part 206 continues to read as follows:

Authority: 19 U.S.C. 1335, 2251–2254, 3351–3382; secs. 103, 301–302, Pub. L. 103–465, 108 .Stat. 4809.

2. Amend § 206.3 to revise paragraph (b) to read as follows:

§ 206.3 Institution of investigations; publication of notice; and availability for public inspection.

* * * * *

(b) *Contents of notice.* The notice will identify the petitioner or other requestor, the imported article that is the subject of the investigation and its tariff subheading, the nature and timing of the determination to be made, the time and place of any public hearing, dates of deadlines for filing briefs, statements, and other documents, limits on page lengths for posthearing briefs, the place at which the petition or request and any other documents filed in the course of the investigation may be inspected, and the name, address, and telephone number of the office that may be contacted for more information. The Commission will provide the same sort of information in its notice when the investigation was instituted following receipt of a resolution or on the Commission's own motion.

* * * * *

3. Amend § 206.8 to revise paragraph (b) to read as follows:

§ 206.8 Service, filing and certification of documents.

* * * * *

(b) *Service.* Any party submitting a document for the consideration of the Commission in the course of an investigation to which this part pertains shall, in addition to complying with § 201.8 of this chapter, serve a copy of the public version of such document on all other parties to the investigation in the manner prescribed in § 201.16 of this chapter, and, when appropriate, serve a copy of the confidential version of such document in the manner provided for in § 206.17(f). The

Secretary shall promptly notify a petitioner when, before the establishment of a service list under § 206.17(a)(4), an application under § 206.17(a) is approved. When practicable, this notification shall be made by facsimile transmission. A copy of the petition including all confidential business information shall then be served by petitioner on those approved applicants in accordance with this section within two (2) calendar days of the time notification is made by the Secretary. If a document is filed before the Secretary's issuance of the service list provided for in § 201.11 of this chapter or the administrative protective order list provided for in § 206.17, the document need not be accompanied by a certificate of service, but the document shall be served on all appropriate parties within two (2) days of the issuance of the service list or the administrative protective order list and a certificate of service shall then be filed. Notwithstanding § 201.16 of this chapter, petitions, briefs, and testimony filed by parties shall be served by hand or, if served by mail, by overnight mail or its equivalent. Failure to comply with the requirements of this rule may result in removal from status as a party to the investigation. The Commission shall make available, upon request, to all parties to the investigation a copy of each document, except transcripts of hearings, confidential business information, privileged information, and information required to be served under this section, placed in the docket file of the investigation by the Commission.

* * * * *

4. Amend § 206.17 to revise paragraph (a)(2), (g)(1) and (3) to read as follows:

§ 206.17 Limited disclosure of certain confidential business information under administrative protective order.

(a) * * *

(1) * * *

(2) *Application.* An application under paragraph (a)(1) of this section must be made by an authorized applicant on a form adopted by the Secretary or a photocopy thereof. A signed application and five (5) copies thereof shall be filed. An application on behalf of an authorized applicant must be made no later than the time that entries of appearance are due pursuant to § 201.11 of this chapter. In the event that two or more authorized applicants represent one interested party who is a party to the investigation, the authorized applicants must select one of their number to be lead authorized applicant. The lead authorized applicant's application must be filed no later than the time that entries of appearance are due. Provided that the application is accepted, the lead authorized applicant shall be served with confidential business information pursuant to paragraph (f) of this section. The other authorized applicants representing the same party may file their applications after the deadline for entries of appearance but at least five days before the deadline for filing posthearing briefs in the investigation, and shall not be served with confidential business information.

* * * * *

(g) *Exemption from disclosure*—(1) *In general.* Any person may request exemption from the disclosure of confidential business information under administrative protective order, whether the person desires to include such information in a petition filed under this Subpart B, or any other submission to the Commission during the course of an investigation. Such a request shall only be granted if the Secretary finds that such information is nondisclosable confidential business information. As defined in § 201.6(a)(2) of this chapter, nondisclosable confidential business information is privileged information, classified information, or specific information (e.g., trade secrets) of a type for which there is a clear and compelling need to withhold from disclosure.

(2) * * *

(3) *Procedure if request is approved.* If the request is approved, the person shall file three versions of the submission containing the nondisclosable confidential business information in question. One version shall contain all confidential business information, bracketed in accordance with § 201.6 of this chapter and § 206.8(c), with the specific information as to which exemption from disclosure was granted enclosed in triple brackets. This version shall have the following warning marked on every page: ''CBI exempted from disclosure under APO enclosed in triple brackets.'' The other two versions shall conform to and be filed in accordance with the requirements of § 201.6 of this chapter and § 206.8 (c), except that the specific information as to which exemption from disclosure was granted shall be redacted from those versions of the submission.

* * * * *

PART 207—INVESTIGATIONS OF WHETHER INJURY TO DOMESTIC INDUSTRIES RESULTS FROM IMPORTS SOLD AT LESS THAN FAIR VALUE OR FROM SUBSIDIZED EXPORTS TO THE UNITED STATES

1. The authority citation for part 207 continues to read as follows:

Authority: 19 U.S.C. 1336, 1671–1677n, 2482, 3513.

§ 207.6 [Removed]

2. Remove and reserve § 207.6.

3. Amend § 207.7 by revising paragraphs (a)(2) and (g)(1) to read as follows:

§ 207.7 Limited disclosure of certain business proprietary information under administrative protective order.

(a) * * *

(2) *Application.* An application under paragraph (a)(1) of this section must be made by an authorized applicant on a form adopted by the Secretary or a photocopy thereof. A signed application and five (5) copies thereof shall be filed. An application on behalf of a petitioner, a respondent, or another party must be made no later than the time that entries of appearance are due pursuant to § 201.11 of this chapter. In the event that two or more authorized applicants represent one interested party who is a party to the investigation, the authorized applicants must select one of their number to be lead authorized applicant. The lead authorized applicant's application must be filed no later than the time that entries of appearance are due. Provided that the application is accepted, the lead authorized applicant shall be served with business proprietary information pursuant to paragraph (f) of this section. The other authorized applicants representing the same party may file their applications after the deadline for entries of appearance but at least five days before the deadline for filing posthearing briefs in the investigation, or the deadline for filing briefs in the preliminary phase of an investigation, or the deadline for filing submissions in a remanded investigation, and shall not be served with business proprietary information.

* * * * *

(g) *Exemption from disclosure*—(1) *In general.* Any person may request exemption from the disclosure of business proprietary information under administrative protective order, whether the person desires to include such information in a petition filed under § 207.10, or any other submission to the Commission during the course of an investigation. Such a request shall only

be granted if the Secretary finds that such information is nondisclosable confidential business information. As defined in § 201.6(a)(2) of this chapter, nondisclosable confidential business information is privileged information, classified information, or specific information (*e.g.*, trade secrets) of a type for which there is a clear and compelling need to withhold from disclosure. The request will be granted or denied not later than thirty (30) days (ten (10) days in a preliminary phase investigation) after the date on which the request is filed.

4. Amend § 207.62 to revise paragraph (b)(2) to read as follows:

§ 207.62 Rulings on adequacy and nature of Commission review.

* * * * *

(b) * * *

(2) Comments shall be submitted within the time specified in the notice of institution. In a grouped review, only one set of comments shall be filed per party. Comments shall not exceed fifteen (15) pages of textual material, double spaced and single sided, on stationery measuring 8 ½ × 11 inches. Comments containing new factual information shall be disregarded.

* * * * *

5. Amend § 207.64 to revise paragraph (b) to read as follows:

§ 207.64 Staff Reports.

* * * * *

(b) *Final staff report.* After the hearing, the Director shall revise the prehearing staff report and submit to the Commission, prior to the Commission's determination, a final version of the staff report. The final staff report is intended to supplement and correct the information contained in the prehearing staff report. The Director shall place the final staff report in the record. A public version of the final staff report shall be made available to the public and a business proprietary version shall also be made available to persons authorized to receive business proprietary information under § 207.7.

Issued: May 30, 2002.

By Order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–13910 Filed 6–4–02; 8:45 am]

BILLING CODE 7020–20–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–216–FOR]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are reopening the public comment period on a proposed amendment to the Kentucky regulatory program (the ''Kentucky program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Kentucky has submitted additional explanatory information pertaining to a previously proposed amendment about subsidence, water replacement, impoundments, hydrology, and permits. Kentucky intends to revise its program to be consistent with the corresponding Federal regulations.

DATES: We will accept written comments on this amendment until 4:00 p.m., [e.s.t.] June 20, 2002.

ADDRESSES: You should mail or hand deliver written comments to William J. Kovacic at the address listed below.

You may review copies of the Kentucky program, this amendment, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Lexington Field Office.

William J. Kovacic, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503, Telephone: (859) 260–8400. E-mail: *bkovacic@osmre.gov*.

Department of Surface Mining Reclamation and Enforcement, 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564–6940.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Telephone: (859) 260–8400. Internet: *bkovacic@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Kentucky program in the May 18, 1982, **Federal Register** (48 FR 21404). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16, and 917.17.

II. Description of the Proposed Amendment

By letter dated July 30, 1997 (administrative record no. KY–1410), Kentucky sent us a proposed amendment to its program. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES.** The provisions of the Kentucky Administrative Regulations (KAR) at section 405 that are being revised are: 8:001, 8:030, 8:040; 16:001, 16:060, 16:090, 16:100, 16:160, 18:001, 18:060, 18:090, 18:100, 18:160, and 18:210. The proposed amendment was announced in the September 5, 1997, Federal Register (62 FR 46933). On November 14, 1997, a Statement of Consideration of public comments was filed with the Kentucky Legislative Research Committee. As a result of the comments and by letter dated March 4, 1998, Kentucky made changes to the original submission (administrative record no. KY–1422). The revisions were made at 405 KAR 8:040, 16:060, 18:060, and 18:210. By letter dated March 16, 1998, Kentucky made additional changes to the original submission (administrative record no. KY–1423). The revisions were made at 8:001, 8:030, 8:040, 16:001, 16:060, 16:090, 16:100, 16:160, 18:001, 18:060, 18:090, 18:100, 18:160, and 18:210. By letter dated July 14, 1998, Kentucky submitted a revised version of the

proposed amendments (administrative record no. KY–1431). All the revisions, except for a portion of those submitted March 16, 1998, were announced in the August 26, 1998, Federal Register (63 FR 45430). The March 16, 1998, revisions not included in previous notices will be included in this document.

During our review of the amendment, we identified concerns relating to the provisions at 405 KAR 8:001, 8:030, 8:040, 16:001, 16:060, 16:090, 16:100, 16:160, 18:001, 18:060, 18:090, 18:100, 18:160, and 18:210. We notified Kentucky of the concerns by letter dated May 26, 2000 (administrative record no. KY–1479). Kentucky responded in a letter dated August 10, 2000, and submitted additional explanatory information (administrative record no. KY–1489).

A. Response to Issue Letter

1. Water Replacement and Subsidence Issues

a. Kentucky law and regulations do not use the term ''drinking, domestic, or residential'' and therefore do not define it. Our law and regulations for both surface and underground mines, and the federal law and regulations for surface mines only, refer to water supplies for ''domestic, agricultural, industrial, or other legitimate use,'' whereas the federal law and regulations for underground mines refers more narrowly to ''drinking, domestic, or residential'' water supplies. Our program is more inclusive and therefore more protective than the federal program.

The federal definition of ''replacement of water supply'' is not included in our program. The federal definition is largely a collection of substantive requirements. The Kentucky Legislative Research Commission's Informational Bulletin 118, Kentucky Administrative Regulations, June 1996, pp. 60–63, states that substantive requirements should not be placed in a definition. Therefore, the cabinet promulgated the provisions of the federal definition as substantive requirements in 405 KAR 16:060 Section 8 and 405 KAR 18:060 Section 12.

b. Our regulations use ''proximately'' because KRS 350.421(2) uses ''proximately resulting from the surface or underground coal mine.'' 30 U.S.C. 1307(b) uses ''proximately resulting from such surface coal mine operation,'' and 30 U.S.C. 1309(a)(2) uses ''resulting from underground coal mining operations.'' The definition of ''proximate cause'' is, in short, ''direct cause,'' which is not significantly different in practice from ''resulting from.'' We do not believe SMCRA or the federal regulations intend a different standard of causation for surface and underground mines.

The term ''proximate cause'' has been defined in Kentucky case law as follows:

Proximate cause is to be determined as a fact in view of the circumstances attending it. (Citation omitted.) It is that cause which naturally leads to, and which might have been expected to have produced, the result. The connection of cause and effect must be established. And if a cause is remote, and only furnished the condition or occasion of the injury, it is not the proximate cause thereof. (Citation omitted.) The proximate cause is a cause which would probably, according to the experience of mankind, lead to the event which happened, and remote cause is a cause which would not, according to such experience, lead to such an event.

Stevens' Adm'r v. *Watt,* Ky., 99 S.W.2d 753, 755, 266 Ky. 608 (1936)

c. The proposal that a notice of noncompliance be issued whenever the cabinet determines that the permittee has damaged a water supply was removed during the legislative review part of the promulgation process. The final regulation requires that the cabinet promptly notify the permittee of receipt of a complaint. After appropriate investigation, if the cabinet determines the permittee damaged the water supply it notifies the permittee of his obligation to replace the water supply and the timetables for replacement. The replacement timetables are not triggered by the mere receipt of a complaint by the permittee or the cabinet, nor are they triggered by the cabinet's initial notice to the permittee that a complaint has been received. The replacement timetables are triggered by the cabinet's notice to the permittee that water loss has occurred, that the permittee caused it, and that he has the obligation to replace the supply. It is simply unfair and unworkable for legally binding timetables for replacement, particularly the 48-hour emergency replacement of domestic water supplies, to begin running upon a mere complaint. There are many cases where alleged impacts to water supplies prove to be nonexistent or to be the result of factors such as drought or inadequate well systems.

With regard to the time period to be used as a basis for payment of increased operation and maintenance expenses, the ''predicted useful life of a water supply system'' is a concept expressed in the federal preamble, not in the federal regulations. Part (a) of the federal definition of ''replacement of water supply'' at 30 CFR 701.5 requires that the time basis is ''a period agreed to by the permittee and the water supply owner.'' Kentucky provides a standard of 20 years that prevails unless a different time period is agreed to by the permittee and water supply owner. It is a reasonable standard that we believe will generally provide a fair outcome to the injured property owner and will provide certainty to the permittee. Because we allow a time period agreed to by the permittee and water supply owner to override the 20-year period, we are completely consistent with the federal regulation. To require that ''remaining useful life'' of a water system be imposed as a rigid standard to be determined on a case by case basis would not only be inconsistent with the federal regulation itself, but also could bog down the enforcement process in wrangling over estimates of useful life that are necessarily subjective. Our 20-year provision is working well in practice.

d. ''Underground or surface source'' is used in KRS 350.421(b) for both surface and underground mines, and is used in 30 U.S.C. 717(b) for surface mines only. Presumably it has the same meaning in both federal and state law, and by including the universe of sources it plainly includes ''wells and springs.''

e. Our identical counterpart to the 30 CFR 784.20(a)(3) requirement that the survey be provided to the property owner is at 405 KAR 18:210 Section 1(4)(a), not Section 1(4)(b). Further, we have procedural protections for the property owner at Section 1(4)(b) that the federal regulations do not have. Further still, the court struck down and OSM has suspended the 784.20(a)(3) requirement for presubsidence condition surveys of structures, so we are not now required to have any of these requirements in our program. Finally, we plan to delete the requirement for presubsidence surveys of structures. See issue 1(i) below.

f. In the previous version of this regulation (before detailed presubsidence surveys were required), which was approved by OSM, undermining sooner than 90 days after the initial notice required a second notice, and in no case could undermining take place sooner than 30 days after the second notice. In this regulation, any undermining sooner than 90 days after the initial notice requires a second notice, must be requested and justified by the permittee, and may be approved by the cabinet, only if the presubsidence survey has been completed (or access denied) and any dispute about the survey has been resolved. With the addition of these safeguards it is possible to allow the minimum time after the second notice to be shorter (as short as 10 days in rare circumstances), and to allow for a possible waiver of the 10-day minimum in writing by the property owner. As presently structured the regulation provides ample notice and opportunity for the property owner to become involved in the decision making about the adequacy of the subsidence control plan and about the adequacy of the presubsidence survey and thereby protect his property.

However, because we intend to delete the requirement for presubsidence surveys of structures, we also intend to amend 405 KAR 18:210 Section 2(2) to return to the previously approved time periods for permittee notice to surface owners. See issue 1(i) below.

g. Procedures for requesting confidentiality of submitted materials are set out in 405 KAR 8:010 Section 12. However, there are limits on what material may be kept confidential and we doubt that information critical to a subsidence control plan can reasonably be kept confidential under state law.

h. Extraction ratios and other information required in 30 CFR 817.121(g) are required in 405 KAR 18:210 Section 5(1), and Section 5(2) expressly states that Mines and Minerals maps will fulfill the requirements of this section if they include all the information required under Section 5(1).

i. In response to the suspension of the corresponding federal rules, we have filed with the Kentucky Legislative Research Commission a Notice of Intent to amend 405 KAR 18:210 to delete the requirement at Section 1(4) for presubsidence surveys of structures, and to delete the rebuttable

presumption of causation of subsidence damage at Section 3(4). We also intend to amend Section 2(2), regarding the required time periods for permittee notice to surface owners prior to undermining, returning to the previously approved time periods.

j. The regulations at 405 KAR 16:060 Section 8(4)(c), 18:060 Section 12(4)(c), and 18:210 Section 3(5)(c) are consistent with the purpose of the federal regulations because the bond cannot be not released or returned until after the permittee has completed the water supply replacement or repair or compensation for subsidence damage that the bond is intended to guarantee.

The sole purpose of the additional bond is to insure that the cabinet will have the money to replace, repair or compensate if the permittee fails to do so. Under the federal regulations, if the permittee repairs or compensates for subsidence damage or replaces a water supply within 90 days (which can be extended up to one year under appropriate circumstances), the additional performance bond is not required. Thus the federal regulations implicitly recognize that there is no reason to require the additional bond unless there develops some reasonable likelihood that the regulatory authority will have to complete the replacement, repair or compensation. If a bond is posted and the permittee then satisfactorily completes the required replacement, repair or compensation there is no reasonable likelihood that the regulatory authority will have to do so, and thus there is no need for the regulatory authority to retain the additional bond amount. Since the cabinet's regulations require that the replacement, repair or compensation insured by the additional bond must have been completed before any release or return of bond, the cabinet believes its regulations are not inconsistent with the federal regulations.

2. Impoundment Issues

k. The safety factors are provided in 405 KAR 16:100, Section 1(3).

l. 405 KAR 16:070 Section 1(2) requires other facilities, in addition to sedimentation ponds, to be installed, operated and maintained when necessary to insure that discharges meet effluent limitations. 405 KAR 16:070 Section 1(b) requires that the other treatment facilities be properly maintained and not be removed until no longer necessary to meet effluent limitations. 405 KAR 16:090 Section 3(2)(b) requires that other treatment facilities be used in conjunction with runoff storage volume to meet effluent limits. 30 CFR 816.46(d)(2) requires that other treatment facilities be designed in accordance with the applicable requirements of 816.46(c), but this is essentially meaningless since the requirements in 816.46(c) are design requirements for sedimentation ponds (detention time, dewatering devices, compaction, spillways, etc.). The federal regulation does not achieve any result that our regulation does not achieve.

m. The Kentucky regulations at 405 KAR 16:090/18:090 Section 4 are as effective as the federal regulations. The requirement that ponds be designed, maintained and operated to provide adequate detention time to meet effluent limits is in 405 KAR 16/18:100 Section 3(1). The requirement to use a nonclogging dewatering device is in Section 4. The purpose of the dewatering device is to remove inflow so that adequate detention time is maintained. To require that the nonclogging dewatering device must be adequate to maintain detention time to meet effluent limits would simply restate the purpose of the dewatering device. The language in 30 CFR 816/817.46(c)(1)(iii)(D) regarding detention time is redundant to the detention time requirement in 30 CFR 816/817.46(c)(1)(iii)(B).

n. The requirements at subsections (11), (12), and (13)(a) were deleted from 405 KAR 16/18:090 because they are provided in 405 KAR 16/18:100.

o. 405 KAR 8:030/8:040 Section 34(6) refers to Class B and C criteria under 405 KAR 7:040 Section 5 and 401 KAR 4:030 (administrative regulation of the cabinet's Division of Water regarding criteria for dams), whereas the federal regulation refers to Class B and C criteria in the USDA–SCS Technical Release No. 60 and incorporate TR–60 by reference.

The Class B and C criteria of the cabinet and those of TR–60 are virtually identical criteria, since the Division of Water's criteria were originally developed based upon the SCS criteria. Thus there is no need for the cabinet's regulations to refer to, or to incorporate by reference, TR–60.

p. Rainfall amounts for PMP events of duration longer than six hours are provided in the cabinet's Division of Water's (formerly Division of Water Resources) Engineering Memorandum No.2, ''Rainfall Frequency Values for Kentucky,'' April 30, 1971. The values are taken from the U.S. Weather Bureau's Technical Papers 40 and 49. Engineering Memorandum No. 2 is referenced in the Division of Water's Engineering Memorandum No. 5, ''Design Criteria for Dams & Associated Structures,'' February 1, 1975, which is referenced in 401 KAR 4:030 Section 3, which in turn is referenced by 405 KAR 16:100/18:100 and 405 KAR 16:160/18:160. Section C(V) (page C–3) of Engineering Memorandum No. 5 makes clear that the PMP to be used is the 6-hour PMP unless the drainage area in question has a time of concentration greater than six hours.

q. The exemption from engineering inspections for certain impoundments without embankments at Section 1(9)(c) is extremely limited. The exemption is not available for impoundments that are sedimentation ponds, coal mine waste impoundments, or are otherwise intended to facilitate active mining. The engineering inspections required by Section 1(9) are intended for impoundments with embankment structures that could fail, and are intended to reveal any signs of instability, structural weakness or other hazardous conditions. The exempted impoundments are holes in the ground. They do not have embankment structures that could fail. They physically cannot present safety hazards or other environmental concerns that warrant the routine, detailed inspections by experienced registered professional engineers or other specialists. Even so, the exemption includes provisions that allow the cabinet to require the inspections on a case by case basis if needed. It would be useless to require the permittee to attempt some kind of demonstration of the obvious, beyond the information normally included in the permit application.

The operator inspections required by Section 1(10) are intended for impoundments with embankment structures that could fail, but which are not Class B or C structures, and are not large enough to be subject to inspection under MSHA rules at 30 CFR 77.216. The required inspections are intended to reveal any signs of structural weakness or other hazardous conditions. The exemption at Section 1(10)(b) from quarterly inspections is only for small nonhazardous impoundments without embankment structures. The exempted impoundments are holes in the ground, so they do not have embankment structures that could fail. They physically cannot develop the hazardous conditions the inspections are intended to protect against, so the inspections are unnecessary for this class of structures. Again, it would be useless to require the permittee to attempt some kind of demonstration of the obvious, beyond the information normally included in the permit application, in order to qualify for the exemption.

r. 405 KAR 16:160/18:160 Section 3(1)(a) expressly mentions the 6-hour PMP. The 90 percent design requirement is in 405 KAR 16:160/18:160 Section 3(3). The 90 percent removal requirement is in 405 KAR 16:160/18:160 Section 4.

s. It is not necessary to reference the Minimum Emergency Spillway Hydrologic Criteria table in TR–60. The federal and Kentucky regulations achieve the same design precipitation values for the freeboard hydrograph criteria.

3. Other Issues

t. The definition of ''historically used for cropland'' cannot be read to decrease the acreage of prime farmland.

OSM is concerned that paragraph (c) of our definition (pertaining to the consideration of additional years of cropland history for lands that have not been used as cropland for any five of the ten years immediately preceding acquisition or application) differs from the federal definition in that does not contain the phrase ''in which case the regulations for prime farmland may be applied to include more years of cropland history only to increase the prime farmland acreage to be preserved.'' The phrase in question is completely superfluous. The only possible use of paragraph (c) is to allow the cabinet to include additional lands as ''historically used for cropland.'' If lands meet the ''any five of ten years'' criteria of paragraphs (a) or (b) they are necessarily ''historically used for cropland.'' Paragraph (c) allows the cabinet to look beyond the ten years to see if land should clearly be considered cropland even though it fails to meet the ''five of ten'' test in paragraphs (a) and (b). Paragraph (c) cannot by any stretch of the imagination be read to say that, because of non-crop use beyond the ten-year period, land should not be considered cropland even though it meets the ''any five of ten'' test under paragraphs (a) or (b).

Paragraphs (a) and (b) of our definition include land as ''historically used for cropland'' if it was, or likely would have been, used as cropland for any five of the ten years immediately preceding either the application or acquisition. Our definition on its face is at least as inclusive as the federal definition, which speaks only to acquisition.

u. In all recent promulgations we have been deleting the phrase ''but not limited to'' after the word ''including.'' Legal staff of the Kentucky Legislative Research Commission's Administrative Regulation Review Subcommittee have insisted that this vague and open-ended language is inconsistent with KRS 13A. We believe that deletion of the term ''but not limited to'' significantly restricts our discretion, but does not necessarily eliminate it.

v. There is nothing in the statutes giving us the authority to adjudicate property title disputes in the first place. With or without the language in question, we cannot adjudicate property title disputes. The federal regulation says it does not intend to give the regulatory authority the authority to adjudicate property rights disputes.

w. You point out that 405 KAR 8:030 Section 12 refers to the 14th edition of *Standard Methods for the Examination of Water and Wastewater*, whereas 30 CFR 780.21(a) refers to the 15th edition. You do not state whether there are substantive differences between the two editions regarding the specific parameters for which sampling is required of coal mining applicants and permittees.

Reference to an earlier edition is not in itself a deficiency. Further, we note that the 20th edition appeared in 1998.

x. We could not find an official list of noxious plants for the state of Kentucky. In the absence of a list that we could place in the regulation or incorporate by reference, we deleted the definition. If there is no state list, there is no need for the definition. The federal regulation does not require that there be an official state list.

y. 30 CFR 816.41(f) requires ''identifying and burying and/or treating, when necessary, materials which may . . .'' The use of ''or'' and ''when necessary'' indicates that the federal regulation does not require ''all three actions in all cases.'' We removed the phrase ''and/or'' from 405 KAR 16:060 Section 4(1) because it is one of several phrases prohibited by KRS 13A.222(4)(k). Our regulation requires ''identifying, burying, and treating, in accordance with 405 KAR 16:190, Section 3, materials which may . . .'' 405 KAR 16:190 Section 3 prescribes the appropriate cover, and treatment as necessary.

The impoundment issues at 405 KAR 16:090 and 18:090, and at other sections as appropriate, will be addressed in a separate **Federal Register** notice (KY–228–FOR). Likewise, the subsidence issues at 405 KAR 18:210 will be addressed in a separate **Federal Register** notice (KY–229–FOR).

B. March 16, 1998, Revisions

Editorial and organizational changes are not included in this notice. Only those substantive changes not addressed in previous proposed rules relating to this amendment appear here.

1. 405 KAR 8:001/16:001/18:001—revision of the definition of ''Sedimentation Pond'' to mean ''a primary sediment control structure: (a) designed, constructed, or maintained pursuant to 405 KAR 16:090 or 405 KAR 18:090; (b) that may include a barrier, dam, or excavated depression to: 1. slow water runoff; and 2. allow suspended solids to settle out; and (c) that shalt not include secondary sedimentation control structures, including a straw dike, riprap, check dam, mulch, dugout, or other measure that reduces overland flow velocity, reduces runoff volume, or trap sediment, to the extent that the secondary sedimentation structure drains into a sedimentation pond.

2. 405 KAR 8:030—sections 34(3) and (5) require that ''the following be submitted to the cabinet after approval by the Mine Safety and Health Admininistration (MSHA): 1. a copy of the final approved design plans for impounding structures; 2. a copy of all correspondence with MSHA; 3. a copy of technical support documents requested by MSHA; 4. a notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the final plan approved by MSHA. These requirements are necessary to minimize duplication of technical review by MSHA and the cabinet, and to minimize conflicts that may arise from duplication of review.''

3. 405 KAR 16:001/18:001—deletion of the definition of ''Noxious Plants'' at section 1(98).

4. 405 KAR 16:001/18:001—revision of the definition of ''Surface Blasting Operation'' to mean ''(a) the on-site storage, transportation, and use of explosives in association with: 1. a coal exploration operation; 2. surface mining activities; or 3. a surface disturbance of underground mining activities; and (b) includes the following activities: 1. design of an individual blast; 2. implementation of a blast design; 3. initiation of a blast; 4. monitoring of an airblast and ground vibration; and 5. use of access control, warning, and all-clear signals, and similar protective measures.

5. 405 KAR 18:001—revision of the definition of ''Material Damage'' to delete reference to 405 KAR 8:040 Section 26.

6. 405 KAR 16:160/18:160—revision of maximum water elevation determination at section 3(1)(c).

III. Public Comment Procedures.

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program. However, we are not requesting comments on Issues 1(e), (f), and (i). These issues pertain to 405 KAR 18:210 Sections 1(4), 2(2), and 3(4). Subsequent to the submission of Kentucky's August 10, 2000, response (administrative record no. KY–1489), Kentucky by letter dated January 25, 2001, submitted changes to 405 KAR 18:210 Sections 1(4), 2(2), and 3(4) (administrative record no. KY–1502). Since the language of these three subsections changed, the 2001 regulatory changes have superseded Kentucky's earlier response. We have sought public comments on these three amended sections on March 5, 2001 (66 FR 13275) and August 15, 2001 (66 FR 42815). Accordingly, 405 KAR 18:210 Sections 1(4), 2(2), and 3(4) will be addressed in a separate final **Federal Register** notice (KY–229–FOR).

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period see **DATES**. We will make every attempt to log all the comments into the administrative record, but comments delivered to an address other than the Lexington Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: SPATS No. [KY–216–FOR] and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Lexington Field Office at (859) 260–8400.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or

town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

IV. Procedural Determinations.

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowable by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) Considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State or local governmental agencies; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 11, 2002.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 02–14077 Filed 6–4–02; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD09–01–122]

RIN 2115–AA98

Special Anchorage Area; Henderson Harbor, NY

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: The purpose of this document is to provide an additional opportunity to submit comments on the appropriate size of the Henderson Harbor Special Anchorage Area. The Coast Guard originally requested comments for 90 days starting on January 2, 2002. The Coast Guard has determined that additional comments will be helpful in determining the appropriate size of the Henderson Harbor Special Anchorage Area.

DATES: Comments must be received by July 22, 2002.

ADDRESSES: You may mail comments to Commander (map), Ninth Coast Guard District, 1240 E. Ninth Street, Cleveland, Ohio 44199–2060, or deliver them to room 2069 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

The Ninth Coast Guard District Marine Safety Office maintains the public docket for this rulemaking. Comments, and documents indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 2069, Ninth Coast Guard District, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Commander Michael Gardiner, Chief, Marine Safety Analysis and Policy Branch, Ninth Coast Guard District Marine Safety Office, at (216) 902–6056.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to submit comments on the appropriate size of the special anchorage area. Persons submitting comments should include their names and addresses, identify this docket (CGD09–01–122) and the specific section of this document to which each comment applies, and give the reason for each comment. 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.

Background Information

On March 7, 2000, the Coast Guard published a final rule extending the southern most special anchorage area approximately 1000 feet while keeping the width approximately the same (65 FR 11892). The Harbormaster had requested that the anchorage area be extended to compensate for the loss of safe anchorage area due to lower water levels. Since vessels must request permission from the Henderson Harbor Town Harbormaster before anchoring or mooring in the special anchorage area, the additional area gave the Town Harbormaster increased deepwater areas in which to direct vessels for safe anchorage.

The Coast Guard has received letters and requests from members of the community, as well as town leaders, indicating that they would like to see the anchorage area revert back to the previous smaller size. In response, on January 2, 2002, the Coast Guard published a request for comments (67 FR 17). Before taking any possible action, the Coast Guard would like to solicit additional comments from those affected by the Henderson Harbor Special Anchorage Area. The Coast Guard would like to get these comments within 45 days of the date of this publication so that they may be considered in conjunction with observing vessel traffic and the physical conditions within Henderson Harbor. After reviewing both the comments and the physical aspects of Henderson Harbor, the Coast Guard will determine if a change is appropriate.

Persons submitting comments should do as directed under *Request for Comments,* and reply to the following specific suggested anchorage areas. Form letters simply citing anecdotal evidence or stating support for or opposition to regulations, without providing substantive data or arguments do not supply support for regulations. The following two options are being considered:

1. *Continue to use current enlarged Anchorage Area.*

(a) *Area A.* The area in the southern portion of Henderson Harbor west of the Henderson Harbor Yacht Club bounded by a line beginning at 43°51′08.8″ N, 76°12′08.9″ W, thence to 43°51′09.0″ N, 76°12′19.0″ W, thence to 43°51′33.4″ N, 76°12′19.0″ W, thence to 43°51′33.4″ N, 76°12′09.6″ W, thence to the point of the beginning. These coordinates are based upon North American Datum 1983 (NAD 83).

(b) *Area B.* The area in the southern portion of Henderson Harbor north of Graham Creek Entrance Light bounded by a line beginning at 43°51′21.8″ N, 76°11′58.2″ W, thence to 43°51′21.7″ N, 76°12′05.5″ W, thence to 43°51′33.4″ N, 76°12′06.2″ W, thence to 43°51′33.6″ N, 76°12′00.8″ W, thence to the point of the beginning. All nautical positions are based on North American Datum 1983 (NAD 83).

2. *Revert Anchorage Area A back to previous smaller size.*

(a) *Area A.* The area in the southern portion of Henderson Harbor west of the Henderson Harbor Yacht club bounded by a line beginning at 43°51′08.8″ N, 76°12′08.9″ W, thence to 43°51′09.0″ N, 76°12′19.0″ W, thence to 43°51′23.8″ N, 76°12′19.0″ W, thence to 43°51′23.8″ N, 76°12′09.6″ W, and then back to the beginning. These coordinates are based upon North American Datum 1983 (NAD 83).

(b) *Area B.* The area in the southern portion of Henderson Harbor north of Graham Creek Entrance Light bounded by a line beginning at 43°51′21.8″ N, 76°11′58.2″ W, thence to 43°51′21.7″ N, 76°12′05.5″ W, thence to 43°51′33.4″ N, 76°12′06.2″ W, thence to 43°51′33.6″ N, 76°12′00.8″ W, thence to the point of the beginning. All nautical positions are based on North American Datum 1983 (NAD 83).

Kurt A. Carlson,

Captain, Coast Guard, Acting Commander, Ninth Coast Guard District.

[FR Doc. 02–14056 Filed 6–4–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA264–0348; FRL–7224–2]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the South Coast Air Quality Management District's portion of the California State Implementation Plan (SIP). This revision concerns the federal recognition of variances from certain rule requirements. We are proposing to approve the revision under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by July 5, 2002.

ADDRESSES: Mail comments to Ginger Vagenas, Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revision and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765.

FOR FURTHER INFORMATION CONTACT: Ginger Vagenas, Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, (415)972–3964.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. The State's Submittal

A. What Rule Did the State Submit?

Rule 518.2, Federal Alternative Operating Conditions, was adopted by the South Coast Air Quality Management District (South Coast or District) on December 21, 2001 and submitted by the California Air Resources Board (CARB) on March 15, 2002. On April 9, 2002, this rule submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

There is one previous version of 518.2. It was adopted by the District on January 12, 1996 and CARB submitted it to us on May 10, 1996. We proposed to approve the earlier version of Rule 518.2 into the SIP on September 25, 1998 (63 FR 51325). EPA later withdrew its proposed approval and proposed to disapprove the rule (64 FR 70652, December 17, 1999).

C. What Is the Purpose of the Submitted Rule?

Rule 518.2 is designed to allow federal recognition of variances through a SIP-approved process that provides adequate public and EPA participation and that will ensure that the substantive requirements of the CAA continue to be met. In brief, this rule establishes a procedure through which an applicable requirement in the SIP may be temporarily modified as it applies to a particular source. The rule accomplishes this by establishing a mechanism for the creation of alternative operating conditions (AOCs), a means by which to offset any emissions in excess of the otherwise applicable requirements that would result, and provisions for EPA and public review and EPA veto of proposed AOCs through the title V ''significant'' permit revision process rather than through the source-specific SIP revision process. The public will be notified of its opportunity to comment on each AOC and each AOC will be submitted to EPA for review. If EPA determines that the AOC does not meet applicable requirements it may veto the AOC thereby rendering it ineffective. See Rule 518.2(f).

For additional background, including a detailed discussion of the CAA requirements governing approval of Rule 518.2, please refer to 63 FR 51325 (September 25, 1998), where EPA proposed approval of the original version of Rule 518.2, and 64 FR 70652 (December 17, 1999), where EPA withdrew its proposed approval and proposed to disapprove Rule 518.2. In response to EPA's proposed disapproval, the District has substantially revised the original Rule 518.2 to address the Agency's concerns. By today's action, EPA proposes to approve the revised rule.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule?

In determining the approvability of Rule 518.2, EPA must evaluate the rule for consistency with the requirements of the Act and EPA regulations. Because this rule would authorize AOCs that allow a source to temporarily comply with an alternative requirement to the requirement approved into the SIP, we have analyzed the rule under CAA provisions that govern SIP revisions—sections 110(l) and 193—to determine whether the AOCs that would be allowed under the rule would be consistent with the requirements of the CAA that apply to SIPs and whether the process for establishing AOCs provides for public and EPA participation similar to that provided for SIP revisions. Generally, revisions to SIPs require reasonable notice and public hearing and must be submitted to EPA for review. SIP rules must be enforceable (*see* section 110(a) of the Act), must require reasonably available control technology (RACT) for existing sources and lowest achievable emission rates (LAER) and offsets for new major sources and modifications in nonattainment areas (*see* sections 182, 172, and 173), must not relax existing requirements in a manner that would result in interference with other requirements of the Act (*see* sections 110(l) and 193), and must require continuous compliance with emission limits (*see* section 302(k)).

B. Do the Rules Meet the Evaluation Criteria?

In our previous proposed rulemakings on the earlier, 1996 version of Rule 518.2 (63 FR 51325 (September 25, 1998) and 64 FR 70653 (December 17, 1999)) we discussed in detail the CAA and regulatory requirements that apply to this rule and our assessment of whether the rule met them. The September 25, 1998 notice described several aspects of the 1996 version of the rule that rendered the rule not approvable. EPA believes that the December 12, 2001 amendments to Rule 518.2 have addressed the disapproval issues we identified and that the rule now complies with the applicable CAA requirements and implementing regulations. Our analysis of those revisions and their consistency with the CAA is summarized below.

1. Compliance With CAA Section 110(l)

Section 110(l) of CAA provides that the Administrator of EPA shall not approve a SIP revision ''if the revision would interfere with any applicable requirement concerning attainment and reasonable and further progress * * * or any other applicable requirement of [the Act].''

In our proposed disapproval of the 1996 version of Rule 518.2, we explained that the rule ran afoul of section 110(l) because the criteria that governed the circumstances under which an AOC could be granted would permit a source to violate certain applicable requirements of the Act, specifically, the technology-based LAER requirements and new source review (NSR) offset requirements that are mandated by sections 172 and 173 of the Act. (See 64 FR 70653). We noted that case law [1] and EPA regulations [2] can be read to provide for an upset defense in the situation where a malfunction is unavoidable and suggested that Rule 518.2 could be redrafted to narrow the circumstances in which an AOC for LAER-based limits would be allowed. We also noted that the District could solve the NSR offset problem by ensuring that sufficient reductions are set aside to compensate for any excess emissions covered by an AOC.

The District has revised Rule 518.2 so that an AOC for LAER-based [3] limits can only be issued in the narrow instance where the source can demonstrate that an emergency or a breakdown of

[1] In *Marathon Oil* v. *EPA*, 564 F.2d 1253, 1272–73 (9th Cir, 1977), the Ninth Circuit held, in the context of a Clean Water Act case, that EPA must provide an upset defense for technology-based effluent limits to take into account the fact that even properly maintained technology can fail.

[2] *See* 40 CFR 70.6(g).

[3] Under the District's rules the terms ''best available control technology'' and ''BACT'' are used in place of ''lowest achievable emissions rate'' and ''LAER.'' As provided in the District's rules, BACT is at least as stringent as LAER, as defined in the Clean Air Act section 171(3). *See* District Rules 1302(f) and 1303(a).

technology caused the violation. Such an exemption is consistent with the CAA and case law interpreting it. *See* Rule 518.2(c)(4).

While the above provision would ensure that the source continued to apply with the technology-based requirements of the CAA, it does not ensure that the SIP will continue to provide for attainment or maintenance of the NAAQS. To address this issue, Rule 518.2 has been revised to require compensating reductions for the purpose of offsetting all excess emissions, including those resulting from AOCs granted for LAER requirements. These reductions are in the form of Alternative Operating Condition Credits, which are emission reduction credits or mobile source emission reduction credits created pursuant to an EPA approved rule, or alternative credits or allowances approved into the SIP by EPA and held by the District. See paragraphs 518.2(b)(3) and (e)(2)(H). Our criteria for judging the adequacy and approvability of emission reduction credits are based on fundamental CAA requirements and ensure that such credits are surplus, quantifiable, enforceable and permanent. See ''Emissions Trading Policy Statement,'' 51 FR 43814, 43831–43832 (December 4, 1986), and ''Economic Incentive Program Rules,'' 59 FR 16690, 16691 (April 7, 1994). Alternatively, sources may generate intra-facility emissions reductions to compensate for the increased emissions allowed under an AOC. Such reductions must also be real, quantifiable, permanent, enforceable, and surplus. See Rule 518.2(h). EPA believes the provisions under the revised version of 518.2 that require the offsetting of excess emissions allowed under an AOC Alternative Operating Condition ensure compliance with sections 173 and 110(l)of the CAA.

2. Compliance With CAA Section 193

Section 193 of CAA prohibits the modification of any control requirement in effect before November 15, 1990 in an area that is a nonattainment area for any air pollutant unless the modification ensures equivalent or greater emission reductions of such air pollutants. The District has been classified as a nonattainment area for several air pollutants and is thus subject to the anti-backsliding provisions of CAA section 193.

In our December 17, 1999 notice, we pointed out that the 1996 version of Rule 518.2 did not meet this CAA requirement because it allowed the relaxation of pre-1990 rules [4] without ensuring that equivalent, contemporaneous emissions reductions are provided to compensate for the emission increases allowed by AOCs (64 FR 70656). We stated that the rule could be amended to cure this problem by funding the emissions bank with real emission reductions.

EPA has concluded that Rule 518.2 as revised complies with section 193 of the CAA because it ensures that excess emissions allowed by AOCs are offset by equivalent or greater reductions that are real, quantifiable, permanent, enforceable, and surplus. As noted above, the reductions are either maintained in the form of Alternative Operating Condition Credits in the Alternative Operating Condition Credit Bank, or are generated by intra-facility reductions. See paragraphs 518.2 (b)(3) and (4) and 518.2(h).

3. Compliance With 40 CFR 70.6(a)(1)(iii)

40 CFR 70.6(a)(1)(iii) provides that ''[i]f an applicable implementation plan allows determination of an alternative emission limit at a part 70 source, *equivalent to that contained in the plan,* to be made in the permit issuance, renewal, or significant modification process, and the State elects to use such process, any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.'' Emphasis added.

SIPs are not typically subject to part 70 regulations governing title V permits, but because Rule 518.2 uses the part 70 permitting process as the vehicle for establishing AOCs, the part 70 regulations establishing the requirements that pertain to the permit revision process, including 40 CFR 70.6(a)(1)(iii), apply.

Because the 1996 version of Rule 518.2 did not require real reductions of air pollutants to compensate for any emissions increases allowed under an AOC, it did not meet the part 70 requirement that alternative limits established under the part 70 permit revision process must be equivalent to the limit in the plan. By revising the rule to require that excess emissions are offset by real reductions generated by EPA-approved rules or by intra-facility reductions the District has ensured that emission reductions equivalent to those required in the plan will be achieved. *See* Rule 518.2(e)(2)(H).

4. Conformity With CAA Requirement for Continuous Compliance

Section 110(a)(2) of the CAA requires enforceable emission limitations and section 302(k) requires the limits must be met on a continuous basis. EPA's interpretation of the Act's requirement for continuous compliance is set forth in policy statements regarding the treatment of excess emissions arising during startup, shutdown, and malfunction. [5] In brief, EPA's view is that SIP limits must be met continuously and any exceptions should be narrowly drawn and clearly impose the burden on the source to show that the exceedance was unavoidable.

In our December 17, 1999 proposal to disapprove the 1996 version of Rule 518.2, we stated that the rule could not be approved because criteria for issuance of an AOC allowed a variance to be granted even if the petitioner could have avoided the violation. *See* 64 FR 70657. This provision was problematic because variances are, by their very nature, allowed periods of noncompliance; they create exceptions to the continuous compliance requirement imposed by the Act on emission limitations. EPA then recommended that the criteria be revised to allow AOCs only when the underlying cause of the violation is unavoidable, and pointed to the Agency's September 20, 1999 policy on excess emissions as a source of guidance. In response to our concerns, the District has revised the criteria for granting AOCs for breakdowns so that they focus on the cause of the violation. Thus, if a violation is caused by a

[4] By ''pre-1990 rules,'' we mean rules in effect before November 15, 1990, the date of the enactment of the CAA Amendments of 1990.

[5] See June 21, 1982 memorandum, entitled ''Definition of ''Continuous Compliance'' and Enforcement of O&M Violations,'' from Kathleen M. Bennett, Assistant for Air Noise and Radiation, to the Regional Administrators; the September 28, 1982 and February 15, 1983 memoranda, both entitled ''Policy on Excess Emissions During Startup, Shutdown, and Malfunctions,'' from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation, to the Regional Administrators; September 20, 1999 memorandum entitled, ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown,'' from Steven A. Herman, Assistant Administrator for Enforcement and Compliance and Robert Perciasepe, Assistant Administrator for Air and Radiation, to the Regional Administrators; and December 5, 2001 memorandum, entitled ''Re-Issuance of Clarification—State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown,'' from Eric Schaeffer, Director, Office of Regulatory Enforcement—Office of Enforcement and Compliance Assurance, and John S. Seitz, Director, Office of Air Quality Planning and Standards, Office of Air and Radiation, to the Regional Administrators.

breakdown of technology, a petitioner cannot receive an AOC unless the violation could not have been prevented through careful planning or design; the breakdown could not reasonably have been foreseen and avoided; the air pollution control equipment or processes were maintained and operated to minimize emissions at all times; repairs were or will be made in an expeditious fashion; and the breakdown is not part of a recurring pattern indicative of inadequate design, operation, or maintenance. *See* Rule 518.2(e)(3). The narrowing of the circumstances under which an AOC can be granted, along with the requirement for real emissions reductions that will offset any increases allowed under the AOC, result in a rule that satisfies EPA's concerns regarding continuous compliance.

5. Prohibition on Allowing Variances From Federal Standards

In our 1999 **Federal Register**, we stated that while the 1996 version of Rule 518.2 in general prohibited the issuance of AOCs for federally promulgated standards, it did not clearly prohibit the issuance of AOCs for local or state rules that EPA has deemed equivalent to, and therefore may be substituted for, maximum achievable technology (MACT) standards under section 112 of the Act. See 64 FR 70657. The District has clarified its intent to prohibit such AOCs with the addition of language that exempts District rules that substitute for MACT standards from eligibility for AOCs. *See* 518.2(c)(2).

6. Concern With Disproportionate Impacts

We received a comment on our September 28, 1998 proposal to approve the 1996 version of Rule 518.2 that opposed the approval of the rule because it could result in disproportionate impacts on communities of color and low income communities. In our 1999 proposal, we suggested that inclusion of language based on California Health and Safety Code section 41700 would address the commenter's concerns. *See* 64 FR 70657. This language was added to the revised version of the rule. *See* 518.2(e)(2)(I).

C. EPA Recommendations to Further Improve the Rules

The TSD describes additional rule revisions that do not affect EPA's current action but are recommended for future modification of the rule by the District.

D. Public Comment and Final Action

Because EPA believes Rule 518.2 fulfills all relevant requirements, we are proposing to fully approve it in accordance with section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate these rules into the federally enforceable SIP.

EPA notes that Rule 518.2 may not represent the only acceptable approach for variances from operating permit conditions. EPA also recognizes that various interested parties are currently considering alternative approaches to variances and will carefully consider and approve such alternatives, so long as they comply with all Clean Air Act requirements.

III. Administrative Requirements

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

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

Dated: May 23, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 02–14039 Filed 6–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 241–0310b; FRL–7224–3]

Revisions to the Arizona State Implementation Plan, California State Implementation Plan, Maricopa County Environmental Services Department, and Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the Maricopa County Environmental Services Department (MCESD) portion of the Arizona State Implementation Plan (SIP), and the Bay Area Air Quality Management District (BAAQMD) portion of the California SIP. These revisions concern volatile organic compound (VOC) emissions from solvent cleaning operations. We are proposing action on local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by July 5, 2002.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Arizona Department of Environmental Quality (ADEQ), 3033 North Central Avenue (T5109), Phoenix, Arizona, 85012.

Maricopa County Environmental Services Department, Air Quality Division, 1001 North Central Avenue, Suite 201, Phoenix, Arizona 85004.

California Air Resources Board (CARB), Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, California 94109.

FOR FURTHER INFORMATION CONTACT: Charnjit Bhullar, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 744–1153.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by local air agencies and submitted by the Arizona Department of Environmental Quality (ADEQ) and California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
MCESD	331	Solvent Cleaning	04/07/99	08/04/99
BAAQMD	8–16	Solvent Cleaning Operations	09/16/98	03/28/00

On October 18, 1999 and May 19, 2000, these rule submittals were found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of These Rules?

MCESD and BAAQMD adopted earlier versions of these rules on June 19, 1996 and June 15, 1994, and ADEQ and CARB submitted them to us on February 26, 1997 and September 28, 1994. We approved these versions into the SIP on February 9, 1998 and December 9, 1994.

C. What Is the Purpose of the Submitted Rules?

Rule 331 applies to all operations using solvents containing VOCs including batch-loaded and in-line, non-vapor and vapor degreasers. Rule 331 does not apply to degreasing operations using solvents containing hazardous air pollutants which are regulated by the National Emission Standards for Hazardous Air Pollutants (NESHAPS) for halogenated solvent cleaning (40 CFR part 63, subpart T).

Rule 8–16 implements control measure A–18 of the BAAQMD's Clean Air Plans. It was adopted by the BAAQMD as part of its June 16, 1999 Ozone Attainment Plan in response to EPA's July 10, 1998 redesignation of the Bay Area as a nonattainment area for the 1-hour ozone National Ambient Air Quality Standard (63 FR 37258). Rule 8–16 applies to cold and vapor cleaners using solvents containing VOCs.

Both rules establish work practice standards and other requirements designed to control VOC emissions. The TSDs have more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(1) and 193). The MCESD and BAAQMD regulate ozone nonattainment areas (see 40 CFR part 81), so Rule 331 and Rule 8–16 must fulfill RACT.

Guidance and policy documents that we used to define specific enforceability and RACT requirements include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.

2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 Federal Register Document,'' (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

3. *Control of Volatile Organic Emissions from Solvent Metal Cleaning,* (EPA–450/2–77–022, November 1977).

4. *Determination of Reasonably Available Control Technology and Best Available Control Technology for*

Organic Solvent Cleaning and Degreasing Operations (CARB, July 18, 1991).

B. Do the Rules Meet the Evaluation Criteria?

These rules improve the SIP by establishing more stringent emission limits and by clarifying monitoring, reporting and recordkeeping provisions. These rules are largely consistent with the relevant policy and guidance regarding enforceability, RACT and SIP relaxations. Rule provisions which do not meet the evaluation criteria are summarized below and discussed further in the TSD.

C. What Are the Rule Deficiencies?

These provisions conflict with section 110 and part D of the Act and prevent full approval of the SIP revisions.

Rule 331 Deficiencies:

1. The provisions of this rule exempt sources that are not necessarily covered by another federally approved rule.

2. Subsections of this rule provide methods of determining capture efficiency, but do not refer to EPA's January 9, 1995 guidance document, ''*Guidelines for Determining Capture Efficiency*'' describing calculation procedures.

3. Sections II and III of the appendix to this rule do not clarify which and how standards are adjusted for boiling point.

4. Section II–6 of the appendix to this rule raise the threshold limit for additional control (from 10.75 ft^2 to 13 ft^2) without adequately justifying this relaxation.

Rule 8–16 Deficiencies:

1. Section 8–16–501.2 allows facility-wide make-up solvent recording on an annual basis, which is not sufficient to ensure that the rule is enforceable pursuant to CAA section 110(a)(2)(A).

2. Rule 8–16 contains a number of incorrect section references that may result in enforcement ambiguity.

D. EPA Recommendations To Further Improve the Rules

The TSD describes additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agency modifies the rules.

E. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the Act, EPA is proposing a limited approval of the submitted rules to improve the SIP. If finalized, this action would incorporate the submitted rules into the SIP, including those provisions identified as deficient. This approval is limited because EPA is simultaneously proposing a limited disapproval of the rules under section 110(k)(3). If this disapproval is finalized, sanctions will be imposed under section 179 of the Act unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months. These sanctions would be imposed according to 40 CFR 52.31. A final disapproval would also trigger the federal implementation plan (FIP) requirement under section 110(c). Note that the submitted rules have been adopted by the MCESD and BAAQMD, and EPA's final limited disapproval would not prevent the local agency from enforcing them.

We will accept comments from the public on the proposed limited approval and limited disapproval for the next 30 days.

III. Background Information

Why Were These Rules Submitted?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency VOC rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1998	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP- Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, Regulatory Planning and Review.

B. 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.

C. Executive Order 13045

Executive Order 13045, entitled ''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

Executive Order 13132, entitled ''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 acts on 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 proposed 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.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This 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. Thus, Executive Order 13175 does not apply to this rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

F. Regulatory Flexibility Act

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 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 act on requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

EPA's proposed disapproval of the state request under section 110 and subchapter I, part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect state enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

G. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to 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 action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This proposed Federal action acts on 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.

EPA believes that VCS are inapplicable to today's proposed action because it 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

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

Dated: May 20, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 02–14038 Filed 6–4–02; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 67, No. 108

Wednesday, June 5, 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

Commodity Credit Corporation

Secretary of Agriculture's Special Cotton Import Quota Announcement Number 3

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: A special import quota for upland cotton is established in accordance with section 136(b) of the Federal Agriculture Improvement and Reform Act of 1996, as amended, (the 1996 Act) under Presidential Proclamation 6301 of June 7, 1991, and Presidential Proclamation 6948 of October 29, 1996. The quota is referenced as the Commodity Credit Corporation Special Cotton Import Quota Announcement Number 3 and is set forth in subheading 9903.52.03, subchapter III, chapter 99 of the Harmonized Tariff Schedule of the United States (HTS).

DATES: The special quota is subject to an established date and applies to upland cotton purchased not later than 90 days from the established date and entered into the United States not later than 180 days from the established date. Dates applicable to the special import quota are contained in a table following this notice.

FOR FURTHER INFORMATION CONTACT: Scott O. Sanford, Farm Service Agency, United States Department of Agriculture, STOP 0515, 1400 Independence Avenue, SW., Washington, DC 20013–0515 or call (202) 720–3392.

SUPPLEMENTARY INFORMATION: The 1996 Act requires that a special global import quota for upland cotton be determined and announced immediately if, for any consecutive 4-week period, the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1 3/32 inch cotton, C.I.F. northern Europe (U.S. Northern Europe price), adjusted for the value of any cotton user marketing certificates issued, exceeds the Northern Europe price by more than 1.25 cents per pound. This condition was met for the consecutive 4-week period ending March 28, 2002. Therefore, the quota referenced as Special Cotton Import Quota Announcement Number 3 is established subject to the following dates and quantities.

The special import quota identifies a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations. The quota does not apply to extra long staple cotton.

Authority: Sec. 136, Pub. L. 104–127 and U.S. Note 6(a), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, DC, on May 23, 2002.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

Secretary of Agriculture's cotton import quota announcement	HTS subheading	News release date	Quota start date	90-Day purchase date	180-Day import date	Quota amount (kilograms)	3-Month consumption base period
Number 3	9903.52.03	3/28/02	4/04/02	7/02/02	9/30/02	30,861,402	December 2001–February 2002.

Enclosure 1.

[FR Doc. 02–14006 Filed 6–4–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Forest Health and RCW Initiative, National Forests in Alabama, Talladega National Forest, Talladega and Shoal Creek Ranger Districts, Calhoun, Cherokee, Clay, Cleburne, and Talladega Counties, AL

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement on a proposal to emphasize forest health initiatives across the Talladega and Shoal Creek Ranger Districts in a systematic five-year program involving:

1. Removal of offsite, high-risk stands, on approximately 9,136 acres of declining loblolly and Virginia pine. This includes 500 acres of non-commercial treatments in longleaf stands that need restoration activities. This forest health treatment will restore the areas to longleaf pine and will include both artificial and natural regeneration. Treatments will range from complete removal of all species except favored hardwoods and longleaf pine, to intense thinning with enough longleaf pine left to naturally reestablish itself. Favored hardwoods species will include a variety of oak and hickory species.

The site preparation methods associated with these treatments will range from, or include a combination of prescribe burning, mechanical, and chemical treatment of competing vegetation. Chemical treatment of restoration stands will include directed folair spray of a 3% solution of Garlon 4, ½% Arsonal, and ½% Sidekick. For injection, a 50% solution of Garlon 3a will be used.

2. Intermediate thinning on approximately 3,047 acres of red-cockaded woodpecker (RCW) habitat inside the RCW Habitat Management Area (HMA).

3. Intermediate thinning of approximately 6,534 acres of 20–45 year old loblolly pine stands to increase vigor and growth, reduce short-term risk of Southern Pine Beetle (SPB) infestation, and begin the restoration process of longleaf pine. Site specific information is available at the Talladega

Ranger District Office in Talladega, AL. and the Shoal Creek Ranger office in Heflin, AL.

DATES: Comments concerning this analysis should be received in writing by July 10, 2002.

ADDRESSES: Send written comments to: EIS Team Leader, Talladega Ranger District, 1001 North Street, Talladega, AL 35160.

FOR FURTHER INFORMATION CONTACT: Tony Tooke, Talladega District Ranger, Earl Stewart, Shoal Creek District Ranger, Jeff Seefeldt, EIS Team Leader, Telephone number: (256) 362–2909, FAX number: (256) 362–0823.

SUPPLEMENTARY INFORMATION:

A. The Proposal

The Forest Service proposes to implement a five-year schedule of work to address declining forest health and improve red-cockaded woodpecker (RCW) habitat. The goal is to create and restore natural conditions that historically withstand SPB and premature die-off or decline.

Additionally, the restoration and forest health initiative will enhance habitat for a viable RCW recovery population on the Talladega National Forest located in Calhoun, Cherokee, Clay, Cleburne, and Talladega Counties, Alabama.

The proposed action will focus on (1) Areas that are currently occupied by loblolly pine between the ages of 20–45 years old, (2) areas within the RCW HMA, and (3) areas of offsite, high risk stands of loblolly/Virginia pine.

The actions will include intermediate thinning in loblolly pine forests, intermediate thinning in RCW HMA's for habitat improvement, and restoration treatments (restoration cuts, thinning, etc.) to restore longleaf pine through artificial and natural regeneration.

Actions proposed include:

(1) Intermediate thinning of approximately 6,534 acres of 20–45 year old loblolly pine stands to increase vigor and growth, reduce short-term risk of SPB infestation, and as the first step towards longleaf restoration.

(2) Intermediate thinning of approximately 3,047 acres of red-cockaded woodpecker (RCW) habitat inside the RCW Habitat Management Area (HMA).

(3) Removal of offsite, high-risk stands on approximately 9,136 acres of declining loblolly and Virginia pine. This includes 500 acres of non-commercial treatments. This forest health treatment will restore the areas to longleaf and will include both include artificial and natural regeneration. Treatments will range from complete removal of all species except favored hardwoods and longleaf; to intense thinning with enough longleaf left to naturally reestablish itself. The site preparation associated with these treatments will include prescribe burning and/or chemical treatment of competing vegetation as stated on page 2. Site-specific information is available at the Talladega Ranger office in Talladega, AL. and the Shoal Creek Ranger office in Heflin, AL.

B. Needs for the Proposal

1. Begin the process of improving forest health and vigor by thinning loblolly pine stands as the first step toward restoring a longleaf pine ecosystem and reducing short-term risk of SPB infestation and other risks associated with insect/disease infestations.

2. Reduce tree spacing to create, maintain, and improve RCW habitat.

3. Restore longleaf pine ecosystem to areas occupied by loblolly and Virginia pine that are of poor health, offsite, and have a high risk of insect/disease infestation and to improve existing longleaf stands through non-commercial treatments.

C. Nature and Scope of the Decision To Be Made

Whether to, and to what extent, implement a 5 year schedule of work that will improve forest health by thinning overstocked pine stands impacted by decline, disease and SPB; remove trees in over-crowded RCW area's to create and maintain, or improve suitable habitat; and use of restoration cuts to restore longleaf pine on historic longleaf pine sites. There are forest health issues that are common to the Talladega and Shoal Creek Ranger Districts. These issues, as with most forest health issues, are the end results of the following history of events:

Pre-settlement forests, prior to 1830, were predominantly longleaf pine and fire adapted species of oaks and hickories. The bottom were predominantly hardwood communities. A mix of hardwoods, loblolly pine, shortleaf pine, and some longleaf pine were in transition zones between the uplands and bottoms.

Natural fires (along with the influences of fuels, climate and moisture) maintained this ecosystem and species composition through time. Wildlife species, such as the red-cockaded woodpecker, that depended on this natural ecosystem were widespread.

The fire dependent longleaf pine ecosystem was the most prevalent forest type in the south during pre-settlement times. Forests were cleared for farming and charcoal production to furnish the iron industry. Based on early journals, the original ecosystem was maintained with frequent natural fires. The natural, upland forest community was primarily longleaf pine with associated shrubs and fire tolerant hardwoods. From 1908–1929 there was large-scale removal of longleaf pine for lumber and to fuel the iron industry.

Federal acquisition, relocation of farm families and establishment of National Forests took place from 1935–1940. During this time period there were large-scale soil stabilization projects completed through reforestation efforts. The primary species planted was loblolly pine due to availability of seed and early success establishing stands of loblolly. From 1940–1950 there was intensive fire suppression along with continued reforestation efforts and loss of natural shortleaf pine stands due to littleleaf disease. During the 1960's the first signs of loblolly decline were reported and research results from the 1990's show littleleaf disease as one pathogen causing loblolly decline.

Over the past decade, the Talladega and Shoal Creek Ranger District's has been experiencing Southern Pine Beetle infestations at epidemic levels, primarily in loblolly pine and Virginia pine stands. The epidemic peaked in the summer of 2000 and continued at very high levels through through 2001. These infestations have contributed to the immediate need for intermediate thinning to reduce the risk of SPB attack (Final Environmental Impact Statement For the Suppression of the Southern Pine Bettle).

Continued loss of imperiled longleaf pine communities, declining forest health, and the loss of red-cockaded woodpeaker habitat due to over stocking are our primary concerns or reason for initiating this project.

As a result of initial field examinations we propose to thin, as the first phase of longleaf restoration and to also improve stand health, 6,534 acres of loblolly/Virginia pine, thin 3,047 acres of RCW habitat, and convert 9,136 acres back to longleaf.

D. Proposed Scoping Process

The scoping period associated with this Notice of Intent (NOI) will be thirty (30) days in length, beginning the day after publication. Preliminary scoping for this proposal began in February, 2002, when information was shared with the public on the proposal and plans to document the analysis in an Environmental Impact Statement (EIS). A public meeting at the Talladega Ranger District office will be held on

June 13, and June 15, from 9 a.m.–1 p.m. to discuss the proposal and visit some selected areas that may be treated.

The Talladega National Forest, Talladega and Shoal Creek Ranger Districts, is seeking additional information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations that may be interested in or affected by the proposed action. This input will be used in preparation of the Draft Environmental Impact Statement (DEIS). The scoping process includes:

1. Identifying potential issues.
2. Identify issues to be analyzed in depth.
3. Eliminating insignificant issues or those, which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives.

E. Preliminary Issues Identified to Date Include

1. Protection of soil and water resources.
2. Impacts of the proposed treatments on Federally listed species of plants and wildlife, which are defined by the Endangered Species Act of 1973 as amended, Forest Service Regional Forester's Sensitive Species list, and upon locally rare species.
3. Protection of cultural resources.
4. Potential effects to management indicator species.

F. Possible Alternatives Identified to Date Include

1. *No Action:* This alternative will serve as a baseline for comparison of alternatives. Present management activities will continue but the proposed project will not be done. This alternative will be fully developed and analyzed.

2. *Proposed Action:* Intermediate thinning of approximately 6,534 acres of 20–45 year old loblolly pine stands will be an initial step to improving forest health, reducing short-term SPB infestation risks, and restoring these areas to a longleaf pine ecosystem. Thinning will take place in stands that are over crowded, and it is proposed to allow the remaining trees more room to grow and increase tree vigor and health. It is anticipated that approximately 70 square feet of basal area per acre will remain in thinned areas.

This proposal also includes thinning of 3,047 acres to enhance and/or create existing or potential RCW habitat. Current areas providing RCW habitat are overstocked. Thinning these areas will create optimal conditions for RCW recruitment/replacement stands and foraging habitat.

The restoration treatments in the proposed action will encompass 9,136 acres. The types of tree removal, site preparation, and regeneration will vary according to site conditions and whether longleaf is present to provide a seed source. Restoration cuts will include complete removal of off-site species (excluding longleaf and favored hardwoods such as oaks and hickories), and thinning of existing off-site species. Site preparation methods associated with these treatments will range from or include a combination of prescribed burning, mechanical, and chemical treatment of competing vegetation. Chemical treatment of restoration stands will include directed foliar spray of a 3% solution of Garlon 4, ½% Arsonal, and ½% Sidekick. For injection, a 50% solution of Garlon 3 will be used. Regeneration of longleaf pine will depend on residual longleaf in the areas to be restored. Planted containerized longleaf, natural regeneration, or a combination of both will be the options for the restoration proposal.

3. *Modified Proposed Action:* This alternative would include a five-year program of thinning and restoration cuts. Site preparation would be done using mechanized equipment. Release of seedlings would be with hand tools. No herbicides would be used.

G. Special Permit Needs

There are no special permits required from any State or Federal agencies in order to implement this project.

H. Lead Agency

The USDA Forest Service is the lead agency for this project.

The Talladega and Shoal Creek Ranger Districts requests that comments be as specific as possible for this proposal and be sent to: EIS Team Leader Jeff Seefeldt, USDA Forest Service, 101 North Street, Talladega, AL 35160.

It is estimated that the draft EIS (DEIS) will be available for public comment by July 31, 2003. It is very important that those interested in this proposed action participate at this time.

To be helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement of the merits of the alternative discussed (see the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 4 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of DEIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewers' position and contentions: *Vermon Yankee Nuclear Power Corp.* v. *NROC,* 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement FEIS). *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). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

I. Estimated Date for FEIS

After the comment period ends on the DEIS, the comments will be analyzed, considered, and responded to by the Forest Service in preparing the final Environmental Impact Statement (FEIS). The FEIS is scheduled to be completed by November 17, 2003. The responsible officials will consider the comments, responses, environmental consequences discussed in the final supplement, applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible officials will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 3 CFR, part 215.

The responsible officials for this project will be Tony Tooke, District Ranger for the Talladega Ranger District, National Forests in Alabama at: 1001 North Street, Talladega, AL 35160 and Earl Stewart, District Ranger, Shoal Creek Ranger District, National Forests in Alabama at : 2390 Hwy. 46, Heflin, AL 36264.

Dated: May 28, 2002.

Tony Tooke,

District Ranger.

Dated: May 30, 2002.

Earl Stewart,

District Ranger.

[FR Doc. 02–14014 Filed 6–04–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Southern Illinois Power Cooperative; Notice of Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has made a finding of no significant impact (FONSI) with respect to a project proposed by Southern Illinois Power Cooperative (SIPC) of Marion, Illinois. SIPC is proposing the addition of two simple-cycle combustion turbine units, each with a generating capacity of 83 MW, to be located in Williamson County at their existing Marion Station.

FOR FUTHER INFORMATION CONTACT: Nurul Islam, Environmental Protection Specialist, Rural Utilities Service, Engineering and Environmental Staff, Stop 1571, 1400 Independence Avenue, SW, Washington, DC 20250–1571, telephone: (202) 720–1414, e-mail: *nislam@rus.usda.gov*. Information is also available from Mr. Dick Myott, Environmental & Planning Department Manager, SIPC, 11543 Lake of Egypt Road, Marion, Illinois 62959, telephone (618) 964–1448 Ext. 268, e-mail *rmyott@sipower.org.*

SUPPLEMENTARY INFORMATION: RUS, in accordance with its environmental policies and procedures, required that SIPC prepare an Environmental Analysis reflecting the potential impacts of the proposed facilities. The Environmental Analysis, which includes input from federal, state, and local agencies, has been reviewed and accepted as RUS'' Environmental Assessment (EA) for the project in accordance with 7 CFR 1794.41. The proposed project will be located in Williamson County, eight miles south of Marion, Illinois. The total amount of farmland that would be converted to non-agricultural use is estimated to be about 30 acres. Approximately 18 acres will be required for the units including the combustion turbines and support facilities. The proposed units will be constructed immediately west of the existing plant site on land owned by SIPC. The land was previously used for farming activities and is contained within sections 26, 27, and 35, Township 15 South, Range 2 East. The nearest airport, Williamson County Airport, is located approximately 8 miles north of the proposed site. The CT project will require two new stacks, each stack will be less than 60 feet tall. The height of the stacks is significantly lower than the height of nearby existing plant structures (stacks height varies between 200–400 ft.). No FAA permit will be required for the facility. We have determined that the proposed facility will not pose any hazards to air navigation.

The existing transmission facilities are adequate for the additional power generated by the new CT units and no additional transmission facilities are considered at present. The CT project will require the routing of natural gas pipeline to the site. The proposed gas pipeline is approximately 5.75 miles long. Generally the construction of the pipeline will require a right-of-way approximately 30 to 40 feet wide. The pipeline crossing of larger streams and wetlands will be accomplished with underground directional boring so that the stream channels, hydrology and vegetation will be least affected. The natural gas pipeline route will potentially affect only one parcel of jurisdictional wetland. The total area of crossing wetland due to natural gas pipeline is estimated to be about 5,750 square feet. Underground boring through the wetlands will minimize the impacts. All permanent streams will be crossed by underground borings while the shallow/intermittent streams will be cut and trenched. There are no floodplains or wetlands in the vicinity of the project location (at CT location); therefore, no impact is anticipated. Based on results of the wetland delineation it is unlikely that the proposed project will require an individual permit from the Corps of Engineers. The U.S. Fish & Wildlife Service and the Illinois Department of Natural Resources identified no significant impacts to fish and wildlife resources due to construction of the proposed project. Therefore, RUS has determined that no threatened or endangered species are likely to be impacted by the proposed construction.

The Illinois State Historic Preservation Officer (SHPO) has reviewed the project and determined that no historic properties will be impacted by the proposed facility. RUS believes the project will have no impact on cultural and historic properties due to construction of the proposed project. However, the project is approved contingent on the following condition: if archaeological remains are discovered during construction activities, the work shall be stopped and SIPC will notify the SHPO and RUS immediately.

SIPC published notices of the availability of the EA and solicited public comments per 7 CFR 1792.42. Notices of availability of EA were published in the Southern Illinoisan newspaper, a daily circular, on April 12 & 13, 2002. The 30-day comment period on the EA for the proposed facility ended on May 14, 2002. No comments were received on the EA.

SIPC committed to follow Federal and state agency recommendations, and secure all necessary permits prior to constructing and operating the CT units. Based on the EA and SIPC's commitments to follow agency recommendations, RUS has concluded that the proposed action will not have a significant effect to various resources, including important farmland, floodplains, wetlands, cultural resources, threatened and endangered species and their critical habitat, air pollution, water quality, and noise. RUS has also determined that there would be no negative impacts of the proposed project on minority communities and low-income communities as a result of the construction of the project. RUS believes that there are no significant unresolved environmental conflicts related to this project.

Dated: May 30, 2002.

Blaine D. Stockton,

Assistant Administrator, Electric Program, Rural Utilities Service.

[FR Doc. 02–14033 Filed 6–4–02; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Submission for OMB Review: Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance of the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: Information Services Order Form.

Agency Form Number: ITA–4096P.

OMB Number: 0625–0143.

Type of Request: Regular Submission.

Burden: 483 hours.

Number of Respondents: 2,675.

Avg. Hours Per Response: 20 minutes.

Needs and Uses: The Department of Commerce's U.S. & Foreign Commercial Service Export Assistance Centers offer their clients DOC programs, market research, and services to enable the client to begin exporting or to expand existing exporting efforts. The Information Services Order Form is used by US&FCS trade specialists in the Export Assistance Centers to collect information about clients in order to determine which programs or services would best help clients meet their export goals. This form is required for clients to order US&FCS programs and services. Certain programs are tailored for individual clients, *e.g.,* the Agent Distributor Service, which identifies potential overseas agents or distributors

for a particular U.S. manufacturer. The form is being revised because some of the product names have changed or have been discontinued.

Affected Public: Business or other for profit, not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897

Copies of the above information collection can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th & Constitution Avenue, NW., Washington, DC 20230 or via the Internet at *MClayton@doc.gov.*

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: May 30, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–13996 Filed 6–4–02; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Submission for OMB Review: Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance of the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: Commercial News USA.

Agency Form Number: ITA–4063P.

OMB Number: 0625–0061.

Type of Request: Regular Submission.

Burden: 733 hours.

Number of Respondents: 2,200.

Avg. Hours Per Response: 20 minutes.

Needs and Uses: Commercial News USA (CNUSA), published twelve times a year by a private sector firm, is the U.S. Department of Commerce's export catalog-magazine. The product information in CNUSA reaches more than 145,000 distributors, government officials, and potential buyers overseas through direct distribution from U.S. embassies and consulates. Firms use the form to request that their product information be published in CNUSA, a service for which the firms pay a minimum fee of $695.

This information collection item allows the U.S. Department of Commerce to promote U.S. products and services available for export as part of the USDOC's trade promotion activities. CNUSA is a unique export promotion service for U.S. manufacturers and service firms; nothing similar is available to them through the private sector. The product promotions in CNUSA differ from paid advertisements in that they must meet program criteria. Because U.S. embassies and consulates handle distribution, the product information reaches a vast, screened readership not only through direct dissemination but also via counseling by commercial officers and through walk-in visits to commercial libraries where CNUSA is displayed. Further, American Chambers of Commerce, local business editors, and other trade entities that reprint information from CNUSA or display or disseminate the entire magazine provide a multiplier effect.

Affected Public: Business or other for profit, not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th & Constitution Avenue, NW., Washington, DC 20230 or via the Internet at *MClayton@doc.gov.*

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: May 30, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–13997 Filed 6–4–02; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Submission for OMB Review: Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance of the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: User Satisfaction Surveys.

Agency Form Number: ITA–4107P, ITA–4110P, etc.

OMB Number: 0625–0217.

Type of Request: Regular Submission.

Burden: 3,298 hours.

Number of Respondents: 20,780.

Avg. Hours Per Response: Range from 05–30 minutes.

Needs and Uses: ITA provides numerous export promotion programs to help U.S. businesses. These programs include information products, services, and trade events. To accomplish its mission effectively, ITA needs ongoing feedback on its programs. These information collection items allow ITA to solicit clients' opinions about the use of ITA products, services, and trade events. The information is used for program improvement, strategic planning, allocation of resources, and performance measures.

The surveys are part of ITA's effort to implement objectives of the National Performance Review (NPR) and Government Performance and Results Act (GPRA). Responses to the surveys will meet the needs of ITA performance measures based on NPR and GPRA guidelines. These performance measures will serve as a basis for justifying and allocating human and financial resources.

Survey responses will acquaint ITA managers with firms' perceptions and assessments of export-assistance products and services. Also, the surveys will enable ITA to track the performance of overseas posts. This information is critical for improving the programs. Survey responses are used to assess client satisfaction, determine priorities, and identify areas where service levels and benefits differ from client expectations. Clients benefit because the information is used to improve services provided to the public. Without this information, ITA is unable to systematically determine client perceptions about the quality and benefit of its export-promotion programs.

Affected Public: Business or other for profit, not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th & Constitution Avenue, NW., Washington,

DC 20230 or via the Internet at *MClayton@doc.gov.*

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: May 30, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–13998 Filed 6–4–02; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Submission for OMB Review: Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance of the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: U.S.-Japan Semiconductor Agreement Data Collection Program.

Agency Form Number: ITA–4115P.

OMB Number: 0625–0211.

Type of Request: Regular Submission.

Burden: 456 hours.

Number of Respondents: 38.

Avg. Hours Per Response: 1 hour.

Needs and Uses: The Data Collection Form is the vehicle by which individual ''Foreign'' (non-Japanese) semiconductor companies voluntarily report their sales to Japan. The information provided by the Data Collection Program (DCP) is used by the U.S. Government to calculate foreign market share in the Japanese semiconductor market to ensure access to the Japanese market gained under the 1986 and 1991 U.S.-Japan Semiconductor Arrangement continues under the 1996 Semiconductor Agreement.

Affected Public: Business or other for profit, not-for-profit institutions.

Frequency: Monthly.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th & Constitution Avenue, NW., Washington, DC 20230 or via the Internet at *MClayton@doc.gov.*

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: May 30, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–14000 Filed 6–4–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: Export Trading Companies Contact Facilitation Service.

Agency Form Number: ITA 4094P.

OMB Number: 0625–0120.

Type of Request: Regular Submission.

Burden: 3,000 hours.

Number of Respondents: 12,000.

Avg. Hours Per Response: 15 minutes.

Needs and Uses: Title III of the Export Trading Company Act of 1982 (Pub. L. No. 97–290, 96 Stat. 1233–1247), requires the Department of Commerce to establish a program to evaluate applications for Export Trade Certificates of Review and, with the concurrence of the Department of Justice, issue such certificates where the requirements of the Act are satisfied. The Act requires that Commerce, with Justice concurrence, issue regulations governing the evaluation and issuance of certificates before Commerce can accept applications for certification. The collection of information is necessary for the antitrust analysis which is a prerequisite to issuance of a certificate. Without the information, there would be no basis upon which a certificate could be issued.

In the Department of Commerce, this economic and legal analysis will be performed by the Office of Export Trading Company Affairs and the Office of the General Counsel. The Department of Justice analysis will be conducted by the Antitrust Division. The purpose of such analysis is to make a determination as to whether or not to approve an application and issue an Export Trade Certificate of Review. If this information is not collected, the antitrust analysis cannot be performed and without that analysis no certificate can be issued. A certificate provides its holder and members named in the certificate (a) immunity from government actions under state and Federal antitrust laws for the export conduct specified in the certificate; (b) some protection from frivolous private suits by limiting their liability in private actions to actual damages when the challenged activities are covered by an Export Certificate of Review. Title III was enacted to reduce uncertainty regarding application of U.S. antitrust laws to export activities—especially those involving actions by domestic competitors.

Affected Public: Businesses or other for-profit, not-for-profit institutions, state, local or tribal Government.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 5033, 14th & Constitution Avenue, NW., Washington, DC 20230 or via the Internet at *MClayton@doc.gov.*

Copies of the above information collection can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th & Constitution Avenue, NW., Washington, DC 20230 or via the Internet at *MClayton@doc.gov.*

Dated: May 30, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–14001 Filed 6–4–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

Foreign Trade Zones Board

[Docket 25–2002]

Foreign-Trade Zone 47—Boone County, Kentucky; Application for Foreign-Trade Subzone Status, GE Engine Services Distribution LLC (Gas Turbine Engines), Erlanger, KY

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Northern Kentucky Foreign Trade Zone, Inc., grantee of FTZ 47, requesting special-purpose subzone

status for the manufacturing and distribution facilities (gas turbine engines) of GE Engine Services Distribution (GEESD) in Erlanger, Kentucky. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 28, 2002.

The GEESD facilities are located at 1800 Donaldson Highway, Erlanger, Kentucky (395,500 square feet of enclosed space on 24 acres). The facilities (75 employees) are used for the warehousing, distribution, and ''kitting'' of gas turbine engines and engine parts for aerospace, marine, and industrial applications. The facilities also may be used in future for the manufacture of such products. Foreign-sourced materials account for approximately 10 to 20 percent of the finished-product value of GE's current gas turbine engines, and may include items from the following categories: Plastic or rubber tubes, plates, and other articles; fiberglass sheets; stainless steel wire; iron or steel tubes or fittings; stranded wire products; iron or steel fasteners; nickel or nickel-alloy products; aluminum wire and fittings; cobalt mattes; titanium nuts, bolts, screws, tubes, sleeves, and bars; articles of chromium and rhenium; base metal fittings, tubing, and stoppers; pumps for liquids and parts thereof; heat exchange units; centrifuges; valves and parts thereof; bearings and parts thereof; transmission shafts and parts thereof; gaskets; electric motors; electrical inductors and ignition equipment; signaling equipment; electrical switches and relays; insulated wire and cable; ceramic insulators; counters and other instruments; measuring or checking instruments; and lamps and lighting fittings.

Zone procedures would exempt GEESD from Customs duty payments on foreign materials used in production for export. On domestic sales, the company would be able to choose the duty rates that apply to the finished products (duty-free to 2.5%) rather than the duty rates that would otherwise apply to the foreign-sourced materials noted above (duty-free to 15%). In addition, GEESD states that it would realize logistical/procedural and other benefits. FTZ status may also make a site eligible for benefits provided under state/local programs. The application indicates that the savings from zone procedures will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board. Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or 2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is August 5, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to August 19, 2002. A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 36 East 7th Street, Suite 2650, Cincinnati, OH 45202.

Dated: May 29, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–14075 Filed 6–4–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 23–2002]

Foreign-Trade Zone 46—Cincinnati, Ohio; Application For Foreign-Trade Subzone Status, General Electric Aircraft Engines, (Gas Turbine Engines), Cincinnati, OH

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Cincinnati Foreign Trade Zone, Inc., grantee of FTZ 46, requesting special-purpose subzone status for the manufacturing and distribution facilities (gas turbine engines) of General Electric Aircraft Engines (GEAE) in Cincinnati, Ohio. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 28, 2002.

The GEAE facilities are located at One Neumann Way in Cincinnati, Ohio (6.5 million square feet of enclosed space on 413 acres). The facilities (6,000 employees) are used for the development, manufacture, and distribution of gas turbine engines and engine parts for aerospace, marine, and industrial applications. Foreign-sourced materials account for approximately 10 to 20 percent of finished-product value, and may include items from the following categories: Plastic or rubber tubes, plates, and other articles; fiberglass sheets; stainless steel wire; iron or steel tubes or fittings; stranded wire products; iron or steel fasteners; nickel or nickel-alloy products; aluminum wire and fittings; cobalt mattes; titanium nuts, bolts, screws, tubes, sleeves, and bars; articles of chromium and rhenium; base metal fittings, tubing, and stoppers; pumps for liquids and parts thereof; heat exchange units; centrifuges; valves and parts thereof; bearings and parts thereof; transmission shafts and parts thereof; gaskets; electric motors; electrical inductors and ignition equipment; signaling equipment; electrical switches and relays; insulated wire and cable; ceramic insulators; counters and other instruments; measuring or checking instruments; and lamps and lighting fittings.

Zone procedures would exempt GEAE from Customs duty payments on foreign materials used in production for export. On domestic sales, the company would be able to choose the duty rates that apply to the finished products (duty-free to 2.5 %) rather than the duty rates that would otherwise apply to the foreign-sourced materials noted above (duty-free to 15 %). In addition, GEAE states that it would realize logistical/procedural and other benefits. FTZ status may also make a site eligible for benefits provided under state/local programs. The application indicates that the savings from zone procedures will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board. Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—

Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is August 5, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to August 19, 2002. A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 36 East 7th Street, Suite 2650, Cincinnati, OH 45202.

Dated: May 29, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–14073 Filed 6–4–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Submission for OMB Review; Comment Request

BUREAU: International Trade Administration, Import Administration.

TITLE: Petition Format for Requesting Relief Under U.S. Antidumping Duty Law.

SUMMARY: DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

Agency Form Number: ITA–357P.

OMB Number: 0625–0105.

Type of Request: Regular submission.

Burden: 2,200 hours.

Number of Respondents: 55.

Average Hours Per Response: 40.

Needs and Uses: The International Trade Administration, Import Administration, AD/CVD Enforcement, implements the U.S. antidumping and countervailing duty laws. Import Administration investigates allegations of unfair trade practices by foreign governments and producers and, in conjunction with the U.S. International Trade Commission, can impose duties on the product in question to offset the unfair practices. Form ITA–357P—Format for Petition Requesting Relief Under the U.S. Antidumping Duty Law—is designed for U.S. companies or industries that are unfamiliar with the antidumping law and the petition process. The Form is designed for potential petitioners that believe that an industry in the United States is being injured because a foreign competitor is selling a product in the United States at less than fair value. Since a variety of detailed information is required under the law before initiation of an antidumping duty investigation, the Form is designed to extract such information in the least burdensome manner possible.

Affected Public: Businesses or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Forms Clearance Officer, (202) 482-3129, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW., Washington, DC 20230. Email *Mclayton@doc.gov.*

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: May 30, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–13999 Filed 6–4–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

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

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with section 351.213 (1999) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review

Not later than the last day of June 2002, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in June for the following periods:

	Period
ANTIDUMPING DUTY PROCEEDINGS	
Belgium: Sugar, A–423–077	6/1/01–5/31/02
France: Sugar, A–427–078	6/1/01–5/31/02
Germany: Sugar, A–428–082	6/1/01–5/31/02
Japan:	
Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Over 4½ Inches), A–588–850,	6/1/01–5/31/02
Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Under 4½ Inches), A–588–851	6/1/01–5/31/02
Structural Steel Beams, A–588–852	6/1/01–5/31/02
Certain Hot-Rolled Carbon Steel Flat Products, A–588–846	6/1/01–5/31/02
Engineered Process Gas Turbo-Compressor Systems, A–588–840	6/1/01–5/31/02
Forklift Trucks, A–588–703	6/1/01–5/31/02
Grain-Oriented Electrical Steel, A–588–831	6/1/01–5/31/02
Republic of Korea: Polyethylene Terephthalate (Pet) Film, A–580–807	6/1/01–5/31/02
Russia: Ammonium Nitrate, A–821–811 6/1/01–5/31/02.	
South Africa: Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Under 4½ Inches) A–791–808	6/1/01-5/31/02
Taiwan:	
Carbon Steel Plate, A–583–080	6/1/01–5/31/02

	Period
Stainless Steel Butt-Weld Pipe Fittings, A–583–816	6/1/01–5/31/02
Certain Helical Spring Lock Washers, A–583–820	6/1/01–5/31/02
The People's Republic of China:	
Apple Juice Concentrate, Non-Frozen, A–570–855	6/1/01–5/31/02
Furfuryl Alcohol, A–570–835	6/1/01–5/31/02
Indigo, A–570–856	6/1/01–5/31/02
Silicon Metal, A–570–806	6/1/01–5/31/02
Sparklers, A–570–804	6/1/01–5/31/02
Tapered Roller Bearings, A–570–601	6/1/01–5/31/02
COUNTERVAILING DUTY PROCEEDINGS	
Italy: Grain-Oriented Electrical Steel, C–475–812	1/1/01–12/31/01
SUSPENSION AGREEMENTS	
None.	

In accordance with section 351.213 (b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify for which individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of June 2002. If the Department does not receive, by the last day of June 2002, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: May 29, 2002.

Holly A. Kuga,

Senior Office Director, Group II, Office 4, Import Administration.

[FR Doc. 02–13993 Filed 6–4–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–098]

Anhydrous Sodium Metasilicate from France: Rescission of Antidumping Duty Administrative Review

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

ACTION: Notice of rescission of antidumping duty administrative review.

SUMMARY: On February 26, 2002, the Department of Commerce initiated an administrative review of the antidumping duty order on anhydrous sodium metasilicate from France. The review covers one manufacturer/exporter, Rhodia HCPCII (formely known as Rhone-Poulenc). The period of review is January 1, 2001, through December 31, 2001. The Department is rescinding this review because it found no entries of subject merchandise by this company into the United States during the period of review.

EFFECTIVE DATE: June 5, 2002.

FOR FURTHER INFORMATION CONTACT: Dunyako Ahmadu or Richard Rimlinger, AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–0198 or (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

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

Background

On January 2, 2002, the Department of Commerce (the Department) published in the Federal Register a notice of opportunity to request an administrative review of the antidumping duty order on anhydrous sodium metasilicate (ASM) from France (67 FR 56). On January 29, 2002, the petitioner in this proceeding, PQ Corporation, submitted a request for an administrative review of sales by Rhodia HCPII, a manufacturer/exporter of ASM, for the period January 1, 2001, through December 31, 2001. The Department initiated an administrative review on February 26, 2002, (67 FR 8780).

On April 24, 2002, Rhodia submitted a letter to the Department stating that it did not export the subject merchandise to the United States during the period of review (POR).

Also on April 24, 2002, the Department sent a no-shipment inquiry concerning Rhodia to the U.S. Customs Service (Customs). The purpose of this inquiry was to determine whether Customs suspended liquidation of entry summaries of ASM during the POR. The Customs Service did not identify any suspended entry summaries of ASM manufactured and/or exported by Rhodia during the POR. Therefore, we have determined that there were no entries of subject merchandise produced or exported by Rhodia into the customs territory of the United States during the POR.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(3), the Department may rescind an administrative review, in whole, or only with respect to a particular exporter or producer, if the Department concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise. In light of the fact that we have determined that the only company covered by the review did not have entries for consumption into the territory of the United States during the POR in question, we find that rescinding this review is appropriate. On May 1, 2002, we sent a letter to the petitioner to notify it of our findings and invited it to comment on our intent to rescind the review. The petitioner responded on May 16, 2002, stating that it does not object. Therefore, we are rescinding this administrative review. The cash-deposit rate for Rhodia will remain at 60 percent, the rate established in the most recently completed segment of this proceeding (66 FR 57934, November 19, 2001).

This notice is in accordance with section 777(i) of the Act and 19 CFR 351.213(d)(4).

Dated: May 24, 2002

Susan Kuhbach,

Acting Deputy Assistant Secretary Import Administration.

[FR Doc. 02–14071 Filed 6–4–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–846]

Brake Rotors from the People's Republic of China: Initiation of New Shipper Antidumping Duty Reviews

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

SUMMARY: The Department of Commerce has received requests to conduct new shipper reviews of the antidumping duty order on brake rotors from the People's Republic of China. In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended, and19 CFR 351.214(d), we are initiating reviews for Zibo Golden Harvest Machinery Limited Company and Shanxi Fengkun Metallurgical Limited Company.

EFFECTIVE DATE: June 5, 2002.

FOR FURTHER INFORMATION CONTACT: Terre Keaton or Davina Hashmi, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–1280 or 482–0984, respectively.

Applicable Statute and Regulations

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

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests from Zibo Golden Harvest Machinery Limited Company (''Zibo Golden Harvest'') and Shanxi Fengkun Metallurgical Limited Company (''Fengkun''), in accordance with 19 CFR 351.214(c), for new shipper reviews of the antidumping duty order on brake rotors from the People's Republic of China (''PRC''), which has an April anniversary date.

As required by 19 CFR 351.214(b)(2)(i) and (iii)(A), each of the companies identified above, which are also producers, has certified that it did not export brake rotors to the United States during the period of investigation (''POI''), and that it has never been affiliated with any exporter or producer which did export brake rotors during the POI. Each company has further certified that its export activities are not controlled by the central government of the PRC, satisfying the requirements of 19 CFR 351.214(b)(2)(iii)(B). Pursuant to the Department's regulations at 19 CFR 351.214(b)(2)(iv)(A), Zibo Golden Harvest and Fengkun each submitted documentation establishing the date on which it first shipped the subject merchandise to the United States, the volume of that first shipment, and the date of the first sale to an unaffiliated customer in the United States.

In accordance with section 751(a)(2)(B) of the Act, as amended, and 19 CFR 351.214(b), and based on information on the record, we are initiating new shipper reviews for Zibo Golden Harvest and Fengkun.

It is the Department's usual practice in cases involving non-market economies to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide de jure and de facto evidence of an absence of government control over the company's export activities. Accordingly we will issue a questionnaire to Zibo Golden Harvest and Fengkun (including a complete separate rates section), allowing approximately 37 days for response. If the response from each respondent provides sufficient indication that it is not subject to either de jure or de facto government control with respect to its exports of brake rotors, each review will proceed. If, on the other hand, a respondent does not demonstrate its eligibility for a separate rate, then it will be deemed to be affiliated with other companies that exported during the POI and that it did not establish entitlement to a separate rate, and the review of that respondent will be rescinded.

Initiation of Review

In accordance with section 751(a)(2)(B)(ii) of the Act and 19 CFR 351.214(d)(1), we are initiating new shipper reviews of the antidumping duty order on brake rotors from the PRC. Therefore, we intend to issue the preliminary results of these reviews not later than 180 days after the date on which the reviews are initiated. On May 7, 2002, Zibo Golden Harvest and Fengkun agreed to waive the time limits in order that the Department, pursuant to 19 CFR 351.214(j)(3), may conduct this review concurrent with the fifth annual administrative review of this order for the period April 1, 2001–March 31, 2002, which is being conducted pursuant to section 751(a)(1) of the Act. Therefore, we intend to issue the final results of this review not later than 245 days after the last day of the anniversary month.

Antidumping Duty Proceeding	Period to be Reviewed
PRC: Brake Rotors, A–570–846:	
Zibo Golden Harvest Machinery Limited Company	04/01/01 - 03/31/02
Shanxi Fengkun Metallurgical Limited Company.	

We will instruct the Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by the above-listed companies. This action is in accordance with 19 CFR 351.214(e).

Interested parties that need access to proprietary information in these new shipper reviews should submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214(d).

Dated: May 24, 2002

Susan Kuhbach,

Acting Deputy Assistant Secretary Import Administration.

[FR Doc. 02–13992 Filed 6–4–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW, Washington, DC.

Docket Number: 02–018. *Applicant:* Thomas Jefferson University, 1020 Walnut Street, Philadelphia, PA 19107–5587. *Instrument*: Electron Microscope, Model Tecnai 12 TWIN. *Manufacturer*: FEI Company, The Netherlands. *Intended Use*: The instrument is intended to be used for the following research purposes:

1. Collagen Fibrillogenesis and Corneal Development.
2. Regulated Assembly of the Tendon Extracellular Matrix.
3. Cellular Pathology of Cutaneous Graft-vs-Host Disease.
4. Biological and Clinical Properties of CD4 Structural Analogs.
5. Altered Proteoglycan Gene Expression and Cancer.
6. Biology of Perlecan in Cancer and Development.
7. Structure of Type VI Collagen and its Role in Disease.
8. Function of Fibulins.
9. Consequences of the Mutations at the Protein Structure/Function Level.
10. Mouse Models of Epidermolysis Bullosa.
11. Molecular Genetics of Epidermolysis Bullosa and Other Heritable Disorders of the Cutaneous Basement Membrane Zone and Epidermis.
12. Biochemistry and Morphology of Connective Tissue.
13. RNA-DNA Oligonucleotide: Novel Skin Therapueutics.
14. Non-viral Therapy for Cutaneous Diseases.
15. Mechanisms of Proteoglycan-collagen Interactions. *Application accepted by Commissioner of Customs:* May 23, 2002.

Docket Number: 02–019. *Applicant:* Vanderbilt University, 1161 21st Avenue South, Nashville, TN 37232. *Instrument:* Electron Microscope, Model Tecnai 12 TWIN. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* The instrument is intended to be used to study the three-dimensional structures of biological macromolecules and assemblies, such as viruses and protein complexes. The materials to be studied include adenovirus, a common human respiratory virus; the ribonucleoprotein vault, a cytoplasmic particle implicated in multi-drug resistance in certain cancer cell lines; the DNA–PK protein/DNA complex, which is involved in repair of DNA double-stranded breaks after exposure to ionizing radiation; the family of small heat-shock proteins, which help the cell to resist heat-induced protein aggregation; CAM kinase complexes, which are involved in regulation of synaptic function in the brain; monoamine transporters (serotonin, norepinephrine, and dopamine), which are targets for antidepressants and phychostimulants; transcription complexes isolated from yeast; and other macromolecular protein assemblies involved in DNA transactions. *Application accepted by Commissioner of Customs:* May 23, 2002.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–14072 Filed 6–4–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Public Meeting To Gather Comments and Suggestions Related to the Scope of the Pending NIST Building and Fire Safety Investigation of the World Trade Center Disaster

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of public meeting.

SUMMARY: The National Institute of Standards and Technology (NIST) of the United States Department of Commerce has scheduled a public meeting to be held on June 24, 2002, to gather comments and suggestions related to the scope of its pending building and fire safety investigation of the World Trade Center disaster. A draft of the proposed NIST investigation plan with details on its scope will be made available June 10, 2002 on the Web site *http://wtc.nist.gov.* A review of the recently completed report ''World Trade Center Building Performance Study: Data Collection, Preliminary Observations, and Recommendations'' sponsored by the Federal Emergency Management Agency (FEMA) and led by the American Society of Civil Engineers may be useful in formulating comments and suggestions. This report (*FEMA 403, May 2002*) may be found at *http://www.fema.gov/library/wtcstudy.htm.* Individuals and representatives of organizations who would like to offer comments and suggestions related to the scope of the pending NIST investigation are invited to request a place on the agenda. The total number of speakers and organizations, and the time

available for each, will be determined by the number of requests, but the time is likely to be 5 to 10 minutes each. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who are unable to attend in person are invited to submit written statements and supporting material to the WTC Technical Information Repository preferably before June 30, 2002. This meeting is being re-scheduled from April 22, 2002.

DATES: The meeting will be held on June 24, 2002, from 8:00 AM to 4:00 PM.

ADDRESSES: The meeting will be held at the Marriott New York East Side Hotel, 525 Lexington Avenue, New York, NY 10017. Telephone number is: (212) 755–4000.

FOR FURTHER INFORMATION CONTACT: Stephen Cauffman, (301) 975–6051 or by e-mail at *stephen.cauffman@nist.gov.* Written statements and supporting material should be submitted to the WTC Technical Information Repository, Building and Fire Research Laboratory, National Institute of Standards and Technology, MS 8610, Gaithersburg, MD 20899–8610 or electronically by e-mail to *WTC@NIST.gov* or by Fax to (301) 975–6122.

SUPPLEMENTARY INFORMATION: President Bush has proposed to Congress that NIST investigate the building construction, the materials used, and the technical conditions that combined to cause the World Trade Center disaster following the airplane impacts. The scope of the NIST investigation will address the following primary objectives, which are to:

- Determine the probable technical causes of the collapse of the World Trade Center buildings (the Twin Towers and WTC 7);
- Determine the factors that led to the injuries and fatalities, including all technical aspects of fire protection, response, evacuation, and occupant behavior and emergency response;
- Determine the procedures and practices that were used in the design, construction, operation, and maintenance of the World Trade Center buildings; and
- Identify building and fire codes, standards, and practices that warrant revision.

The investigation is to be part of a broader NIST response plan to the WTC disaster, which also is to include research and development and information dissemination and technical assistance.

To request an opportunity to speak, NIST must receive the following information via e-mail (*WTC@NIST.gov*) or FAX ((301)–975–6122) no later than 5:00 PM on June 17, 2002:

- Name and contact information (including FAX, phone and/or e-mail) of individual who will be speaking.
- Name and complete address of organization(s) speaker represents.
- A 150–200 word summary of key points to be made by the speaker relating to the scope of the pending NIST investigation.

Those who are selected to speak will be contacted by 12 noon on June 19, 2002, using the FAX, phone or e-mail address provided, and informed of the decision and the maximum amount of time allotted to each speaker. Speakers will be selected based on the following criteria: (1) Relevance of the 150–200 word summary to the primary objectives of the NIST investigation listed previously, (2) order in which requests are received, (3) balancing interests and perspectives, and (4) avoidance of duplication in comments and suggestions.

Speakers who wish to expand upon their oral statements, those who wish to speak but cannot be accommodated on the agenda, and those who are unable to attend in person are invited to submit written statements and supporting material to the WTC Technical Information Repository, Building and Fire Research Laboratory, National Institute of Standards and Technology, MS 8610, Gaithersburg, MD 20899–8610 or electronically by e-mail to *WTC@NIST.gov* or by Fax to (301) 975–6122.

Statements made at the meeting and/or submitted to NIST may be recorded and transcribed and made available to the public at a later date. The meeting will be Web cast and linked to the NIST home page, *http://www.nist.gov/.* Details will be available on that Web site before the meeting.

Dated: May 31, 2002.

Arden L. Bement, Jr.,

Director.

[FR Doc. 02–14082 Filed 6–4–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No 000202023–2049–03 I.D 041502E]

Announcement of Funding Opportunity to Submit Proposals for the Coastal Ecosystem Research Project in the Northern Gulf of Mexico

AGENCY: Center for Sponsored Coastal Ocean Research/Coastal Ocean Program (CSCOR/COP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of funding availability for financial assistance for project grants and cooperative agreements.

SUMMARY: The purpose of this notice is to advise the public that CSCOR/COP is soliciting proposals to support 1 to 3 year studies of coastal ecosystem research related to hypoxia over the Louisiana continental shelf in the northern Gulf of Mexico. Funding is contingent upon the availability of Federal appropriations. It is anticipated that projects funded under this announcement will have a May 1, 2003 start date.

DATES: The deadline for receipt of proposals at the CSCOR/COP office is 3 p.m., local time September 17,2002.

(Note that late-arriving applications provided to a delivery service on or before September 16,2002 with delivery guaranteed before 3 p.m., local time on September 17,2002, will be accepted for review if the applicant can document that the application was provided to the delivery service with delivery to the address listed below guaranteed prior to the specified closing date and time, and, in any event, the proposals are received in the CSCOR/COP office by 3 p.m., local time, no later than 2 business days following the closing date.)

ADDRESSES: Submit the original and 15 copies of your proposal to Center for Sponsored Coastal Ocean Research/Coastal Ocean Program (N/SCI2), SSMCι4, 8th Floor, Station 8243, 1305 East-West Highway, Silver Spring, MD 20910, attn. N-GOMEX 2002.

NOAA and Standard Form Applications with instructions are accessible on the following CSCOR/COP Internet Site: http://www.cop.noaa.gov under the COP Grants Information Section, Part D, Application Forms for Initial Proposal Submission.

Forms may be viewed and, in most cases, filled in by computer. All forms must be printed, completed, and mailed to CSCOR/COP with original signatures.

If you are unable to access this information, you may call CSCOR/COP at 301–713–3338 to leave a mailing request.

FOR FURTHER INFORMATION CONTACT:

Technical Information. Dr. Kenric Osgood, N-GOMEX 2002 Program Manager, CSCOR/COP, 301–713–3338/ext 163, Internet: Kenric.Osgood@noaa.gov.

Business Management Information. Leslie McDonald, CSCOR/COP Grants Administrator, 301–713–3338/ext 155, Internet: Leslie.McDonald@noaa.gov

SUPPLEMENTARY INFORMATION:

Electronic Access

The following web sites furnish results of studies concerning the periodic hypoxia associated with the northern Gulf of Mexico: http://www.cop.noaa.gov/pubs/das/das14.html, for results from the Nutrient Enhanced Coastal Ocean Productivity (NECOP) study, and; http://www.nos.noaa.gov/Products/pubs_hypox.html for Gulf of Mexico hypoxia reports produced by the Committee on Environment and Natural Resources (CENR). Hard copies of these reports can be obtained from the CSCOR/COP office. The Action Plan for reducing, mitigating, and controlling hypoxia in the northern Gulf of Mexico that resulted from the CENR reports is available at: http://www.epa.gov/msbasin/planintro.htm

A general description of ongoing work in the northern Gulf of Mexico funded by the CSCOR/COP is provided at: http://www.cop.noaa.gov/Fact_Sheets/NGOMEX.htm A listing of the individual ongoing projects funded by the CSCOR/COP is provided at http://www.cop.noaa.gov/projects/GoMex/abstract-links.htm

University-National Oceanographic Laboratory System (UNOLS) Ship Time Request Form is available in electronic format at: http://www.gso.uri.edu/unols/ship/shiptime.html. UNOLS' vessel requirements are identified later in this document under Part I: Schedule and Proposal Submission, (7) Budget of this document.

Background

Program Description

For complete program description and other requirements criteria for the Center for Sponsored Coastal Ocean Research/Coastal Ocean Program, see the COP General Grant Administration Terms and Conditions annual notification in the **Federal Register** (66 FR 63019, December 4, 2001) and at the CSCOR/COP home page.

Coastal regions dominated by large rivers are disproportionately important to the biological production of the world's oceans primarily because these rivers carry large amounts of ''new'' nitrogen. The Northern Gulf of Mexico coastal ecosystem, which is influenced by the Mississippi River, supports high primary and secondary production and is an important river-dominated ecosystem. Approximately 20 percent of the U.S. commercial fishery landings, by dollar value, are from the northern Gulf. Major recreational fisheries also exist in this region.

There is a strong relationship between riverine inputs (especially nutrients) and primary production, followed in turn by zooplankton production and fish production in a classic nutrient-phytoplankton-zooplankton-fish (NPZF) food web. Because anthropogenic nitrogen loadings from the Mississippi River to the Gulf of Mexico have increased dramatically during the past several decades, many changes in the ecosystem of the northern Gulf have occurred, including (1) an initial increase in overall biological production, (2) the annual development of an extensive zone of bottom water hypoxia during the summer stratified period; and (3) an apparent shift from a balanced pelagic/demersal fish community to one significantly more dominated by pelagic fisheries.

Several past and present programs have studied the seasonal hypoxia associated with the northern Gulf of Mexico. Notably, from 1990 to 1997, the CSCOR/COP supported a study on Nutrient Enhanced Coastal Ocean Productivity (NECOP), and the Committee on Environment and Natural Resources (CENR) recently completed an integrated assessment of Gulf of Mexico hypoxia. Results and reports of these studies can be found on the web sites or obtained from CSCOR/COP as listed under ''Electronic Access'' of this document.

This solicitation for proposals will augment the existing program which was started in fiscal year 2000 and expanded in 2001, to examine the inter-relationships driving the Mississippi River-dominated Gulf of Mexico ecosystem. Abstracts of ongoing studies funded by CSCOR/COP in the northern Gulf of Mexico are available on the CSCOR/COP internet site that is provided in this document under ''Electronic Access'' of this document. All ongoing studies are scheduled to end by September 2003. The planned suite of studies will enable improved predictions about future effects of nutrient loading, eutrophication, hypoxia, and climate change on the northern Gulf of Mexico ecosystem.

The underlying goal of the entire program is to develop a predictive capability for the physical, chemical, and biological components of the Louisiana continental shelf ecosystem. In particular, it is desirable to obtain the ability to input different possible physical forcing and nutrient loading scenarios into a predictive model for the region in order to predict the effects on the oxygen concentrations and the biological system, including the effects on economically and ecologically important species. CSCOR/COP's intent is to provide timely and high-quality scientific results that can be used in an adaptive management program to restore and protect the Louisiana continental shelf ecosystem. The results of the funded research proposals should be useful to resource managers by helping them make informed decisions and assess alternative management strategies. This solicitation for proposals is one more step in the development of this predictive capability.

Research Priorities

This announcement seeks proposals to conduct research focused on understanding the causes and effects of the hypoxic zone over the Louisiana continental shelf and the prediction of its future extent and impacts. At this time, top priorities for the CSCOR/COP research program include (1) modeling studies for the region of the northern Gulf of Mexico affected by seasonal hypoxia centered over the Louisiana continental shelf, and (2) observational studies necessary to support the modeling studies.

Modeling studies are requested that extend beyond prior modeling efforts for the region of the northern Gulf of Mexico affected by seasonal hypoxia. This could include a natural evolution from empirically based statistical models, to process-oriented modeling studies, to a predictive modeling capability. Models of particular interest include the following: Models of oceanographic and climate influences on water column stability and nutrient flux; the impacts of the combination of these factors on productivity, trophic response and hypoxic zone dynamics; and the ultimate impacts to, and responses of, commercially and recreationally important fisheries. Individual studies may model one or more of these portions of the desired whole, but the models must be designed so that they can be combined with other components to form an efficient, integrative whole.

Observational studies are requested in support of the modeling studies. Physical, chemical, and biological observational studies are needed to provide (1) data for the boundary conditions of the models, (2) the process rate information needed by the models, and (3) validation data for the models. It is expected that the data/results acquired through the observational studies will be made available for assimilation into models being developed for the region and would thereby play an important role in their future development. Observational studies could include shipboard surveys, mooring observations, drifters, analysis of regional satellite data and in situ or laboratory rate measurements/experiments.

Part I: Schedule and Proposal Submission

This document requests full proposals only. The provisions for proposal preparation provided here are mandatory. Proposals received after the published deadline or proposals that deviate from the prescribed format will be returned to the sender without further consideration. Information regarding this announcement, additional background information, and required Federal forms are available on the CSCOR/COP home page.

Full Proposals

Applications submitted in response to this announcement require an original proposal and 15 proposal copies at time of submission. This includes color or high-resolution graphics, unusually sized materials, or otherwise unusual materials submitted as part of the proposal. For color graphics, submit either color originals or color copies. The stated requirements for the number of proposal copies provide for a timely review process. Facsimile transmissions and electronic mail submissions will not be accepted.

Required Elements

All recipients must follow the instructions in the preparation of the CSCOR/COP application forms included under Part II: Further Supplementary Information, (10) Application forms and kit of this document. Each proposal must also include the following ten elements or will be returned to sender without further consideration:

(1) *Standard Form 424*. At time of proposal submission, all applicants anticipating direct funding shall submit the Standard Form, SF–424, ''Application for Federal Assistance,'' to indicate the total amount of funding proposed for the whole project period. This form is to be the cover page for the original proposal and all requested copies. Multi-institutional proposals must include signed SF–424 forms from all institutions requesting funding.

(2) *Signed Summary title page*. The title page should be signed by the Principal Investigator (PI). The Summary title page identifies the project's title, starting with the acronym: N-GOMEX 2002, a short title (less than 50 characters), and the PI's name and affiliation, complete address, phone, FAX and E-mail information. The requested budget for each fiscal year should be included on the Summary title page. Multi-investigator proposals must include the names and affiliations of each investigator on the title page. Multi-institution proposals must also identify the lead investigator from each institution and the requested funding for each fiscal year for each institution on the title page, but no signatures are required on the title page from the additional institutions. Lead investigator and separate budget information is not requested on the title page for institutions that are proposed to receive funds through a subcontract to the lead institution; however, the COP Summary Proposal Budget Form and accompanying budget justification must be submitted for each subcontractor. For further details on budget information, please see Section (7) Budget of this Part.

(3) *One-page abstract/project summary*. The Project Summary (Abstract) Form, which is to be submitted at time of application, shall include an introduction of the problem, rationale, scientific objectives and/or hypotheses to be tested, and a brief summary of work to be completed. The prescribed CSCOR/COP format for the Project Summary Form can be found on the CSCOR/COP Internet site under the Grants Information section, Part D.

The summary should appear on a separate page, headed by the proposal title, institution(s), investigator(s), total proposed cost and budget period. It should be written in the third person. The summary is used to help compare proposals quickly and allows the respondents to summarize these key points in their own words.

(4) *Statement of work/project description*. The proposed project must be completely described, including identification of the problem, scientific objectives, proposed methodology, and relevance to the program goals and objectives. The project description section (including relevant results from prior support) should not exceed 15 pages. Page limits are inclusive of figures and other visual materials, but exclusive of references and milestone chart.

This section should clearly identify project management with a description of the functions of each PI within a team. It should provide a full scientific justification for the research. Do not simply reiterate justifications presented in this document. It should also include:

(a) The objective for the period of proposed work and its expected significance;

(b) The relation to the present state of knowledge in the field and the relation to previous work and work in progress by the proposing principal investigator(s);

(c) A discussion of how the proposed project lends value to the program goal;

(d) Potential coordination with other investigators.

(5) *References cited*. Reference information is required. Each reference must include the names of all authors in the same sequence in which they appear in the publications, the article title, volume number, page numbers and year of publications. While there is no established page limitation, this section should include bibliographic citations only and should not be used to provide parenthetical information outside the 15–page project description.

(6) *Milestone chart*. Provide time lines of major tasks covering the duration of the proposed project.

(7) *Budget*. At time of proposal submission, all applicants are required to submit a COP Summary Proposal Budget Form for each fiscal year increment. Multi-institution proposals must include a COP Summary Proposal Budget Form for each institution, and multi-investigator proposals using a lead investigator with a subcontract's approach must submit a COP Summary Proposal Budget Form for each subcontractor.

Each subcontract or subgrant should be listed as a separate item. Describe products/services to be obtained and indicate the applicability or necessity of each to the project. Provide separate budgets for each subgrant or contract regardless of the dollar value and indicate the basis for the cost estimates. List all subgrant or contract costs under line item number 5 - Subcontracts on the COP Summary Proposal Budget Form.

The use of this budget form will provide for a detailed annual budget and for the level of detail required by the CSCOR/COP program staff to evaluate the effort to be invested by investigators and staff on a specific project. The COP budget form is compatible with forms in use by other agencies that participate in joint projects

with CSCOR/COP and can be found on the CSCOR/COP home page under the COP Grants Information section, Part D.

All applications must include a budget narrative and a justification to support all proposed budget categories. The SF–424A, Budget Information (Non-Construction) Form, will be requested only from those applicants subsequently recommended for award.

Ship time needs should be clearly identified in the proposed budget. The investigator is responsible for requesting ship time and for meeting all requirements to ensure the availability of requested ship time. Copies of relevant ship time request forms should be included with the proposal. For example, the UNOLS Ship Time Request Form is available at the website cited earlier in this document under the section ''Electronic Access.''

(8) *Biographical sketch*. All principal and co-investigators must provide summaries of up to 2 pages that include the following:

(a) A listing of professional and academic essentials and mailing address;

(b) A list of up to five publications most closely related to the proposed project and five other significant publications. Additional lists of publications, lectures, and the rest should not be included;

(c) A list of all persons (including their organizational affiliation) in alphabetical order, with whom the investigator has collaborated on a project or publication within the last 48 months, including collaborators on the proposal and persons listed in the publications. If no collaborators exist, this should be so indicated;

(d) A list of persons (including their organizational affiliation) with whom the individual has had an association like thesis advisor or postdoctoral scholar sponsor;

(e) A list of the names and institutions of the individual's own graduate and postgraduate advisors.

The material presented in (c, d, and e) is used to assist in identifying potential conflicts or bias in the selection of reviewers.

(9) *Current and pending support*. Describe all current and pending financial/funding support for all principal and co-investigators, including subsequent funding in the case of continuing grants. All current support from whatever source (e.g., Federal, state or local government agencies, private foundations, industrial or other commercial organizations) must be listed. The proposed project and all other projects or activities requiring a portion of time of the principal investigator or co-investigators should be included, even if they receive no salary support from the projects. The total award amount for the entire award period covered (including indirect costs) should be shown as well as the number of person-months per year to be devoted to the project, regardless of source of support.

(10) *Proposal format and assembly*. The original proposal should be clamped in the upper left-hand corner, but left individually unbound. The 15 additional copies can be stapled in the upper left-hand corner or bound on the left edge. The page margin must be 1 inch (2.5 cm) at the top, bottom, left and right, and the typeface standard 12–point size must be clear and easily legible. Proposals should be single spaced.

Part II: Further Supplementary Information

(1) *Program authorities*. For a list of all program authorities for the Center for Sponsored Coastal Ocean Research/ Coastal Ocean Program, see the General Grant Administration Terms and Conditions of the Coastal Ocean Program published in the **Federal Register** (66 FR 63019, December 4, 2001) and at the CSCOR/COP home page. Specific Authority cited for this announcement is 33 U.S.C. 1442.

(2) *Catalog of Federal Domestic Assistance (CFDA) Number*. The CFDA number for the Coastal Ocean Program is 11.478.

(3) *Program description*. For complete CSCOR/COP program descriptions, see the General Grant Administration Terms and Conditions of the Coastal Ocean Program published in the **Federal Register** (66 FR 63019, December 4, 2001).

(4) *Funding availability*. Funding is contingent upon availability of Federal appropriations. Approximately $3,000,000 will be available for supporting studies proposed by submissions to this announcement during the first year, and approximately $2,000,000 during the second and third years. It is estimated that seven to fifteen awards will be made as a result of this announcement.

If an application is selected for funding, NOAA has no obligation to provide any additional prospective funding in connection with that award in subsequent years. Continuation of an award to increase funding or to extend the period of performance is based on satisfactory performance and is at the total discretion of the funding agency.

Publication of this notice does not obligate any agency to any specific award or to obligate any part of the entire amount of funds available. Recipients and subrecipients are subject to all Federal laws and agency policies, regulations and procedures applicable to Federal financial assistance awards.

(5) *Matching requirements*. None.

(6) *Type of funding instrument*. Project Grants for non-Federal applicants, interagency transfer agreements, or any other appropriate mechanisms other than project grants or cooperative agreements for Federal applicants.

(7) *Eligibility criteria*: For complete eligibility criteria for the CSCOR/COP, see the COP General Grant Administration Terms and Conditions annual document in the **Federal Register** (66 FR 63019 December 4, 2001) and the CSCOR/COP home page. Eligible applicants are institutions of higher education, not-for-profit institutions, state, local and Indian tribal governments, and Federal agencies. CSCOR/COP will accept proposals that include foreign researchers as collaborators with a researcher who is affiliated with a U.S. academic institution, Federal agency, or with any other non-profit organization.

Applications from non-Federal and Federal applicants will be competed against each other. Proposals selected for funding from non-Federal applicants will be funded through a project grant or cooperative agreement under the terms of this notice. Proposals selected for funding from NOAA employees shall be effected by an intra-agency fund transfer. Proposals selected for funding from employees of a non-NOAA Federal agency will be funded through an inter-agency transfer.

Note: Before non-NOAA Federal applicants may be funded, they must demonstrate that they have legal authority to receive funds from another Federal agency in excess of their appropriation. Because this announcement is not proposing to procure goods or services from applicants, the Economy Act (31 U.S.C. 1535) is not an appropriate legal basis.

(8) *Award period*. Full Proposals can cover a project period from 1 to 3 years. Multi-year project period funding may be funded incrementally on an annual basis, but, once awarded, multi-year projects will not compete for funding in subsequent years. Each annual award shall require an Implementation Plan and statement of work that can be easily divided into annual increments of meaningful work representing solid accomplishments in the event that prospective funding is not made available, or is discontinued.

(9) *Indirect costs*. Regardless of any approved indirect cost rate applicable to

the award, the maximum dollar amount of allocable indirect costs for which DOC will reimburse the recipient shall be the lesser of (a) the line item amount for the Federal share of indirect costs contained in the approved budget of the award or (b) the Federal share of the total allocable indirect costs of the award based on the indirect cost rate approved by a cognizant or oversight Federal agency and current at the time the cost was incurred, provided the rate is approved on or before the award end date.

(10) *Application forms and kit*. For complete information on application forms for the CSCOR/COP, see the COP General Grant Administration Terms and Conditions annual Document in the **Federal Register** (66 FR 63019, December 4, 2001) at the CSCOR/COP home page, and the information given under *Required Elements*,(6) Budget of this Part.

(11) *Project funding priorities*. For description of project funding priorities, see the COP General Grant Administration Terms and Conditions annual notification in the **Federal Register** (66 FR 63019, December 4, 2001) and at the CSCOR/COP home page.

(12) *Evaluation criteria*. For complete information on evaluation criteria, see the COP General Grant Administration Terms and Conditions annual Document in the **Federal Register** (66 FR 63019, December 4, 2001) and at the CSCOR/COP home page.

(13) *Selection procedures*. For complete information on selection procedures, see the COP General Grant Administration Terms and Conditions annual Document in the **Federal Register** (66 FR 63019, December 4, 2001) and at the CSCOR/COP home page. All proposals received under this specific Document will be evaluated and ranked individually in accordance with the assigned weights of the above evaluation criteria by independent peer mail review and/or panel review.

(14) *Other requirements*. (a) For a complete description of other requirements, see the COP General Grant Administration Terms and Conditions annual Document in the **Federal Register** (66 FR 63019, December 4, 2001) and at the CSCOR/COP home page. NOAA has specific requirements that environmental data be submitted to the National Oceanographic Data Center (see section 16 below).

(b) The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** (66 FR 49917, October 1, 2001) are applicable to this solicitation. However, please note that the Department of Commerce will not implement the requirements of Executive Order 13202 (66 FR 49921), pursuant to guidance issued by the Office of Management and Budget in light of a court opinion which found that the Executive Order was not legally authorized. See *Building and Construction Trades Department* v. *Allbaugh*, 172 F. Supp. 2d 138 (D.D.C. 2001). This decision is currently on appeal. When the case has been finally resolved, the Department will provide further information on implementation of Executive Order 13202.

(c) Please note that NOAA is developing a policy on internal overhead charges; NOAA scientists considering submission of proposals should contact the appropriate CSCOR/COP Program Manager for the latest information.

(15) *Intergovernmental review*. Applications under this program are not subject to Executive Order l2372, ''Intergovernmental Review of Federal Programs.'' It has been determined that this notice is not significant for purposes of Executive Order 12866. Pursuant to 5 U.S.C. 553(a)(2), an opportunity for public notice and comment is not required for this notice relating to grants, benefits, and contracts. Because this notice is exempt from the notice and comment provisions of the Administrative Procedure Act, a Regulatory Flexibility Analysis is not required, and none has been prepared. It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

(16) *Data archiving*. Any data collected in projects supported by CSCOR/COP must be delivered to a National Data Center (NDC), such as the National Oceanographic Data Center (NODC), in a format to be determined by the institution, the NODC, and the Program Officer. It is the responsibility of the institution for the delivery of these data; the DOC will not provide additional support for delivery beyond the award. Additionally, all biological cultures established, molecular probes developed, genetic sequences identified, mathematical models constructed, or other resulting information products established through support provided by CSCOR/COP are encouraged to be made available to the general research community at no or modest handling charge (to be determined by the institution, Program Officer, and DOC).

(17) This notification involves collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, and SF-LLL has been approved by the Office of Management and Budget (OMB) under control numbers 0348–0043, 0348–0044, 0348–0040 and 0348–0046.

The following requirements have been approved by OMB under control number 0648–0384: a Summary Proposal Budget Form (30 minutes per response), a Project Summary Form (30 minutes per response), a standardized format for the Annual Performance Report (5 hours per response), a standardized format for the Final Report (10 hours per response) and the submission of up to 20 copies of proposals (10 minutes per response). The response estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Leslie.McDonald@noaa.gov. Copies of these forms and formats can be found on the CSCOR/COP home page under Grants Information sections, Parts D and F.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection displays a currently valid OMB control number

Dated: May 22, 2002.

Jamison S. Hawkins,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 02–14069 Filed 6–4–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050802F]

Endangered Species; Permits 1316, 1231 and 1033

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

ACTION: Issuance of permit modifications no. 1316, 1231 and 1033.

SUMMARY: Notice is hereby given that permit modifications have been issued to take ESA-listed species for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376.

FOR FURTHER INFORMATION CONTACT: Lillian Becker or Ruth Johnson, (301)713–2289).

SUPPLEMENTARY INFORMATION: The requested permits have been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Modifications

Modification no. 2 to permit no. 1033 issued to Mr. David Nelson, Department of the Army, Engineer Research and Developmental Center, Corps of Engineers, Environmental Laboratory, Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, Mississippi 39180-6199, to extend the expiration date to December 31, 2002;

Modification no. 1 to permit no. 1316 issued to Dr. Jeff Schmid, The Conservancy of Southwest Florida, 1450 Merrihue Drive, Naples, Fl 34102, to allow attachment of time-depth recorders to the radio and sonic tags already being placed on 20 juvenile Kemp's ridley sea turtles.

Modification no. 2 to permit no. 1231 issued to Llewellyn M. Ehrhart, Dept of Biological Science, University of Central Florida, P.O. Box 162368, Orlando, FL 32816, to allow attachment of satellite tags to no more than 20 large juvenile green turtles in the Indian River Lagoon and the nearby reef system between McLarty Museum and Ambersand Beach.

Issuance of the permit and modifications, as required by the ESA, was based on a finding that such actions (1) were applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: May 29, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–14068 Filed 6–4–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Army

Final Environmental Impact Statement (FEIS) for Enhanced Training and Operations at the National Guard Training Center (NGTC)—Fort Indiantown Gap (FTIG), PA

AGENCY: National Guard Bureau (NGB), Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Pennsylvania Army National Guard (PAARNG) and the Pennsylvania Air National Guard (PAANG) have formulated long-range plans to ensure the continued and long-term viability of FTIG as a National Guard Training Center. The proposed plan, a total of 11 actions comprised of 42 component projects, is proposed for the specific purposes and needs set forth in the FEIS. These proposed actions consist of the construction or improvement of the following projects: (1) Tracked Vehicle Training Complex, (2) Ammunition Supply Point Facility, (3) Artillery Training Support Facility, (4) Multi-Purpose Training Range Facility, (5) NGTC–FTIG Garrison Facility, (6) Wastewater Treatment Plant and Collection System, (7) Muir Army Airfield Complex, (8) Air Guard Station Facilities, (9) Air-to-Ground Range Control Compound, (10) Regional Equipment Operator Training School, and (11) the implementation of the Integrated Natural Resources Management Plan. Each of the proposed actions have been determined to be necessary to allow the PAARNG and PAANG to continue to utilize the training site to support on-going military and civilian missions. By implementing each of these actions, NGTC–FTIG will continue to provide training and support facilities necessary to ensure its long-term viability, sustainability, and value as a major NGB training site.

DATES: The review period for the FEIS will end 30 days after publication of the NOA in the **Federal Register** by the U.S. Environmental Protection Agency.

ADDRESSES: Written comments or materials should be forwarded to Captain Geoffrey Lincoln, NGTC–FTIG EIS Project Officer, NGTC–FTIG, Environmental Section, 1119 Utility Road, Annville, Pennsylvania 17003–5002 or Lieutenant Colonel Christopher Cleaver, NGTC–FTIG Public Affairs Officer (PAO), PADMVA Headquarters, Building 0–47, Annville, Pennsylvania 17003–5002.

FOR FURTHER INFORMATION CONTACT: Captain Lincoln at (717) 861–2548 or Lieutenant Colonel Cleaver at (717) 861–8468.

SUPPLEMENTARY INFORMATION: The mission of the 28th Infantry Division (Mechanized) is to be trained and equipped to join the active forces in time of war or national emergency to respond to orders of the Governor, to protect lives and property during natural and man-made disasters, to clean up the environment, to fight to eradicate the illicit flow of drugs, and to serve as role models for future generations. Each of the proposed actions is necessary to allow the PAARNG and PAANG to productively utilize FTIG to support its on-going military and civilian missions.

Two alternatives in addition to the proposed action were considered: (1) Alternative 2 includes a scaled down or modified version of some or all of the proposed projects. This alternative primarily changes the scope of the Tracked Vehicle Training Complex, Multi-Purpose Training Range Facility, and Muir Military Runway/Enhancement proposed actions. The three alternative projects, coupled with the other eight actions as proposed in the EIS, comprise Alternative 2 and (2) Alternative 3, whereby none of the proposed upgrade or facility construction actions would be implemented; on-going actions will be continue; no new construction projects would be authorized except those already under construction or contracted for construction.

By implementing the proposed actions, NGTC–FTIG can continue to provide training and support facilities necessary to ensure its long-term viability, sustainability and value as a major NGB training site. A summary of impact analyses of previously completed Environmental Assessments is incorporated into the FEIS.

Dated: May 29, 2002.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA (I&E).

[FR Doc. 02–14070 Filed 6–4–02; 8:45 am]

BILLING CODE 3710–08–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

FOIA Fee Schedule Update

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice.

SUMMARY: The Defense Nuclear Facilities Safety Board is publishing its

annual update to the Freedom of Information Act (FOIA) Fee Schedule pursuant to 10 CFR 1703.107(b)(6) of the Board's regulations.

EFFECTIVE DATE: June 1, 2002.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004–2901, (202) 694–7060.

SUPPLEMENTARY INFORMATION: The FOIA requires each Federal agency covered by the Act to specify a schedule of fees applicable to processing of requests for agency records. 5 U.S.C. 552(a)(4)(i). On March 15, 1991, the Board published for comment in the **Federal Register** its proposed FOIA Fee Schedule. 56 FR 11114. No comments were received in response to that notice and the Board issued a final Fee Schedule on May 6, 1991.

Pursuant to 10 CFR 1703.107(b)(6) of the Board's regulations, the Board's General Manager will update the FOIA Fee Schedule once every 12 months. Previous Fee Schedule updates were published in the **Federal Register** and went into effect, most recently, on June 1, 2001, 66 FR 30176.

Board Action

Accordingly, the Board issues the following schedule of updated fees for services performed in response to FOIA requests:

DEFENSE NUCLEAR FACILITIES SAFETY BOARD SCHEDULE OF FEES FOR FOIA SERVICES

[Implementing 10 CFR 1703.107(b)(6)]

FOIA service	Fees
Search or Review Charge.	$59.00 per hour.
Copy Charge (paper)	$.05 per page, if done in-house, or generally available commercial rate (approximately $.08 per page).
Copy Charge (3.5'' diskette).	$5.00 per diskette.
Copy Charge (audio cassette).	$3.00 per cassette.
Duplication of Video ..	$25.00 for each individual videotape; $16.50 for each additional individual videotape.
Copy Charge for large documents (*e.g.*, maps, diagrams).	Actual commercial rates.

Dated: May 31, 2002.

Kenneth M. Pusateri,

General Manager.

[FR Doc. 02–14028 Filed 6–4–02; 8:45 am]

BILLING CODE 3670–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Biomass Research and Development Technical Advisory Committee

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

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Biomass Research and Development Technical Advisory Committee under the Biomass Research and Development Act of 2000. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that agencies publish these notices in the **Federal Register** to allow for public participation. This notice announces the meeting of the Biomass Research and Development Technical Advisory Committee.

DATES: June 27, 2002.

Time: 8:30 a.m.

ADDRESSES: Department of Energy, Room 1E–245, 1000 Independence Avenue, SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Douglas E. Kaempf, Designated Federal Officer for the Committee, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585; (202) 586–7766.

SUPPLEMENTARY INFORMATION: *Purpose of Meeting:* To provide advice and guidance that promotes research and development leading to the production of biobased industrial products.

Tentative Agenda: Agenda will include discussions on the following:

• Full committee discussion of recommendations to the Secretaries of Energy and Agriculture and their designated Points of Contacts on the technical focus and direction of request for proposals issued under the Biomass Research and Development Initiative.

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the Biomass Research and Development Technical Advisory Committee. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, you should contact Douglas E. Kaempf at 202–586–7766 or *Bioenergy @ee.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chair of the Committee will make every effort to hear the views of all interested parties. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. The Chair will conduct the meeting to facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 60 days at the Freedom of Information Public Reading Room; Room 1E–190; Forrestal Building; 1000 Independence Avenue, SW, Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on May 30, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–14030 Filed 6–4–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1842–000, et al.]

Midwest Independent Transmission System Operator, Inc., et al.; Electric Rate and Corporate Regulation Filings

May 29, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1842–000]

Take notice that on May 17, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) filed certain modifications to the energy imbalance provisions of the existing Midwest ISO Open Access Transmission Tariff (Midwest ISO OATT). Specifically, the Midwest ISO is seeking to amend the energy imbalance provisions set forth in Schedule 4A of the Midwest ISO OATT in order to implement certain aspects of the Commission's recent decision Opinion No. 456, and make other changes to

simplify the administration of Schedule 4A that are consistent with Commission precedent.

Copies of this filing were served on all customers of the Midwest ISO OATT, as well as on all affected state utility commissions.

Comment Date: June 7, 2002.

2. American Transmission Company LLC

[Docket No. ER02–1870–000]

Take notice that on May 21, 2002, American Transmission Company LLC (ATC) tendered for filing an executed Rider to the Distribution to Transmission Interconnection Agreement between ATC and Adams-Columbia Electric Cooperative requesting an effective date of June 25, 2001.

Comment Date: June 11, 2002.

3. American Transmission Company LLC

[Docket No. ER02–1871–000]

Take notice that on May 21, 2002, American Transmission Company LLC (ATC) tendered for filing an executed Rider to the Distribution to Transmission Interconnection Agreement between ATC and the City of Algoma requesting an effective date of June 25, 2001.

Comment Date: June 11, 2002.

4. American Transmission Company LLC

[Docket No. ER02–1872–000]

Take notice that on May 21, 2002, American Transmission Company LLC (ATC) tendered for filing an executed Rider to the Distribution to Transmission Interconnection Agreement between ATC and Badger Power Marketing Authority requesting an effective date of June 25, 2001.

Comment Date: June 11, 2002.

5. American Transmission Company LLC

[Docket No. ER02–1873–000]

Take notice that on May 21, 2002, American Transmission Company LLC (ATC) tendered for filing an executed Rider to the Distribution to Transmission Interconnection Agreement between ATC and the City of Kaukauna requesting an effective date of June 25, 2001.

Comment Date: June 11, 2002.

6. American Transmission Company LLC

[Docket No. ER02–1874–000]

Take notice that on May 21, 2002, American Transmission Company LLC (ATC) tendered for filing an executed Rider to the Distribution to Transmission Interconnection Agreement between ATC and Central Wisconsin Electric Cooperative requesting an effective date of June 25, 2001.

Comment Date: June 11, 2002.

7. American Transmission Company LLC

[Docket No. ER02–1875–000]

Take notice that on May 21, 2002, American Transmission Company LLC (ATC) tendered for filing an executed Rider to the Distribution to Transmission Interconnection Agreement between ATC and Marshfield Electric & Water Department requesting an effective date of June 25, 2001.

Comment Date: June 11, 2002.

8. American Transmission Company LLC

[Docket No. ER02–1876–000]

Take notice that on May 21, 2002, American Transmission Company LLC (ATC) tendered for filing an executed Rider to the Distribution to Transmission Interconnection Agreement between ATC and the City of Menasha requesting an effective date of June 25, 2001.

Comment Date: June 11, 2002.

9. American Transmission Company LLC

[Docket No. ER02–1877–000]

Take notice that on May 21, 2002, American Transmission Company LLC (ATC) tendered for filing an executed Rider to the Distribution to Transmission Interconnection Agreement between ATC and the City of Plymouth requesting an effective date of June 25, 2001.

Comment Date: June 11, 2002.

10. American Transmission Company LLC

[Docket No. ER02–1878–000]

Take notice that on May 21, 2002, American Transmission Company LLC (ATC) tendered for filing an executed Rider to the Distribution to Transmission Interconnection Agreement between ATC and the City of Reedsburg requesting an effective date of June 25, 2001.

Comment Date: June 11, 2002.

11. American Transmission Company LLC

[Docket No. ER02–1879–000]

Take notice that on May 21, 2002, American Transmission Company LLC (ATC) tendered for filing an executed Rider to the Distribution to Transmission Interconnection Agreement between ATC and Rock County Electric Cooperative Association requesting an effective date of June 25, 2001.

Comment Date: June 11, 2002.

12. American Transmission Company LLC

[Docket No. ER02–1880–000]

Take notice that on May 21, 2002, American Transmission Company LLC (ATC) tendered for filing an executed Rider to the Distribution to Transmission Interconnection Agreement between ATC and the City of Sheboygan Falls requesting an effective date of June 25, 2001.

Comment Date: June 11, 2002.

13. American Transmission Company LLC

[Docket No. ER02–1881–000]

Take notice that on May 21, 2002, American Transmission Company LLC (ATC) tendered for filing an executed Rider to the Distribution to Transmission Interconnection Agreement between ATC and the City of Sturgeon Bay requesting an effective date of June 25, 2001.

Comment Date: June 11, 2002.

14. American Transmission Company LLC

[Docket No. ER02–1882–000]

Take notice that on May 21, 2002, American Transmission Company LLC (ATC) tendered for filing an executed Rider to the Distribution to Transmission Interconnection Agreement between ATC and the City of Sun Paririe requesting an effective date of June 25, 2001.

Comment Date: June 11, 2002.

15. American Transmission Company LLC

[Docket No. ER02–1883–000]

Take notice that on May 21, 2002, American Transmission Company LLC (ATC) tendered for filing an executed Rider to the Distribution to Transmission Interconnection Agreement between ATC and the City of Wisconsin Rapids requesting an effective date of June 25, 2001.

Comment Date: June 11, 2002.

16. Go Green, Inc.

[Docket No. QF02–65–000]

Take notice that on May 28, 2002, Go Green, Inc., tendered for filing supplements to its April 26, 2002 filing of an application for a small power production facility with the Federal Energy Regulatory Commission (Commission). No determination has

been made that the submittal constitutes a complete filing.

The supplements provide additional information pertaining to the ownership of the small power production facility.

Comment Date: June 10, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–14026 Filed 6–4–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[AMS–FRL–7224–5]

California State Motor Vehicle Pollution Control Standards; 2001 Zero-Emission Vehicle (ZEV) Amendments; Within the Scope Request; Opportunity for Public Hearing; Correction Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of opportunity for public hearing and comment.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has adopted amendments to the California ZEV regulations (2001 ZEV amendments) after its January 25, 2001 hearing. By letter dated May 21, 2002, California requested that EPA confirm CARB's determination that the 2001 ZEV amendments are within-the-scope of a previously issued waiver granted by EPA. On May 21, 2002, EPA published in the **Federal Register** (67 FR 35809) (May 21, 2002 notice) a Notice of Opportunity for public hearing and comment on CARB's request for a waiver of federal preemption for its Low-Emission Vehicle (LEV) regulatory amendments (LEVII) and for CARB's request that EPA confirm CARB's determination that its 1999 ZEV amendments are within-the-scope of previously issued waivers granted by EPA. This notice announces that EPA has tentatively scheduled a public hearing concerning CARB's May 21, 2002 request (this hearing is tentatively scheduled to take place in conjunction with the June 20, 2002 tentative hearing for the 1999 ZEV amendments announced in the May 21, 2002 notice) and that EPA is accepting comment on this request. EPA invites comments on all relevant aspects of California's requests, in particular, (1) Whether EPA should now consider both the 1999 and 2001 ZEV amendments, and (2) whether the 1999 and 2001 ZEV amendments are within the scope of previous waivers and, if not, whether EPA should waive preemption for the 1999 and 2001 ZEV amendments. Through today's notice EPA also provides a correction to the May 21, 2002 notice which incorrectly listed the applicable Air Docket number as ''A–99–26'' whereas the correct Air Docket number for the 1999 and 2001 ZEV Amendment requests as well as the LEVII amendments is ''A–2002–11.'' By today's notice EPA also provides a correction to the location of the hearing(s) tentatively scheduled to take place on June 20, 2002; the new location is the EPA Auditorium, 401 M St., SW, Washington, DC.

DATES: EPA has tentatively scheduled a public hearing concerning the 1999 and 2001 ZEV amendments on June 20, 2002, beginning at 10:00 a.m. EPA has also tentatively scheduled a public hearing concerning the LEVII amendments to commence immediately following the hearing for the 1999 and 2001 ZEV amendments and may carry over until the following day. EPA will hold hearings only if a party notifies EPA by June 10, 2002 expressing its interest in presenting oral testimony regarding the 1999 ZEV amendments and/or the LEVII amendments. In addition, EPA will hold a hearing regarding the 2001 ZEV amendments only if a party notifies EPA by June 14, 2002 expressing its interest in presenting oral testimony. By June 17, 2002, any person who plans to attend the hearing(s) should call David Dickinson at (202)564–9256 to learn any of the hearings will be held. If EPA does not receive a request for any public hearing, then EPA will not hold hearings, and instead consider CARB's requests based on written submissions to the docket. Any party may submit written comments by July 22, 2002.

ADDRESSES: EPA will make available for public inspection at the Air and Radiation Docket and Information Center written comments received from interested parties, in addition to any testimony given at the public hearing. The Air Docket is open during working hours from 8 a.m. to 4 p.m. at EPA, Air Docket (6102), Room M–1500, Waterside Mall, 401 M St., SW, Washington, DC 20460. The reference number for this docket is A–2002–11. Parties wishing to present oral testimony at the public hearing(s) should provide written notice to David Dickinson at the address noted below; parties should submit any written comments to David Dickinson. If EPA receives a request for a public hearing, EPA will hold the public hearing in the main EPA Auditorium, 401 M Street, SW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: *Obtaining Electronic Copies of Documents:* David Dickinson, Certification and Compliance Division (6405J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave, NW, Washington, DC 20460. Telephone: (202) 564–9256, Fax: (202) 565–2057, e-mail address: *Dickinson.David@EPA.GOV.* EPA makes available an electronic copy of this Notice on the Office of Transportation and Air Quality's (OTAQ's) home page (*http://www.epa.gov/otaq/*). Users can find this document by accessing the OTAQ home page and looking at the path entitled ''Regulations.'' This service is free of charge, except any cost you already incur for Internet connectivity. Users can also get the official **Federal Register** version of the Notice on the day of publication on the primary Web site: (*http://www.epa.gov/docs/fedrgstr/EPA-AIR/*).

Please note that due to differences between the software used to develop the documents and the software into which the documents may be downloaded, changes in format, page length, *etc.,* may occur.

SUPPLEMENTARY INFORMATION:

(A) Procedural History

Please see the May 21, 2002 notice noted above for a discussion of the procedural history of CARB's LEV program including its ZEV

requirements. As noted above, CARB has submitted a letter to EPA on May 21, 2002 which requests that EPA confirm that its 2001 ZEV amendments are within the scope of waivers previously granted by EPA.

(B) Background and Discussion

Section 209(a) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7543(a), provides:

> No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No state shall require certification, inspection or any other approval relating to the control of emission from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.

Section 209(b)(1) of the Act requires the Administrator, after notice and opportunity for public hearing, to waive application of the prohibitions of section 209(a) for any state that has adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, if the state determines that the state standards will be, in the aggregate, at least as protective of public health and welfare as applicable federal standards. California is the only state that is qualified to seek and receive a waiver under section 209(b). The Administrator must grant a waiver unless she finds that (A) the determination of the state is arbitrary and capricious, (B) the state does not need the state standards to meet compelling and extraordinary conditions, or (C) the state standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act.

CARB's May 21, 2002 letter to the Administrator notified EPA that it had adopted amendments to its ZEV program. The regulatory amendments covered by CARB's request are amendments to title 13, California Code of Regulations (CCR), section 1962 and the incorporated ''California Exhaust Emission Standards and Test Procedures for 2003 and Subsequent Model Zero-Emission Vehicles, and 2001 and Subsequent Model Hybrid-Electric vehicles, in the Passenger Car, Light-Duty Truck, and Medium-Duty Vehicle Classes,'' and amendments to section 1900(b)(19)-(21), section 1960.1(k) and section 1961(a)(8)(A) and (d), title 13 CCR.

When EPA receives new waiver requests from CARB, EPA traditionally publishes a notice of opportunity for public hearing and comment and then publishes a decision in the **Federal Register** following the public comment period. In contrast, when EPA receives within the scope waiver requests from CARB, EPA traditionally publishes a decision in the **Federal Register** and concurrently invites public comment if an interested part is opposed to EPA's decision.

Because EPA has already received written comment on CARB's within the scope request for its 1999 ZEV amendments and because EPA anticipates a similar level of interest in CARB's 2001 ZEV amendments, EPA invites comment on the following issues: (1) Whether California's 1999 and 2001 ZEV amendments should be considered together or separately; (2) whether California's 2001 ZEV amendments (a) undermine California's previous determination that its standards, in the aggregate, are at least as protective of public health and welfare as comparable Federal standards, (b) affect the consistency of California's requirements with section 202(a) of the Act, and (c) raise new issues affecting EPA's previous waiver determinations; and (3) whether (a) California's determination that its 2001 ZEV amendments, to the extent they are not within the scope of previous waivers, are at least as protective of public health and welfare as applicable federal standards is arbitrary and capricious, (b) California needs separate standards to meet compelling and extraordinary conditions, and (c) California's standards and accompanying enforcement procedures are consistent with section 202(a) of the Act?

Procedures for Public Participation

In recognition that public hearings are designed to give interested parties an opportunity to participate in this proceeding, there are no adverse parties as such. Statements by participants will not be subject to cross-examination by other participants without special approval by the presiding officer. The presiding officer is authorized to strike from the record statements that he or she deems irrelevant or repetitious and to impose reasonable time limits on the duration of the statement of any participant.

If hearing(s) are held, the Agency will make a verbatim record of the proceedings. Interested parties may arrange with the reporter at the hearing(s) to obtain a copy of the transcript at their own expense. Regardless of whether public hearing(s) are held, EPA will keep the record open until July 22, 2002. Upon expiration of the comment period, the Administrator will render a decision on CARB's request based on the record of the public hearing(s), if any, relevant written submissions, and other information that she deems pertinent. All information will be available for inspection at EPA Air Docket. (Docket No. A–2002–11).

EPA requests that parties wishing to submit comments specify which issue, noted above, they are addressing. Commenters may submit one document which addresses several issues but they should separate, to the extent possible, those comments that relate to the 1999 ZEV amendments, those that relate to the 2001 ZEV amendments, and those that relate to the LEVII amendments.

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest possible extent and label it as ''Confidential Business Information'' (CBI). If a person making comments wants EPA to base its decision in part on a submission labeled CBI, then a nonconfidential version of the document that summarizes the key data or information should be submitted for the public docket. To ensure that proprietary information is not inadvertently placed in the docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when EPA receives it, EPA will make it available to the public without further notice to the person making comments.

Dated: May 30, 2002.

Jeffrey R. Holmstead,

Assistant Administrator for Air and Radiation.

[FR Doc. 02–14041 Filed 6–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0033; FRL–7179–4]

Propanil; Notice of Pesticide Tolerance Reassessment Decision and Availability of Risk Assessments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice represents the Agency's tolerance reassessment

decision for propanil. It announces the Agency's tolerance reassessment decision and releases the human health and ecological effects risk assessments and related documents supporting this decision to the public. The Agency's reassessment of dietary risk, including public exposure through food and drinking water as required by the Federal Food, Drug and Cosmetic Act (FFDCA) indicates that propanil poses no risk concerns; therefore, no risk mitigation is needed and no further actions related to dietary risk are warranted at this time. The Agency will complete a Reregistration Eligibility Decision (RED) document for propanil later in 2002, which will address any possible risk to workers and the environment and any confirmatory data needs.

DATES: Public comments on the tolerance reassessment decision for propanil are requested on or before July 5, 2002. In the absence of substantive comments, the tolerance reassessment decision will be considered final. Comments on the human health and ecological effects risk assessments must be submitted on or before August 5, 2002.

ADDRESSES: Comments, may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0033 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Carmen Rodia, Chemical Review Manager, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (703) 306–0327; e-mail address: rodia.carmen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining information on propanil, including environmental, human health and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. Since other entities also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. To access the OPPTS Harmonized Guideline referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm.

In addition, copies of the documents related to the propanil risk assessments and tolerance reassessment decision released to the public may be accessed at http://www.epa.gov/pesticides/reregistration/status.htm.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0033. The official record consists of the documents specifically referenced in this action and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Room 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0033 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP–2002–0033. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Tolerance Reassessment and Risk Management Decision

The Agency has completed its assessment of the dietary risk of propanil (3',4'-dichloropropionanilide) and its principle metabolic degradate 3,4-dichloroaniline (3,4-DCA), and has determined that the level of dietary risk from exposure as a result of currently registered uses of propanil is not of concern to the Agency. Therefore, no mitigation measures are needed and no further actions are warranted at this time. Tolerances for the registered uses of propanil are reassessed. The Agency is still reviewing any possible risk to workers and the environment and, if risk mitigation is necessary, the Agency will provide its risk management decision, as well as any confirmatory data requirements, in the RED scheduled for later in 2002.

The Agency may determine that further action is necessary, once it is determined whether the anilides, such as propanil, share a common mechanism of toxicity as a group or with other neuroendocrine-disrupting chemicals. Such an incremental approach to the tolerance reassessment process is consistent with the Agency's goal of improving transparency in implementing FFDCA. For propanil, the established tolerances remain in effect until such time as a full reassessment of the cumulative risk from all anilide pesticides, such as propanil, may be needed and is completed.

III. Background

This notice announces the tolerance reassessment decision for propanil. This decision has been developed as part of the public participation process that EPA and the United States Department of Agriculture (USDA) are using to involve the public in the reassessment of pesticide tolerances under FFDCA. EPA must review tolerances and tolerance exemptions that were in effect when the Food Quality Protection Act (FQPA) was enacted in August of 1996 to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard of the new law. Propanil was first registered in 1973 and is therefore subject to both reregistration and tolerance assessment under the FQPA amendments to FFDCA.

The FQPA amendments to FFDCA requires EPA to review all the tolerances for registered chemicals in effect on or before the date of the enactment. In reviewing these tolerances, the Agency must consider, among other things, aggregate risks from nonoccupational sources of pesticide exposure, whether there is increased susceptibility to infants and children and the cumulative effects of pesticides with a common mechanism of toxicity. The tolerances are considered reassessed once the safety finding has been made or a revocation occurs.

FFDCA requires that the Agency, when considering whether to establish, modify, or revoke a tolerance, consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' The Agency does not have sufficient information at this time to determine whether the anilide pesticides, such as propanil, share a common mechanism of toxicity.

The Agency's human health findings for the pesticide propanil, discussed in Unit IV., are presented fully in the document: ''Propanil-HED Revised Human Health Risk Assessment, February 28, 2002.'' The risk assessments and other documents pertaining to the propanil tolerance reassessment decision are available for viewing in the public docket (see Unit I.B.2.) or on the Agency's website at http://www.epa.gov/pesticides/reregistration/status.htm.

IV. Use Summary

Propanil is a selective post-emergent herbicide registered on rice, barley, oats, and spring wheat to control broadleaf and grass weeds in commercial settings. Propanil is also registered (but not currently marketed) for turf use at commercial sod farms. There are no existing or proposed residential uses of propanil products.

Propanil is formulated as an emulsifiable concentrate liquid (16.6%–58% active ingredient), a water dispersable granule (or dry flowable) (59.6%–81% active ingredient), a soluble concentrate liquid (41.2%–80.2% active ingredient), and a flowable concentrate (41.2% active ingredient). Propanil is typically applied as a broadcast treatment by groundboom sprayers and aerial equipment.

The estimate for total domestic use (annual average) is approximately 7 million pounds of active ingredient on a total of approximately 2 million acres treated. The crop with the highest use is rice, which accounts for approximately 99% of the annual average. Fifty to seventy percent of the U.S. rice crop is treated with propanil. Small grains comprise the remaining 1% of the annual average.

V. Dietary Food Risks

EPA has not assessed acute dietary risk for propanil since no appropriate endpoint attributable to a single exposure (dose) could be identified. An acute dietary reference dose was not established.

Chronic dietary risk is calculated by using the average consumption value for food and average residue values on those foods. A risk estimate that is less than 100% of the chronic population adjusted dose (cPAD), the dose at which an individual could be exposed over the course of a lifetime and no adverse health effects would be expected, does not exceed the Agency's level of concern. The cPAD is the chronic dietary reference dose (RfD) adjusted for the FQPA safety factor.

Chronic risk estimates from exposures to propanil in food do not exceed the Agency's level of concern (i.e., they are less than 100% of the cPAD). The chronic dietary (food only) risk estimate is 13% of the cPAD, for the most highly exposed population subgroup, all infants (<1 year).

The toxicity endpoint for the chronic dietary assessment is decreased hemoglobin, red blood cell count and/or packed cell volumes and is calculated using the lowest observed adverse effect level (LOAEL) (9 milligrams/kilogram/day (mg/kg/day)) from the chronic/carcinogenicity study in the rat (no observed adverse effect level (NOAEL)) was identified).

The FQPA safety factor of 10x was retained for chronic exposures based on increased susceptibility following prenatal and postnatal exposure, the

lack of a developmental neurotoxicity study; and neuroendocrine disruption in the rat. The uncertainty factor (UF) used in the RfD derivation is 300x. The UF is 100x (10x for interspecies extrapolation and 10x for intraspecies variability). An additional UF of 3x is applied for the use of a LOAEL instead of a NOAEL for an overall UF of 3,000x. Thus, the chronic RfD is 0.03 mg/kg/day and the cPAD is 0.003 mg/kg/day.

The propanil chronic dietary exposure assessment was conducted using the Dietary Exposure Evaluation Model (DEEM™) Software Version 7.73. The DEEM™ analysis evaluated the individual food consumption as reported by respondents in the USDA's Continuing Surveys of Food Intake by Individuals (CSFII), 1989–1992, and accumulated exposure to the chemical for each commodity. To calculate chronic dietary risk from propanil use on food, EPA used the DEEM™, along with average residue estimated from field trial data, and assumed 70% of the rice crop was treated with propanil. Field trial data are generally considered to be an upper-bound estimate of actual residues, and 70% is also a high-end estimate of the percent of the present rice crop treated. Thus, actual dietary risk is likely to be less than indicated by EPA's assessment. Food and Drug Administration (FDA) monitoring data were available, but not sufficient, due to lack of analysis for 3,4-DCA.

VI. Dietary Drinking Water Risks

Drinking water exposure to pesticides can occur through ground water and surface water contamination. EPA considers both acute (1 day) and chronic (lifetime) drinking water risks and uses either modeling or actual monitoring data, if available, to estimate those risks. To determine the maximum allowable contribution of water allowed in the diet, EPA first looks at how much of the overall allowable risk is contributed by food, then calculates a ''drinking water level of comparison'' (DWLOC) to determine whether modeled or monitoring estimates exceed this level. In the case of propanil, no acute drinking water assessment has been conducted, because no acute endpoint was identified. The calculated chronic DWLOCs for propanil are 26 parts per billion (ppb) for children, 86 ppb for adult females, and 100 ppb for adult males.

Available data indicate that propanil will not persist in the environment and is in the medium mobility class for sand, sandy loam and clay loam soils, based on available mobility studies. Due to its mobility, propanil could possibly reach ground water but due to its rapid metabolism in a water/soil matrix, it is unlikely to persist for a sufficient amount of time to leach in significant quantities. (The possible exception are sites of extreme vulnerability and low metabolic capacity which would most likely occur only for terrestrial uses. However, if propanil does reach ground water in these vulnerable areas, it is expected to be stable). Propanil and its principle metabolic degradate, 3,4-DCA, and residues convertible to 3,4-DCA are the residues of concern for the drinking water risk assessment.

Monitoring data for propanil residues in ground water and surface water are available but not adequate to develop estimated environmental concentrations (EECs) for the aggregate dietary (food and water) risk assessment. Although not targeted to specific propanil use areas, United States Geological Survey (USGS) monitoring data do provide some information on the magnitude and frequency of propanil and 3,4-DCA detections. Propanil was found in about 3% of the 1,560 surface water samples analyzed with a maximum concentration of 2 parts per billion (ppb). 3,4-DCA was found in about 50% of the 68 samples with a maximum concentration of 8.9 ppb. All detects are well below the DWLOCs. Models have been used to estimate ground water and surface water concentrations expected from normal agricultural use.

Estimated surface water EECs, a range of 6–72 ppb, are below the DWLOC for all population subgroups except for children at the upper-bound EEC of 72 ppb. This subpopulation of children could be an area of concern because exposure estimates for this group exceed the DWLOC; however, the Agency believes that the concerns have been addressed by the conservative assumptions (field trial residue levels and 70% crop treated) used in the chronic dietary calculation. In this case, the Agency concludes that actual residues of propanil *per se* and 3,4-dichloroaniline (3,4-DCA combined) are likely to be less than the estimated DWLOC; and a conclusion can be drawn that no adverse toxicological effect will occur due to aggregate chronic exposure. Estimated drinking water concentrations are based on EPA's Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) screening model, which is a Tier II assessment that provides more refined, less upper-bound assumptions. The range of EECs represents different rice growing areas and normal versus overflow release.

Estimated ground water concentrations are based on the Screening Concentration in Ground Water (SCI-GROW) model, which is a Tier I assessment that provides a high-end estimate. The drinking water EEC for ground water (0.35 ppb) is below the DWLOC for all population subgroups.

VII. Aggregate Risks

The aggregate risk assessment for propanil examines the combined risk from exposure through food and drinking water *only*. Chronic residential exposures are not expected because there are no residential uses for propanil and, thus, are not included in the aggregate risk assessment. As detailed above, for propanil the only interval of exposure to be assessed is chronic (1 year or more), and the only route of exposure to be assessed is oral (food and water). Generally, combined risks from these exposures that are less than 100% of the cPAD, are not considered to be a risk concern.

EPA has also evaluated the potential aggregate exposure to 3,4-DCA. Available data indicates that 3,4-DCA is a major metabolic degradate of propanil. 3,4-DCA is also a metabolite of linuron and diuron, but to a lesser extent. The Agency's Metabolism Assessment Review Committee does not recommend aggregating residues of 3,4-DCA for the propanil, linuron, and diuron risk assessments. 3,4-DCA is a significant residue of concern for propanil, but is not a residue of concern *per se* for linuron or diuron. Submitted data indicate that the maximum amount of 3,4-DCA formed from propanil is approximately 50% of propanil initially applied, based on results from the aerobic soil metabolism study. Neither diuron nor linuron metabolize to 3,4-DCA in appreciable amounts (less than 1% detection rate) of the parent compound in animal, plant, or water metabolism studies.

The registered uses for propanil, linuron, and diuron result in minimal co-occurrence of use. That is, there is very little overlap of use patterns and the use patterns are geographically limited for each chemical. Therefore, the risk assessments for each individual chemical fully assess the risks posed by the parent chemical and the metabolite, 3,4-DCA, individually.

VIII. Residential Risk

Propanil is not registered for residential (home) use, nor is it used in or around public buildings, schools, or recreational areas where children might be exposed. Thus, there is no residential exposure to aggregate with the dietary exposure.

The use of propanil on turf is restricted to commercial sod farms only. Although propanil-treated sod may

eventually be used in residential settings (i.e., residential lawns), propanil residues are not expected to exceed levels of concern for residential post-application risk. Since the proposed use of propanil on turf is post-emergent, applied at sod farms early in the turf growing season (well before harvest), the Agency concludes that the amount of time is adequate to allow residue dissipation to a level that would not pose any significant exposure to residents.

IX. Occupational Risk and Ecological Risk

The Agency will assess occupational and ecological risks, any necessary mitigation as well as the need for confirmatory data in the forthcoming RED.

X. Tolerance Reassessment Summary

The existing tolerances for residues of propanil in/on plant, animal and processed commodities are established under 40 CFR 180.274(a)(1) and (a)(2). These tolerances are currently expressed as the combined residues of propanil (3',4'-dichloropropionanilide) and its metabolites (calculated as propanil). The Agency is now recommending that the propanil tolerance expression for plant and animal commodities be revised to specify that the residues of concern are propanil and its related compounds convertible to 3,4-DCA. To eliminate redundancy, the propanil tolerances separately listed under 40 CFR 180.274(a)(2) should be removed and 40 CFR 180.274(a)(1) should be redesignated as 40 CFR 180.274(a).

The Agency has updated the list of raw agricultural and processed commodities and feedstuffs derived from crops (Table 1, OPPTS GLN 860.1000). As a result of these changes, propanil tolerances for certain raw agricultural commodities that have been removed from the livestock feed table need to be revoked. A number of tolerances are being revised (increased or decreased) to reflect updates to the propanil data base based on the submission of new livestock feeding studies, analytical methods, processing data, recovery methods, and/or field trial residue data. Additionally, some commodity definitions must be updated and/or corrected. A summary of propanil tolerance reassessments is presented below in Table 1.

Adequate residue data have been submitted to support the established tolerances for barley, grain; cattle, fat; goat, fat; hog, fat; horse, fat; milk; oat, grain; poultry, meat; rice, straw; sheep, fat; and wheat, straw. For these commodities, the established tolerances were found to be appropriate and will not change as part of this tolerance reassessment.

The established tolerance levels for barley, straw; oat, straw, and wheat, straw must be increased to reflect new recovery procedures. The established tolerance levels for cattle, meat byproducts; egg; goat, meat byproducts; hog, meat byproducts; horse, meat byproducts; poultry, meat byproducts, and sheep, meat byproducts have been increased based on the results of livestock feeding studies and revised dietary burden (exposure) to propanil. For rice, grain; rice, bran, and rice, hull, the existing tolerance levels were increased since data demonstrate that residues concentrate in bran and hulls when rice is processed, based on a reevaluation of crop field trial data.

The available data indicate that the tolerance levels can be decreased for cattle, meat; goat, meat; hog, meat; horse, meat; poultry, fat; and sheep, meat based on the results of a ruminant feeding study and a revised dietary burden.

Group commodity definitions will be revised as noted in Table 1. The established tolerances for rice mill fractions and rice polishings should be revoked according to Table 1 of OPPTS GLN 860.1000, since these commodities are no longer considered to be significant livestock feed items. As a result, the tolerances are no longer needed.

Tolerances To Be Proposed Under 40 CFR 180.274(a)

Adequate residue data have been submitted for the establishment of propanil tolerances for crayfish; oat, forage, and wheat, forage based on the crayfish metabolism study and wheat forage data.

Inadequate residue data are available for the establishment of propanil tolerances for barley, hay; oat, hay, and wheat, hay. The requested data for wheat, hay will be translated to barley, hay, and oat, hay.

Tolerances Currently Listed Under 40 CFR 180.274(a)(2)

The tolerances currently listed in 40 CFR 180.274(a)(2) are inadvertent duplicates of the tolerances established for the same commodities listed in 40 CFR 180.274(a)(1). The tolerances listed in 40 CFR 180.274(a)(2) should be removed because the duplicate tolerances found there are not needed.

TABLE 1.—TOLERANCE REASSESSMENT SUMMARY FOR PROPANILTOLERANCES CURRENTLY LISTED UNDER 40 CFR 180.247(A)(1)

Commodity	Current Tolerance (ppm)	Reassessed Tolerance (ppm)	Comment (Corrected Commodity Definition)
Barley, grain	.2	0.20	
Barley, straw	.75	1.5	Increased residues reflect new recovery procedures.
Cattle, fat	0.1(N)[1]	0.10	
Cattle, mbyp	0.1(N)	1.0	(Cattle, meat byproducts) Increased residues based on ruminant feeding studies and a revised dietary burden from residues in rice.
Cattle, meat	0.1(N)	0.05	Decreased residues based on ruminant feeding studies and a revised dietary burden from residues in rice.

TABLE 1.—TOLERANCE REASSESSMENT SUMMARY FOR PROPANILTOLERANCES CURRENTLY LISTED UNDER 40 CFR 180.247(A)(1)—Continued

Commodity	Current Tolerance (ppm)	Reassessed Tolerance (ppm)	Comment (Corrected Commodity Definition)
Eggs	0.05(N)	0.30	(Egg) Increased residues based on ruminant feeding studies and a revised dietary burden from residues in rice.
Goats, fat	0.1(N)	0.10	(Goat, fat)
Goats, mbyp	0.1(N)	0.80	(Goat, meat byproducts) Increased residues based on ruminant feeding studies and a revised dietary burden from residues in rice.
Goats, meat	0.1(N)	0.05	(Goat, meat) Decreased residues based on ruminant feeding studies and a revised dietary burden from residues in rice.
Hogs, fat	0.1(N)	0.10	(Hog, fat)
Hogs, mbyp	0.1(N)	0.80	(Hog, meat byproducts) Increased residues based on ruminant feeding studies and a revised dietary burden from residues in rice.
Hogs, meat	0.1(N)	0.05	(Hog, meat) Decreased residues based on ruminant feeding studies and a revised dietary burden from residues in rice.
Horses, fat	0.1(N)	0.10	(Horse, fat)
Horses, mbyp	0.1(N)	0.80	(Horse, meat byproducts) Increased residues based on ruminant feeding studies and a revised dietary burden from residues in rice.
Horses, meat	0.1(N)	0.05	(Horse, meat) Decreased residues based on ruminant feeding studies and a revised dietary burden from residues in rice.
Milk	0.05(N)	0.05	
Oat, grain	.2	0.20	
Oat, straw	.75	1.5	Increased residues reflect new recovery procedures.
Poultry, fat	0.1(N)	0.05	Decreased residues based on ruminant feeding studies and a revised dietary burden from residues in rice.
Poultry, mbyp	0.1(N)	0.50	(Poultry, meat byproducts) Increased residues based on ruminant feeding studies and a revised dietary burden from residues in rice.
Poultry, meat	0.1(N)	0.10	
Rice	2	10	(Rice, grain) Tolerances were increased since residues were found to concentrate when rice is processed.
Rice bran	10	40	(Rice, bran) Tolerances were increased since residues were found to concentrate when rice is processed.
Rice hulls	10	30	(Rice, hull) Tolerances were increased since residues were found to concentrate when rice is processed.

TABLE 1.—TOLERANCE REASSESSMENT SUMMARY FOR PROPANILTOLERANCES CURRENTLY LISTED UNDER 40 CFR 180.247(A)(1)—Continued

Commodity	Current Tolerance (ppm)	Reassessed Tolerance (ppm)	Comment (Corrected Commodity Definition)
Rice mill fractions	10	Revoke	These items have been deleted from Table 1 of OPPTS GLN 860.1000.
Rice polishings	10	Revoke	
Rice, straw	75(N)	75	
Sheep, fat	0.1(N)	0.10	
Sheep, mbyp	0.1(N)	0.80	(Sheep, meat byproducts) Increased residues based on ruminant feeding studies and a revised dietary burden from residues in rice.
Sheep, meat	0.1(N)	0.05	Decreased residues based on ruminant feeding studies and a revised dietary burden from residues in rice.
Wheat, grain	0.2	0.20	
Wheat, straw	0.75	1.5	Increased residues reflect new recovery procedures.

[1](N) = negligible residues; however, the Agency is removing the ''(N)'' designation from all entries to conform to current Agency administrative practice.

TABLE 2.—TOLERANCE REASSESSMENT SUMMARY FOR PROPANILTOLERANCES TO BE PROPOSED UNDER 40 CFR 180.274(A)

Commodity	Current Tolerance (ppm)	Reassessed Tolerance (ppm)	Comment (Corrected Commodity Definition)
Barley, hay	None	To be determined[1]	The requested data for wheat, hay will be translated to barley, hay.
Crayfish	None	0.05	
Oat, forage	None	0.20	The available data for wheat, forage will be translated to oat, forage.
Oat, hay	None	To be determined[1]	The requested data for wheat, hay will be translated to oat, hay.
Wheat, forage	None	0.20	
Wheat, hay	None	To be determined[1]	Additional data are required.

[1]The establishment of these tolerance(s) cannot be made at this time because additional data are required.

TABLE 3.—TOLERANCE REASSESSMENT SUMMARY FOR PROPANIL TOLERANCES CURRENTLY LISTED UNDER 40 CFR 180.274(A)(2)

Commodity	Current Tolerance (ppm)	Reassessed Tolerance (ppm)	Comment (Corrected Commodity Definition)
Rice bran	10	Remove	These tolerances are not needed because they are inadvertent duplicate tolerances for rice commodities that already exist in 40 CFR 180.274(a)(1).
Rice hulls	10	Remove	
Rice mill fractions	10	Remove	
Rice polishings	10	Remove	

XI. Codex Harmonization

No Codex maximum residue levels (MRLs) have been established for propanil; therefore, issues of compatibility between Codex MRLs and U.S. tolerances do not exist.

List of Subjects

Environmental protection, Pesticides and pests, Risk assessment and tolerance reassessment.

Dated: May 20, 2002.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–13809 Filed 6–4–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0065; FRL–7177–4]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number OPP–2002–0065, must be received on or before July 5, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–2002–0065 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Sidney Jackson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7610; e-mail address: jackson.Sidney@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–2002–0065. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–2002–0065 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–2002–0065. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the

information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 17, 2002.

Robert Forrest,

Acting Director, Registration Division, Office of Pesticide Programs.

III. Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by Valent U.S.A. Corporation, P.O. Box 8025, Walnut Creek, CA 94596–8025 and represents the view of Valent U.S.A. Corporation. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

PP 1E6272, 1E6285, and 2E6353

EPA has received pesticide petitions (PP) 1E6272, 1E6285, and 2E6353 from the Interregional Research Project Number 4 (IR-4), Technology Centre of New Jersey, Rutgers, the State University of New Jersey, 681 U.S. Highway No. 1 South, North Brunswick, NJ 08902–3390 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of pyriproxyfen, 2-[1-methyl-2-(4-phenoxyphenoxy)ethoxy]pyridine, in or on the raw agricultural commodities as follows:

1. PP 1E6272 proposes tolerances for lychee, longan, Spanish lime, rambutan, and pulasan at 0.3 parts per million (ppm).

2. PP 1E6285 proposes tolerances for guava, feijoa, jaboticaba, wax jambu, starfruit, passionfruit, and acerola at 0.1 ppm, and

3. PP 2E6353 proposes tolerances for Bushberry subgroup 13 B at 1.0 ppm and lingonberry, juneberry, and salal at 1.0 ppm.

EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the Federal Food Drug and Cosmetic Act (FFDCA); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petitions. Additional data may be needed before EPA rules on the petitions. Pyriproxyfen is manufactured by Sumitomo Chemical Company, represented in the United States by Valent U.S.A. Corporation.

A. Residue Chemistry

1. *Plant metabolism.* Metabolism of ^{14}C-pyriproxyfen labelled in the phenoxyphenyl ring and in the pyridyl ring has been studied in cotton, apples, tomatoes, lactating goats, laying hens and rats. The major metabolic pathways in plants is aryl hydroxylation and cleavage of the ether linkage, followed by further metabolism into more polar products by further oxidation and/or conjugation reactions. However, the bulk of the radiochemical residue on raw agricultural commodities (RAC) samples remained as parent. Comparing metabolites detected and quantified from cotton, apple, tomato, goat, hen and rat shows that there are no significant aglycones in plants which are not also present in the excreta or tissues of animals. The residue of concern is best defined as the parent, pyriproxyfen.

Ruminant and poultry metabolism studies demonstrated that transfer of administered ^{14}C-residues to tissues was low. Total ^{14}C-residues in goat milk, muscle and tissues accounted for less than 2% of the administered dose, and were less than 1 ppm in all cases. In poultry, total ^{14}C residues in eggs, muscle and tissues accounted for about 2.7% of the administered dose, and were less than 1 ppm in all cases except for gizzard.

2. *Analytical method.* Practical analytical methods for detecting and measuring levels of pyriproxyfen (and relevant metabolites) have been developed and validated in/on all appropriate agricultural commodities, respective processing fractions, milk, animal tissues, and environmental samples. The extraction methodology has been validated using aged radiochemical residue samples from metabolism studies. The methods have been validated in cottonseed, apples, soil, and oranges at independent laboratories. EPA has successfully validated the analytical methods for analysis of cottonseed, pome fruit, nutmeats, almond hulls, and fruiting vegetables. The limit of detection of pyriproxyfen in the methods is 0.01 ppm which will allow monitoring of food with residues at the levels proposed for the tolerances.

3. *Magnitude of residues* —i. *Lychee.* Three lychee field residue trials were conducted in 1998 in EPA Region 13. Each field site received two pyriproxyfen applications at 0.11 lb active ingredient/acre (a.i./A), with an interval of 10 to 11 days between applications, and a preharvest interval of 11 to 13 days. Pyriproxyfen residues on treated lychee samples ranged from

0.0759 to 0.272 ppm. These data support a tolerance for pyriproxyfen in or on lychee of 0.3 ppm.

ii. *Guava.* Three guava field residue trials were conducted in 1999 in EPA Region 13. Each field site received two pyriproxyfen applications at 0.11 lb a.i./A, with an interval of 13 days between applications, and a pre-harvest interval of 14 to 15 days. Pyriproxyfen residues on treated guava samples ranged from <0.025 to 0.055 ppm. The data support a tolerance for pyriproxyfen in or on guava of 0.1 ppm.

iii. *Blueberry.* Eight blueberry field residue trials were conducted in 1999. Three trials were conducted in EPA Region 2, three trials in EPA Region 5, one trial in EPA Region 1, and one trial in EPA Region 12. Each field site received two pyriproxyfen applications at 0.1 lb ai/A with a retreatment interval ranging between 13 to 15 days. At seven trial locations samples were collected 6 to 8 days after the last application. At one trial location, samples were collected at 2, 7, 10, 14 and 21 days after the last application. Pyriproxyfen residues ranged from 0.14 ppm to 0.64 ppm for treated samples collected 6 to 8 days after the last application. In the residue decline study, pyriproxyfen residues ranged from 0.10 ppm to 0.22 ppm in treated samples collected at the first three sampling intervals, declining to as low as 0.03 ppm after 21 days after the last application. These data support a tolerance for pyriproxyfen in or on blueberries and commodities within the bushberry subgroup of 1.0 ppm.

B. Toxicological Profile

An assessment of toxic effects caused by pyriproxyfen is discussed in Unit III.A. and Unit III.B. of the **Federal Register** dated April 4, 2001, (FRL–6772–4) (66 FR 17883).

1. *Animal metabolism.* The absorption, tissue distribution, metabolism and excretion of ^{14}C-labeled pyriproxyfen were studied in rats after single oral doses of 2 or 1,000 milligrams/kilograms body weight (mg/kg bw) (phenoxyphenyl and pyridyl label), and after a single oral dose of 2 mg/kg bw, phenoxyphenyl label only, following 14 daily oral doses at 2 mg/kg bw of unlabelled material. For all dose groups, most (88–96%) of the administered radiolabel was excreted in the urine and feces within two days after radiolabeled test material dosing, and 92–98% of the administered dose was excreted within seven days. Seven days after dosing, tissue residues were generally low, accounting for no more than 0.3% of the dosed ^{14}C. Radiocarbon concentrations in fat were the higher than in other tissues analyzed. Recovery in tissues over time indicates that the potential for bioaccumulation is minimal. There were no significant sex or dose-related differences in excretion or metabolism.

2. *Metabolite toxicology.* Metabolism studies of pyriproxyfen in rats, goats and hens, as well as the fish bioaccumulation study demonstrate that the parent is very rapidly metabolized and eliminated. In the rat, most (88–96%) of the administered radiolabel was excreted in the urine and feces within 2 days of dosing, and 92–98% of the administered dose was excreted within 7 days. Tissue residues were low 7 days after dosing, accounting for no more than 0.3% of the dosed ^{14}C. Because parent and metabolites are not retained in the body, the potential for acute toxicity from in situ formed metabolites is low. The potential for chronic toxicity is adequately tested by chronic exposure to the parent at the maximum tolerated dose (MTD) and consequent chronic exposure to the internally formed metabolites.

Seven metabolites of pyriproxyfen, 4′-OH-pyriproxyfen, 5″-OH-pyriproxyfen, desphenyl-pyriproxyfen, POPA, PYPAC, 2-OH-pyridine and 2,5-diOH-pyridine, have been tested for mutagenicity, via Ames Assay, and acute oral toxicity to mice. All seven metabolites were tested in the Ames assay with and without S9 at doses up to 5,000 micro-grams per plate or up to the growth inhibitory dose. The metabolites did not induce any significant increases in revertible colonies in any of the test strains. Positive control chemicals showed marked increases in reverting colonies. The acute toxicity to mice of 4′-OH-pyriproxyfen, 5″-OH-pyriproxyfen, desphenyl-pyriproxyfen, POPA, and PYPAC did not appear to markedly differ from pyriproxyfen, with all metabolites having acute oral Lethal Dose (LD_{50}) values greater than 2,000 mg/kg bw. The two pyridines, 2-OH-pyridine and 2,5-diOH-pyridine, gave acute oral LD_{50} values of 124 (male) and 166 (female) mg/kg bw, and 1,105 (male) and 1,000 (female) mg/kg bw, respectively.

3. *Endocrine disruption.* Pyriproxyfen is specifically designed to be an insect growth regulator and is known to produce juvenoid effects on arthropod development. However, this mechanism-of-action in target insects and some other arthropods has no relevance to any mammalian endocrine system. While specific tests, uniquely designed to evaluate the potential effects of pyriproxyfen on mammalian endocrine systems have not been conducted, the toxicology of pyriproxyfen has been extensively evaluated in acute, sub-chronic, chronic, developmental, and reproductive toxicology studies including detailed histopathology of numerous tissues. The results of these studies show no evidence of any endocrine-mediated effects and no pathology of the endocrine organs. Consequently, Valent concludes that pyriproxyfen does not possess estrogenic or endocrine disrupting properties applicable to mammals.

C. Aggregate Exposure

1. *Dietary exposure.* An evaluation of chronic dietary exposure including both food and drinking water has been performed for the U.S. population and various sub-populations including infants and children. No acute dietary endpoint and dose was identified in the toxicology data base for pyriproxyfen, therefore, the Valent Corporation concludes that there is a reasonable certainty of no harm from acute dietary exposure.

i. *Food.* Chronic dietary exposure to pyriproxyfen residues was calculated for the U.S. population and 25 population subgroups assuming tolerance level residues, processing factors from residue studies, and 100% of the crop-treated. The analyses included residue data for all existing uses, pending uses, and proposed new uses. The results from several representative subgroups are listed below. Chronic exposure to the overall U.S. population is estimated to be 0.002984 mg/kg bw/day, representing 0.9% of the Reference Dose (RfD). For the most highly exposed sub-population, children 1 to 6 years of age, exposure is calculated to be 0.007438 mg/kg bw/day, or 2.1% of the RfD. Generally speaking, the Agency has no cause for concern if total residue contribution for established and proposed tolerances is less than 100% of the RfD.

CALCULATED CHRONIC DIETARY EXPOSURES TO THE TOTAL U.S. POPULATION AND SELECTED SUB-POPULATIONS TO PYRIPROXYFEN RESIDUES IN FOOD

Population Subgroup	Exposure (mg/kg bw/day)	Percent of RfD
Total U.S. population (all seasons)	0.002984	0.853
Children (1–6 years)	0.007438	2.125
Non-Nursing infants (<1 year old)	0.006483	1.852
All infants (<1 year old)	0.005604	1.601
Children (7–12 years)	0.004159	1.188

CALCULATED CHRONIC DIETARY EXPOSURES TO THE TOTAL U.S. POPULATION AND SELECTED SUB-POPULATIONS TO PYRIPROXYFEN RESIDUES IN FOOD—Continued

Population Subgroup	Exposure (mg/kg bw/day)	Percent of RfD
Females (13+/nursing)	0.002964	0.847
Nursing infants (<1 year old)	0.002601	0.743

ii. *Drinking water*. Since pyriproxyfen is applied outdoors to growing agricultural crops, the potential exists for pyriproxyfen or its metabolites to reach ground or surface water that may be used for drinking water. Because of the physical properties of pyriproxyfen, it is unlikely that pyriproxyfen or its metabolites can leach to potable ground water. To quantify potential exposure from drinking water, surface water concentrations for pyriproxyfen were estimated using GENEEC 1.3. The average 56–day concentration predicted in the simulated pond water was 0.16 parts per billion (ppb). Using standard assumptions about body weight and water consumption, the chronic exposure to pyriproxyfen from this drinking water would be 4.57×10^{-6} and 1.6×10^{-5} mg/kg bw/day for adults and children, respectively; 0.0046% of the RfD (0.35 mg/kg/day) for children. Based on this worse case analysis, the contribution of water to the dietary risk is negligible.

2. *Non-dietary exposure.* Pyriproxyfen is currently registered for use on residential non-food sites. Pyriproxyfen is the active ingredient in numerous registered products for flea and tick control. Formulations include foggers, aerosol sprays, emulsifiable concentrates, and impregnated materials (pet collars). With the exception of the pet collar uses, consumer use of pyriproxyfen typically results in acute and short-term intermittent exposures. No acute dermal, or inhalation dose or endpoint was identified in the toxicity data for pyriproxyfen. Similarly, doses and endpoints were not identified for short and intermediate term dermal or inhalation exposure to pyriproxyfen. The Valent Corporation has concluded that there are reasonable certainties of no harm from acute, short-term, and intermediate-term dermal and inhalation occupational and residential exposures due to the lack of significant toxicological effects observed.

Chronic residential post-application exposure and risk assessments were conducted to estimate the potential risks from pet collar uses. The risk assessment was conducted using the following assumptions: application rate of 0.58 mg active ingredient (ai)/day, average bw for a 1–6 year old child of 10 kg, the a.i. dissipates uniformly through 365 days (the label instruct to change collar once a year), 1% of the active ingredient is available for dermal and inhalation exposure per day (assumption from Draft EPA Standard Operating Procedures (SOPs) for Residential Exposure Assessments, December 18, 1997). The assessment also assumes an absorption rate of 100%. This is a conservative assumption since the dermal absorption was estimated to be 10%. The estimated chronic term MOE was 61,000 for children, and 430,000 for adults. The risk estimates indicate that potential risks from pet collar uses do not exceed the Agency's level of concern.

D. Cumulative Effects

Section 408(b)(2)(D)(v) requires that the Agency must consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' Available information in this context include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way.

There are no other pesticidal compounds that are structurally related to pyriproxyfen and have similar effects on animals. In consideration of potential cumulative effects of pyriproxyfen and other substances that may have a common mechanism of toxicity, there are currently no available data or other reliable information indicating that any toxic effects produced by pyriproxyfen would be cumulative with those of other chemical compounds. Thus, only the potential risks of pyriproxyfen have been considered in this assessment of aggregate exposure and effects.

Valent will submit information for EPA to consider concerning potential cumulative effects of pyriproxyfen consistent with the schedule established by EPA at 62 FR 42020 (Aug. 4, 1997) and other subsequent EPA publications pursuant to the Food Quality Protection Act.

E. Safety Determination

1. *U.S. population.* —i. *Chronic dietary exposure and risk adult sub-populations*. The results of the chronic dietary exposure assessment described above demonstrate that estimates of chronic dietary exposure for all existing, pending and proposed uses of pyriproxyfen are well below the chronic RfD of 0.35 mg/kg bw/day. The estimated chronic dietary exposure from food for the overall U.S. population and many non-child/infant subgroups is from 0.002123 to 0.003884 mg/kg bw/day, 0.607 to 1.100% of the RfD. Addition of the small but worse case potential chronic exposure from drinking water (calculated above) increases exposure by only 4.57×10^{-6} mg/kg bw/day and does not change the maximum occupancy of the RfD significantly. Generally, the Agency has no cause for concern if total residue contribution is less than 100% of the RfD. Valent concludes that there is a reasonable certainty that no harm will result to the overall U.S. Population or any non-child/infant subgroups from aggregate, chronic dietary exposure to pyriproxyfen residues.

ii. *Acute dietary exposure and risk adult sub-populations*. No acute dietary endpoint and dose were identified in the toxicology data base for pyriproxyfen; therefore, it can be concluded that there is a reasonable certainty that no harm will result to the overall U.S. population or any non-child/infant subgroups from aggregate, acute dietary exposure to pyriproxyfen residues.

iii. *Non-dietary exposure and aggregate risk adult sub-populations*. Acute, short term, and intermediate term dermal and inhalation risk assessments for residential exposure are not required due to the lack of significant toxicological effects observed. The results of a chronic residential post-application exposure and risk assessment for pet collar uses demonstrate that potential risks from pet collar uses do not exceed the Agency's level of concern. The estimated chronic term MOE for adults was 430,000.

2. *Infants and children* — i. *Safety factor for infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of pyriproxyfen, FFDCA section 408 provides that EPA shall apply an additional margin of safety, up to 10-fold, for added protection for infants and children in the case of threshold effects unless EPA determines

that a different margin of safety will be safe for infants and children.

The toxicological data base for evaluating pre-natal and post-natal toxicity for pyriproxyfen is complete with respect to current data requirements. There are no special prenatal or postnatal toxicity concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies or the 2-generation reproductive toxicity study in rats. Valent concludes that reliable data support use of the standard 100-fold uncertainty factor and that an additional uncertainty factor is not needed for pyriproxyfen to be further protective of infants and children.

ii. *Chronic dietary exposure and risk infants and children*. Using the conservative exposure assumptions described above, the percentage of the RfD that will be utilized by chronic dietary (food only) exposure to residues of pyriproxyfen ranges from 0.002601 mg/kg bw/day for nursing infants, up to 0.007438 mg/kg bw/day for children (1 to 6 years of age), 0.743 to 2.125% of the RfD, respectively. Adding the worse case potential incremental exposure to infants and children from pyriproxyfen in drinking water (1.6×10^{-5} mg/kg bw/day) does not materially increase the aggregate, chronic dietary exposure and only increases the occupancy of the RfD by 0.0046% to 2.130% for Children (1 to 6 years of age). EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Valent concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate, chronic dietary exposure to pyriproxyfen residues.

iii. *Acute dietary exposure and risk infants and children*. No acute dietary endpoint and dose were identified in the toxicology data base for pyriproxyfen; therefore, Valent believes that there is a reasonable certainty that no harm will result to infants and children from aggregate, acute dietary exposure to pyriproxyfen residues.

iv. *Non-dietary exposure and aggregate risk infants and children*. Acute, short term, and intermediate term dermal and inhalation risk assessments for residential exposure are not required due to the lack of significant toxicological effects observed. The results of a chronic residential post-application exposure and risk assessment for pet collar uses demonstrate that potential risks from pet collar uses do not exceed the Agency's level of concern. The estimated chronic term MOE for children was 61,000.

F. International Tolerances

There are no presently existing Codex maximum residue levels (MRLs) for pyriproxyfen.

[FR Doc. 02–13810 Filed 6–4–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0089; FRL–7181–5]

Avermectin; Receipt of Application for Emergency Exemption Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the California EPA, Department of Pesticide Regulation, to use the pesticide avermectin (CAS No. 717517–41–2) to treat up to 3,000 acres of basil to control leafminer. The Applicant proposes a use which has been requested in 3 or more previous years, and a petition for tolerance has not yet been submitted to the Agency.

DATES: Comments, identified by docket ID number OPP–2002–0089, must be received on or before June 20, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket ID number 2002–0089 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Barbara Madden, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6463; fax number: (703) 308–5433; e-mail address: sec–18–mailbox@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you petition EPA for emergency exemption under section 18 of FIFRA. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS Codes	Examples of Potentially Affected Entities
State government	9241	State agencies that petition EPA for section 18 pesticide exemption

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. Other types of entities not listed in the table in this unit could also be regulated. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action applies to certain entities. To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions. Since other entities also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket ID number OPP–2002–0089. The official record consists of the documents specifically referenced in this action, any public comments

received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm.119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0089 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP–2002–0089. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the Administrator determines that emergency conditions exist which require the exemption. California EPA, Department of Pesticide Regulation has requested the Administrator to issue a specific exemption for the use of avermectin on basil to control leafminer. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the Applicant asserts that during the months of July through September of 1997, a severe leafminer infestation impacted the major basil growing areas of California. It is anticipated this year that if environmental conditions do not change, the basil growers will experience the same if not worse leafminer pest problem.

Basil is grown next to various vegetable crops that serve as host plants for leafminers. During the harvesting of these various vegetable crops, leafminers will migrate to the adjacent basil crop that also serves as an ideal host crop. Basil growers do not have an effective registered pesticide to control leafminers. Without avermectin net revenues are estimated at a loss of $195 per acre. With the use of avermectin net revenues are estimated to be $18 per acre.

The Applicant proposes to make no more than two applications per single cutting and no more than 3 to 6 applications can be made per cropping season. Between 0.01 lbs to 0.02 lbs active ingredient may be applied per acre. A maximum of 0.06 lbs active ingredient can be applied per acre per year. Avermectin, formulated as a 2.0% emulsifiable concentrate will be applied to no more than 3,000 acres of basil from July 1, 2002, until October 30, 2002, in California. If the maximum number of acres (3,000) were treated at the maximum application rate (0.06 lbs) than, a total of 180 lbs of avermectin could be applied.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 of FIFRA require publication of a notice of receipt of an application for a specific exemption proposing a use which has been requested in 3 or more previous years, and a petition for tolerance has not yet been submitted to the Agency. The notice provides an opportunity for public comment on the application.

The Agency, will review and consider all comments received during the comment period in determining whether to issue the specific exemption requested by the California EPA, Department of Pesticide Regulation.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 22, 2002

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 02–13524 Filed 6–4–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7224–4]

Notice of Web-Based Availability for Public Comments to the EPA White Paper Regarding Options for Addressing Boutique Fuels in the Longer Term

AGENCY: Environmental Protection Agency.

ACTION: Notice of Web-based availability for public review of comments received in response to an EPA White Paper ''Study of Unique Gasoline Fuel Blends (Boutique Fuels), Effects on Fuel Supply and Distribution and Potential Improvements' (EPA420–P–01–004); hereafter referred to as ''White Paper''. The ''white paper'' explores a number of options for addressing boutique fuels in the longer term.

SUMMARY: The President's National Energy Policy issued on May 17, 2001, directed EPA to * * * study opportunities to maintain or improve the environmental benefits of state and local ''boutique'' clean fuel programs while exploring ways to increase the flexibility of the fuels distribution infrastructure, improve fungibility, and provide added gasoline market liquidity * * *.

In response to this directive, EPA prepared a report that discusses the actions that EPA will take in the near term to ensure a smoother transition from winter to summer grade reformulated gasoline (RFG). That report, entitled: ''Study of Boutique Fuels and Issues Relating to Transition from Winter to Summer Gasoline'' was sent to the President and made publicly available. Based on the finding of the Transition Report, EPA recently completed several actions including elimination of cumbersome blendstock accounting provisions, modifying regulations dealing with previously certified gasoline and issuing enforcement guidance concerning initial tank turnover testing tolerance.

In addition, EPA prepared a White Paper, entitled: ''Study of Unique Gasoline Fuel Blends (''Boutique Fuels''), Effects on Fuel Supply and Distribution and Potential Improvements,'' that addressed boutique fuels in the longer term and explored a number of options that could reduce the total number of fuels and lay the groundwork for further study. EPA continues to review the public comments received regarding the White Paper and will consider appropriate further actions. Today EPA is announcing the web-based availability of public comments received in response to the White Paper, ''Study of Unique Gasoline Fuel Blends (''Boutique Fuels''), Effects on Fuel Supply and Distribution and Potential Improvements.''

EPA is publishing this notice of availability of public comments on the White Paper. The White Paper, as well as the Study of Boutique Fuels and Issues Relating to Transition from Winter to Summer Gasoline, are both available in the public docket A–2001–20. The docket is located at U.S. Environmental Protection Agency, 401 M St., SW., Room 1500, Washington, DC 20460. The telephone number of the docket office is (202) 260–7548.

The public comments will be made available through EPA's Regulatory Public Access System (RPAS) at *http://www.epa.gov/rpas.* The docket ID is OAR–2002–0003 and the public comments are numbered OAR–2002–0003–0050 through OAR–2002–0003–0081.

FOR FURTHER INFORMATION CONTACT: Kurt Gustafson, Office of Air Quality and Transportation, (202) 564–2224, or by e-mail at *gustafson.kurt@epa.gov.*

Dated: May 30, 2002.

Margo T. Oge,

Director, Office of Transportation and Air Quality, Environmental Protection Agency.

[FR Doc. 02–14042 Filed 6–4–02; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board).

Date and Time: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on June 6, 2002, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Kelly Mikel Williams, Secretary to the Farm Credit Administration Board, (703) 883–4024, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- May 2, 2002 (Open and Closed)

B. Reports

- FCS Building Association's Quarterly Report
- Corporate Approvals
- Conditions and Trends in the McLean Field Office Portfolio
- Overview of the 2002 Farm Bill
- Quarterly Report on Strategic Plan Goals

Closed *

- Review of the FCS Building Association's Audit

*Session Closed-Exempt pursuant to 5 U.S.C. 552b(c)(8).

Dated: May 31, 2002.

Kelly Mikel Williams,

Secretary, Farm Credit Administration Board.

[FR Doc. 02–14121 Filed 5–31–02; 4:10 pm]

BILLING CODE 6705–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011671–006.

Title: Italia/CP Ships Space Charter and Sailing Agreement.

Parties: Italia di Navigazione, S.p.A., Contship Containerlines, Lykes Lines Limited, LLC, TMM Lines Limited, LLC.

Synopsis: The proposed modification expands the geographic scope of the agreement to include ports in Mexico and Central America and on the north coast of South America. The modification also revises the space

allocations among the parties. The parties request expedited review.

Agreement No.: 011807.

Title: SNL/HASCO Cross Space Charter and Sailing Agreement.

Parties: Sinotrans Container Lines Co., Ltd., Shanghai Hai Hua Shipping Co., Ltd.

Synopsis: The proposed agreement authorizes the parties to charter vessel space to and from each other in the trade between the People's Republic of China (including Hong Kong), Korea, and Japan, on the one hand, and the U.S. Pacific Coast, on the other hand.

Agreement No.: 201006–003.

Title: New Orleans-Ceres Gulf Lease Agreement.

Parties: Board of Commissioners of the Port of New Orleans, Ceres Gulf, Inc.

Synopsis: The amendment provides for a month to month occupancy with no specific termination date, although it is expected that Ceres Gulf will leave the premises before March 31, 2003.

Agreement No.: 201114–002.

Title: Oakland/Evergreen Terminal Use Agreement.

Parties: City of Oakland, Board of Port Commissioners, Evergreen Marine Corp. (Taiwan) Ltd., Lloyd Triestino di Navigazione S.p.A., Hatsu Marine Ltd.

Synopsis: The amendment adds Hatsu Marine Ltd. as a party to the agreement.

Agreement No.: 201136.

Title: Palm Beach/ITG Vegas Lease and Operating Agreement.

Parties: Port of Palm Beach District, ITG Vegas, Inc.

Synopsis: The agreement provides for the lease of office space and passenger vessel berthing rights. The agreement runs through December 31, 2007.

By Order of the Federal Maritime Commission.

Dated: May 31, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–14083 Filed 6–4–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 16747NF.
Name: Ambert Inc. dba African Express Lines.
Address: 249 Merrifield Avenue, Oceanside, NY 11572.
Date Revoked: May 12, 2002.
Reason: Failed to maintain valid bonds.

License Number: 13354F.
Name: Binex Line Corp.
Address: 21818 S. Wilmington Avenue, Suite 404, Long Beach, CA 90810.
Date Revoked: May 17, 2002.
Reason: Failed to maintain a valid bond.

License Number: 4647F.
Name: Brian Leslie Scheele dba Southern Cross Shipping Co.
Address: 2200 Severn Avenue, Q–105, Metairie, LA 70001.
Date Revoked: March 30, 2002.
Reason: Failed to maintain a valid bond.

License Number: 17525F.
Name: Faour International Co.
Address: 1971 W. Fifth Avenue, Suite 2, Columbus, OH 43212.
Date Revoked: May 17, 2002.
Reason: Failed to maintain a valid bond.

License Number: 4066F.
Name: Maracargo Inc.
Address: 7700 NW., 79th Place, Suite #1, Miami, FL 33166.
Date Revoked: May 2, 2002.
Reason: Failed to maintain a valid bond.

License Number: 3651N and 3651F.
Name: Puma Express, Inc.
Address: 840 Dillon Drive, Wood Dale, IL 60191.
Date Revoked: April 3, 2002 and April 24, 2002.
Reason: Failed to maintain valid bonds.

License Number: 4652NF.
Name: Smith & Johnson International Logistic Services, Inc.
Address: 868 Elston Street, Rahway, NJ 07065.
Date Revoked: May 9, 2002.
Reason: Failed to maintain valid bonds.

License Number: 3880F.
Name: Southern Cargo Logistics Inc.
Address: 3119 Spring Glen Road, #108, Jacksonville, FL 32207
Date Revoked: May 11, 2002.
Reason: Failed to maintain a valid bond.

License Number: 3598NF.
Name: Ventana Overseas Cargo, Inc.
Address: 153–63 Rockaway Blvd., Jamaica, NY 11434.
Date Revoked: September 19, 2001.
Reason: Failed to maintain valid bonds.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 02–14085 Filed 6–4–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/Address	Date reissued
12279N	Frontrunner Worldwide, Inc., 215W Diehl Road, Naperville, IL 60563.	April 12, 2002.
4427F	Pegasus Transair, Inc., 612 East Dallas Road, Suite 100, Grapevine, TX 76099.	March 30, 2002.
4257N	Road Runner International, Inc., dba International Delivery Systems, 1021 Stuyvesant Avenue, Union, NJ 07083.	March 2, 2002.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 02–14084 Filed 6–4–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicant

Notice is hereby given that the following applicant has filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicant should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicant:

GSA Shipping, Inc., 500 W. 140th Street, Gardena, CA 90248. Officers: Marq Shim, President (Qualifying Individual), John Kim, General Manager.

Dated: May 31, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–14086 Filed 6–4–02; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

National Healthcare Disparities Report Measures and Candidate Data Sets—Request for Nominations

AGENCY: The Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Request for Nominations.

SUMMARY: AHRQ invites nominations of measures and candidate data sets for inclusion in the National Healthcare Disparities Report, (NHDR).

DATES: Nominations should be submitted by August 5, 2002 in order to be considered for the NHDR. AHRQ will not reply to individual nominations, but will consider all nominations during the report development process.

ADDRESSES: The nominations should be submitted to Sari Siegel, Center for Primary Care Research, AHRQ, 6010 Executive Boulevard, Suite 201, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Sari Siegel, Center for Primary Care Research, AHRQ, 6010 Executive Boulevard, Suite 200, Rockville, MD 20852. Phone: (301) 5946373; FAX: (301) 5943721. E-mail: *ssiegel@ahrq.gov.*

Arrangement for Public Inspection: All nominations will be available for public inspection at the Center for Primary Care Research, telephone (301) 594–6373, weekdays between 8:30 a.m. and 5 p.m. (Eastern time).

SUPPLEMENTARY INFORMATION:

1. Background

In FY 2003, AHRQ is required to submit to the Congress the first annual report on prevailing disparities in health care. AHRQ's authorizing legislation requires that the Director prepare and annually submit to the Congress a report regarding prevailing disparities in health care delivery as it relates to racial factors and socioeconomic factors in priority populations. The legislation further specifies that priority populations include: Low income groups; minority groups; women; children; the elderly; and individuals with special health care needs, including individuals with disabilities and individuals who need chronic care or end-of-life care. The first NHDR will focus on health care disparities for these groups compared to other Americans with respect to access to and quality of care.

This effort will be implemented in partnership with other Agency and Department projects to ensure synergy with existing efforts, including, Healthy People 2010, HHS survey integration priorities and the AHRQ National Healthcare Quality Report. The report will provide answers on a national basis to critical questions about disparities in health care and will permit the development of a more complete picture of health care in America, including who has access to care and how good is the care received. The NHDR provides an important opportunity for the Department of Health and Human Services to further its long-term commitment to identifying and reducing avoidable disparities in health care.

2. Purpose

The purpose of this **Federal Register** notice is to encourage submission of measures and candidate data sets for inclusion in the NHDR. The AHRQ will review nominations and supporting information and determine which measures and data sets will be included in the NHDR, seeking additional information as appropriate.

Dated: May 29, 2002.

Carolyn M. Clancy,

Acting Director.

[FR Doc. 02–14002 Filed 6–4–02; 8:45 am]

BILLING CODE 4160–90–M

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: Data System for Organ Procurement and Transplantation Network and Associated Forms (OMB No. 0915–0157): Revision

Section 372 of the Public Health Service (PHS) Act requires that the Secretary, by contract, provide for the establishment and operation of an Organ Procurement and Transplantation Network (OPTN). The OPTN, among other responsibilities, operates and maintains a national waiting list of individuals requiring organ transplants, maintains a computerized system for matching donor organs with transplant candidates on the waiting list, and operates a 24-hour telephone service to

facilitate matching organs with individuals included in the list.

Data for the OPTN data system are collected from transplant hospitals, organ procurement organizations, and tissue-typing laboratories. The information is used to match donor organs with recipients, to monitor compliance of member organizations with OPTN rules and requirements, and to report periodically on the clinical and scientific status of organ donation and transplantation in this country. Data are used in the development and revision of OPTN rules and requirements, operating procedures, and standards of quality for organ acquisition and preservation, some of which have provided the foundation for development of Federal regulations. The practical utility of the data collection is further enhanced by requirements that the OPTN data must be made available without restriction for use by OPTN members, the Scientific Registry of Transplant Recipients, the Department of Health and Human Services, and others for evaluation, research, patient information, and other important purposes.

Revisions in the 28 data collection forms are intended to clarify existing questions, to provide additional detail and categories to avoid confusion and be more inclusive, to remove obsolete data, and to comply with requests for more complete and precise data.

ESTIMATES OF ANNUALIZED HOUR BURDEN

Form	Number of respondents	Responses per respondents	Total responses	Hours per response	Total burden hours
Cadaver Donor Registration	59	170	10,030	0.3	3,009.00
Death referral data	59	12	708	10	7,080.00
Living Donor Registration	668	11	7,348	0.2	1,469.60
Living Donor Follow-up	668	16	10,688	0.1	1,068.80
Donor Histocompatibility	156	86	13,416	0.1	1,341.60
Recipient Histocompatibility	156	161	25,116	0.1	2,511.60
Heart Candidate Registration	140	26	3,640	0.3	1,092.00
Lung Candidate Registration	75	29	2,175	0.3	652.50
Heart/Lung Candidate Registration	81	2	162	0.3	48.60
Thoracic Registration	140	29	4,060	0.3	1,218.00
Thoracic Follow-up	140	168	23,520	0.2	4,704.00
Kidney Candidate Registration	242	108	26,136	0.2	5,227.20
Kidney Registration	242	62	15,004	0.3	4,501.20
Kidney Follow-up*	242	444	107,448	0.2	21,489.60
Liver Candidate Registration	120	97	11,640	0.2	2,328.00
Liver Registration	120	44	5,280	0.4	2,112.00
Liver Follow-up	120	276	33,120	0.3	9,936.00
Kidney/Pancreas Candidate Registration	138	14	1,932	0.2	386.40
Kidney/Pancreas Registration (new form)	138	7	966	0.4	386.40
Kidney/Pancreas Follow-up (new form)	138	51	7,038	0.3	2,111.40
Pancreas Candidate Registration	138	7	966	0.2	193.20
Pancreas Registration	138	4	552	0.3	165.60
Pancreas Follow-up	138	12	1,656	0.2	331.20
Intestine Candidate Registration	38	6	228	0.2	45.60
Intestine Registration	38	3	114	0.2	22.80
Intestine Follow-up	38	9	342	0.2	68.40
Immunosuppression Treatment	668	39	26,052	0.025	651.30
Immunosuppression Treatment Follow-up	668	259	173,012	0.025	4,325.30
Post Transplant Malignancy	668	8	5,344	0.05	267.20
Total	883	.....	517,693	.....	78,744.50

*Includes an estimated 10,000 kidney transplant patients transplanted prior to the initiation of the data system.

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: May 30, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–14020 Filed 6–4–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Health Education Assistance Loan (HEAL) Program: Lender's Application for Insurance Claim Form and Request for Collection Assistance Form (OMB No. 0915–0036)—Extension

The HEAL program ensures the availability of funds for loans to eligible students who desire to borrow money to pay for their educational costs. The HEAL lenders use the Lenders Application for Insurance Claim to request payment from the Federal

Government for federally insured loans lost due to borrowers death, disability, bankruptcy, or default. The Request for Collection Assistance form is used by HEAL lenders to request federal assistance with the collection of delinquent payments from HEAL borrowers.

The burden estimates are as follows:

Form	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Lender's Application for Insurance Claim	20	75	1,500	.50	750
Request for Collection Assistance	20	1,260	25,200	.167	4,208
Total Burden	20		26,700		4,958

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: May 30, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–14021 Filed 6–4–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Small Rural Hospital Improvement Grant Program

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that applications are being accepted for grants to small rural hospitals to help them do any or all of the following: (1) Pay for costs related to the implementation of prospective payment systems (PPS), (2) comply with provisions of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, and (3) reduce medical errors and support quality improvement.

Name of Grant Program: Small Rural Hospital Improvement Grant Program.

Program Authorization: Section 1820(g)(3) of the Social Security Act and the Departments of Labor, HHS, Education and Related Agencies Appropriations Act of 2002 (Pub. L.107–116).

Amount of Funding Available: Approximately $15.0 million will be available for grants in fiscal year 2002.

Eligible Applicants: All small rural hospitals located in the fifty States and Territories, including faith-based hospitals. For the purpose of this program, (1) small is defined as 49 available beds or less, as reported on the hospital's most recently filed Medicare Cost Report, (2) rural is defined as located outside a Metropolitan Statistical Area (MSA) or located in a rural census tract of a MSA as determined under the Goldsmith Modification, and (3) hospital is defined as a non-Federal, short-term, general acute care facility. A list of eligible hospitals, approximately 1265, can be found at *http://www.ruralhealth.hrsa.gov/ship.htm.*

Funding Criteria: To help facilitate the awards process, eligible hospitals are asked to submit a brief letter of application to their State Office of Rural Health (SORH) that describes their need, and intended use and expenditure of grant funds. In turn, the SORH will prepare and submit a single grant application (PHS Form 5161) to HRSA on behalf of all hospital applicants. An award will be made to each State based on the total number of applicants in that State. Grantee hospitals will receive their award from the SORH. If a State chooses not to join in this Federal-State partnership, eligible hospitals may submit a grant application (PHS Form 5161) directly to HRSA.

It is anticipated that all eligible hospitals will apply for this grant program, which would result in awards of about $11,000 per hospital. It is expected that most of these grant funds will be used to purchase technical assistance, services, training and information technology. To help maximize purchasing power through economies of scale, eligible grantees are strongly encouraged to organize themselves into consortiums and pool their grant funds for the purchase of these services. SORHs may help their eligible hospitals form consortiums and also purchase the goods and services they need.

Funding will be available for a single year followed by yearly renewals, with funding contingent upon: (a) availability of Federal funds, and (b) satisfactory performance by the grantee. The SORH may charge up to five percent to the grants to cover its administrative costs.

Review Criteria: Applications will be evaluated on the extent to which they: (1) Are responsive to the requirements and purposes of this program, (2) describe need and strategies to address those needs, and (3) propose an allowable use of the grant funds. Further description of the review criteria is contained in the program guidance.

Requesting Applications: The application and program guidance may be downloaded via the Web at *http://www.ruralhealth.hrsa.gov/ship.htm.* Hard copies of the application and program guidance are available from: HRSA Grants Application Center, Grants Management Officer, 901 Russell Avenue, Suite 450, Gaithersburg, MD 20879. Phone (877) 477–2123, e-mail *hrsagac@hrsa.gov.* Request CFDA #93.301.

Submitting Applications: All hospital applications must be submitted to the appropriate SORH in hard copy and postmarked before 5 PM EDT on June 21, 2002. All SORH applications must be submitted in hard copy and postmarked before 5 PM EDT on July 19, 2002 to the HRSA Grants Application Center, Grants Management Officer, 901 Russell Avenue, Suite 450, Gaithersburg, MD 20879.

Program Contact Person: Jerry Coopey, Office of Rural Health Policy, HRSA, Rm. 9A–55, Parklawn Bldg, 5600 Fishers Lane, Rockville, MD 20857. Phone (301) 443–0835, Fax (301) 443–2803, e-mail *jcoopey@hrsa.gov*

Paperwork Reduction Act: The application for this grant program has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The OMB clearance number is 0925–0001.

The OMB Catalog of Federal Domestic Assistance number is 93.301.

This program is not subject to the Public Health Systems Reporting Requirements.

Executive Order 12372: This program has been determined to be a program that is subject to the provisions of

Executive Order 12372 concerning intergovernmental review of Federal Programs by appropriate health planning agencies, as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available under this notice will contain a listing of States that have chosen to set up such a review system and will provide a single point of contact (SPOC) in the States for review. Applicants (other than federally-recognized Indian tribal governments) should contact their State SPOC as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline for new and competing awards. The granting agency does not guarantee to ''accommodate or explain'' State process recommendations it receives after that date. (*See* Executive Order 12372 and 45 CFR part 100 for a description of the review process and requirements.)

Dated: May 14, 2002.

Elizabeth M. Duke,

Administrator.

[FR Doc. 02–14166 Filed 6–4–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

The Persistent Effects of Treatment Studies (PETS)—(OMB No. 0930–0202, revision)—SAMHSA's Center for Substance Abuse Treatment (CSAT) is requesting an extension and revision of OMB approval to allow for completion of data collection in two studies being conducted under the PETS program. CSAT has developed PETS as a family of coordinated studies that evaluates the outcomes of drug and alcohol treatment received through a wide range of publicly funded programs. Populations being studied are diverse in the nature and severity of their substance abuse and in their personal characteristics and circumstances. The conceptual underpinning of the PETS studies is a recognition that substance abuse disorders, while variable in their manifestations, are often chronic and prone to relapse. PETS focuses on the longitudinal course of substance abuse and treatment. While most previous outcome studies in the field have examined changes taking place for only several months after a particular treatment episode, PETS looks at outcomes over a longer time period of three years or more. In the context of the client's life history, careful attention has been given to the stage in his or her experience of substance abuse and treatment to what has preceded their current treatment episode, and to any sequence of aftercare, relapse, and subsequent treatment that may follow.

The PETS Chicago study continues data collection activities initiated under a grant to local investigators as part of CSAT's Target Cities project. This study will collect two- to six-year treatment followup data on a sample of clients originally assessed for treatment services at any of 22 service delivery units on Chicago's West Side. An interview 72 months after admission to treatment is being added for one of the two study cohorts.

The PETS Longer-term Adolescent Study builds upon CSAT's adolescent substance abuse treatment outcome studies in the Adolescent Treatment Models (ATM) and Cannabis Youth Treatment (CYT) grant programs. This study includes all four CYT sites and three first-round ATM sites, and will collect followup interviews for as long as 30 months after admission to treatment. The extension will allow completion of data collection in the last three sites.

CSAT is conducting these studies in order to develop a better understanding of the longer-term outcomes for adults and adolescents receiving substance abuse treatment and factors that influence these outcomes. The information will be used to refine treatment approaches for these populations. The tables that follow summarize the burden for the one-year period of data collection for which approval will be sought.

Adult study	Number of respondents			Responses/respondent	Burden/response (hours)	Total burden (hours)
	48-month interview	60-month interview	72-month interview			
Chicago	15	229	289	1	1.5	801

Adolescent studies	Number of respondents		Responses/respondent	Burden/response (hours)	Total burden (hours)
	24-month	30-month			
3 site total	30	183	1	1.85	395

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Lauren Wittenberg, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: May 28, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–14017 Filed 6–4–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at the following websites: *http://workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov*.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014, Fax: (301) 443–3031.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection.

To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016, (Formerly: Bayshore Clinical Laboratory).

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 716–429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150.

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400.

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–9000, (Formerly: Jewish Hospital of Cincinnati, Inc.).

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151, 703–802–6900.

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750.

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Laboratory Partners, LLC, 129 East Cedar St., Newington, CT 06111, 860–696–8115, (Formerly: Hartford Hospital Toxicology Laboratory).

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917.

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–269–3093, (Formerly: Cox Medical Centers).

Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 941–561–8200/800–735–5416.

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31602, 912–244–4468.

DrugProof, Divison of Dynacare, 543 South Hull St., Montgomery, AL 36103, 888–777–9497/334–241–0522, (Formerly: Alabama Reference Laboratories, Inc.).

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672/800–898–0180, (Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.).

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310.

Dynacare Kasper Medical Laboratories,* 14940–123 Ave., Edmonton, Alberta, Canada T5V 1B4, 780–451–3702/800–661–9876.

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 662–236–2609.

Express Analytical Labs, 3405 7th Avenue, Suite 106, Marion, IA 52302, 319–377–0500.

Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ONT, Canada N6A 1P4, 519–679–1630.

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267.

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Laboratory Specialists, Inc.).

LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–728–4064, (Formerly: Center for Laboratory Services, a Division of LabOne, Inc.).

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche

CompuChem Laboratories, Inc., A Member of the Roche Group).

Laboratory Corporation of America Holdings, 10788 Roselle Street, San Diego, CA 92121, 800–882–7272, (Formerly: Poisonlab, Inc.).

Laboratory Corporation of America Holdings, 1120 Stateline Road West, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc., MedExpress/National Laboratory Center).

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734.

MAXXAM Analytics Inc., * 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555, (Formerly: NOVAMANN (Ontario) Inc.).

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43699, 419–383–5213.

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466/800–832–3244. Medical College hospitals

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515.

Northwest Drug Testing, a division of NWT Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 801–293–2300/800–322–3361, (Formerly: NWT Drug Testing, NorthWest Toxicology, Inc.)

One Source Toxicology Laboratory, Inc., 1705 Center Street, Deer Park, TX 77536, 713–920–2559, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory).

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134.

Pacific Toxicology Laboratories, 6160 Variel Ave., Woodland Hills, CA 91367, 818–598–3110/800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory).

Pathology Associates Medical Laboratories, 110 West Cliff Drive, Spokane, WA 99204, 509–755–8991/800–541–7891x8991.

PharmChem Laboratories, Inc., 4600 N. Beach, Haltom City, TX 76137, 817–605–5300, (Formerly: PharmChem Laboratories, Inc., Texas Division; Harris Medical Laboratory).

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627.

Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–842–6152, (Moved from the Dallas location on 03/31/01; Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995/847–885–2010, (Formerly: SmithKline Beecham Clinical Laboratories, International Toxicology Laboratories).

Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520, (Formerly: SmithKline Beecham Clinical Laboratories).

Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130.

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227.

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176.

Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507/800–279–0027.

Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520, (Formerly: St. Lawrence Hospital & Healthcare System).

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052.

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273.

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260.

US Army Forensic Toxicology Drug Testing Laboratory, Fort Meade, Building 2490, Wilson Street, Fort George G. Meade, MD 20755–5235, 301–677–7085.

The following laboratory voluntarily withdrew from the NLCP on April 30, 2002:

Universal Toxicology Laboratories (Florida), LLC, 5361 NW 33rd Avenue, Fort Lauderdale, FL 33309, 954–717–0300, 800–419–7187x419, (Formerly: Integrated Regional Laboratories, Cedars Medical Center, Department of Pathology).

The following laboratory voluntarily withdrew from the NLCP on May 15, 2002:

Universal Toxicology Laboratories, LLC, 9930 W. Highway 80, Midland, TX 79706, 915–561–8851/888–953–8851.

*The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (**Federal Register**, 16 July 1996) as meeting the minimum standards of the ''Mandatory Guidelines for Workplace Drug Testing'' (59 FR, 9 June 1994, Pages 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 02–14018 Filed 6–4–02; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Invasive Species Advisory Committee

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of public meetings of the Invasive Species Advisory Committee.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of meetings of the Invasive Species Advisory Committee. The purpose of the Advisory Committee

is to provide advice to the National Invasive Species Council, as authorized by Executive Order 13112, on a broad array of issues related to preventing the introduction of invasive species and providing for their control and minimizing the economic, ecological, and human health impacts that invasive species cause. The Council is Co-chaired by the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce. The duty of the Council is to provide national leadership regarding invasive species issues. The purpose of a meeting on June 25–26, 2002 is to convene the full Advisory Committee (appointed by Secretary Norton on April 1, 2002); and to discuss implementation of action items outlined in the National Invasive Species Management Plan, which was finalized on January 18, 2001.

DATES: Meeting of Invasive Species Advisory Committee: 8:30 a.m., Tuesday, June 25, 2002 and 8:30 a.m., Wednesday, June 26, 2002.

ADDRESSES: Chico Hot Springs Resort, 1 Chico Road, Pray MT 59065.

FOR FURTHER INFORMATION CONTACT: Kelsey Passé, National Invasive Species Council Program Analyst; Phone: (202) 208–6336; Fax: (202) 208–1526.

Dated: May 30, 2002.

Lori Williams,

Executive Director, National Invasive Species Council.

[FR Doc. 02–14019 Filed 6–4–02; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF LABOR

Office of the Secretary

Advisory Council on Employee Welfare and Pension Benefit Plans; Nominations for Vacancy of Unexpired Term of Employer Organization (Multiemployer Plan) Member

Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 895, 29 U.S.C. 1142, provides for the establishment of an ''Advisory Council on Employee Welfare and Pension Benefit Plans'' (the Council), which is to consist of 15 members to be appointed by the Secretary of Labor (the Secretary) as follows: Three representatives of employee organizations (at least one of whom shall be representative of an organization whose members are participants in a multi employer plan); three representatives of employers (at least one of whom shall be representative of employers maintaining or contributing to multi employer plans); one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management and accounting; and three representatives from the general public (one of whom shall be a person representing those receiving benefits from a pension plan). No more than eight members of the Council shall be members of the same political party.

Members shall be persons qualified to appraise the programs instituted under ERISA. Appointments are for terms of three years. The prescribed duties of the Council are to advise the Secretary with respect to the carrying out of his or her functions under ERISA, and to submit to the Secretary, or his or her designee, recommendations with respect thereto. The Council will meet at least four times each year, and recommendations of the Council to the Secretary will be included in the Secretary's annual report to the Congress on ERISA.

Thomas McMahon, who had been serving as the employer organization (multiemployer plan) representative, recently passed away and nominations for the remaining two years of the term are being sought. The Department of Labor is committed to equal opportunity in the workplace and seeks a broad-based and diverse ERISA Advisory Council membership.

Accordingly, notice is hereby given that any person or organization desiring to recommend one or more individuals for appointment to the ERISA Advisory Council on Employee Welfare and Pension Benefit Plans to represent the field specified in the preceding paragraph, may submit recommendations to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., suite N–5677, Washington, DC 20210. Recommendations must be delivered or mailed on or before June 28, 2002. Recommendations may be in the form of a letter, resolution or petition, signed by the person making the recommendation or, in the case of a recommendation by an organization, by an authorized representative of the organization.

Signed at Washington, DC this 30th day of May, 2002.

Ann L. Combs,

Assistant Secretary of Labor, Pension and Welfare Benefits Administration.

[FR Doc. 02–14031 Filed 6–4–02; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0217]

Blasting Operations; Extension of the Office of Management and Budget's (OMB) Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comment.

SUMMARY: OSHA solicits public comment concerning its request to extend OMB approval of the information-collection requirement specified in paragraph (k)(3)(i) of the Blasting Operations Standard for Construction (29 CFR 1926.900); this paragraph requires employers to post signs warning against the use of mobile radio transmitters near blasting operations or to certify and maintain records of alternative means developed to prevent the premature detonation of electric blasting caps by mobile radio transmitters.

DATES: Submit written comments on or before August 5, 2002.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0217(2002), OSHA, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less by facsimile to: (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Martinez, Directorate of Policy, Office of Regulatory Analysis, OSHA, U.S. Department of Labor, Room N–3627, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1953. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information collections specified by the Blasting Operation Standard is available for inspection and copying in the Docket Office, or by requesting a copy from Todd Owen at (202) 693–2444. For electronic copies of the ICR contact OSHA on the Internet at *http://www.osha.gov/comp-links.html* and select ''Information Collection Requests.''

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an

opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and cost) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information-collection burden is correct.

Paragraph (k)(3)(i) of this Standard requires a prominent display of adequate warning signs against the use of mobile transmitters. If the signs are infeasible, an alternative method needs to be developed to prevent premature detonation.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and cost) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

III. Proposed Actions

OSHA proposes to extend OMB's previous approval of the recordkeeping (paperwork) requirement specified in paragraphs (k)(3)(i) of the Blasting Operation Standard for Construction (29 CFR 1926.900). The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of this information-collection requirement.

Type of Review: Extension of currently approved information-collection requirements.

Title: Blasting Operations.

OMB Number: 1218–0217.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; State, local or tribal governments.

Number of Respondents: 160.

Frequency of Response: On Occasion.

Total Responses: 160.

Average Time per Response: 8 hours.

Estimated Total Burden Hours: 1,280.

Estimated Cost (Operation and Maintenance): $1,704,000.

IV. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No. 3–2000 (65 FR 50017).

Signed at Washington, DC., on May 30, 2002.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 02–14065 Filed 6–4–02; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0222(2002)]

Derricks Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comment.

SUMMARY: OSHA solicits comment concerning its proposal to extend OMB approval of the information-collection requirements specified by its general industry Derricks Standard (29 CFR 110.181). The paperwork provisions of this Standard specify requirements for maintaining or posting load and capacity information and for developing, maintaining, and disclosing inspection records for ropes used on derricks. The purpose of each of these requirements is to prevent employees from using derricks beyond their rated load and capacity and from using unsafe ropes, thereby, reducing their risk of death or serious injury cased by a derrick component or rope failure.

DATES: Submit written comments on or before August 5, 2002.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0222(2002), OSHA, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Programs, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2222. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information collections specified by the Derricks Standard is available for inspection and copying in the Docket Office, or by requesting a copy from Todd Owen at (202) 693–2444. For electronic copies of the ICR contact OSHA on the Internet at *http://www.osha.gov/comp-links.html*, and select ''Information Collection Requests.''

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and cost) is minimal, collection instruments are understandable, and OSHA's estimate of the information-collection burden is correct.

The Derricks Standard specifies two paperwork requirements. The following sections describe who uses the information collected under each requirements, as well as how they use it. The purpose of these requirements is to prevent death and serious injuries to employees by ensuring that the derrick is not used to lift loads its rated capacity and that all the ropes are inspected for wear and tear.

- *Marking the Rated Load (paragraph (c)).* Paragraph (c)(1) requires that for permanently installed derricks a clearly legible rating chart be provided with each derrick and securely affixed to the derrick. Paragraph (c)(2) requires that for non-permanent installations, the manufacturer provide sufficient information from which capacity charts can be prepared by the employer for the particular installation. The capacity charts must be located at the derrick or at the jobsite office. The data on the capacity charts provide information to the employees to assure that the derricks are used as designed and not overloaded or used beyond the range specified in the charts.
- *Certification Records of Rope Inspections (paragraph (g)).* Paragraph (g)(1) requires employers to thoroughly inspect all running rope in use, and to do so at least once a month. In addition, before using rope which has been idle for at least a month, it must be inspected as prescribed by paragraph (g)(3) and a record prepared to certify that the

inspection was done. The certification records must include the inspection date, the signature of the person conducting the inspection, and the identifier of the rope inspected. Employers must keep the certification records on file and available for inspection. The certification records provide employers, employees, and OSHA compliance officers with assurance that the ropes are in good condition.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

III. Proposed Actions

OSHA proposes to extend the Office of Management and Budget's (OMB) approval of the collection-of-information requirements specified by its Derricks Standard (29 CFR 1910.181). The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of these information-collection requirements.

Type of Review: Extension of a currently information-collection requirement.

Title: Derricks Standard (29 CFR 1910.181).

OMB Number: 1218–0222.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; State, local, or tribal governments.

Number of Respondents: 10,000.

Frequency of Recordkeeping: On occasion; monthly.

Average Time per Response: Varies from 3 minutes (.05 hour) to post or keep information to 15 minutes (.25 hour) to inspect rope and to prepare, maintain, and disclose a certification record.

Total Annual Hours Requested: 28,530.

Total Annual Costs (O&M): $0.

IV. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), and Secretary of Labor's Order No. 3–2000 (65 FR 50017).

Signed at Washington, DC, on May 30, 2002.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 02–14066 Filed 6–4–02; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Notice of Meetings

AGENCY: National Commission on Libraries and Information Science.

ACTION: Notice of meetings.

Summary: The U.S. National Commission on Libraries and Information Science is holding an open business meeting to discuss Commission programs and administrative matters. Topics will include discussion about the NCLIS initiative regarding the role of libraries following the September 11th terrorist attack and updates of ongoing projects.

Date and Time: NCLIS Business Meeting—June 27, 2002, 10 a.m. until 12 Noon.

Address: Conference Room, NCLIS Office, 1110 Vermont Avenue, NW., Suite 820 Washington, DC 20005.

Status: Open meeting.

SUPPLEMENTARY INFORMATION: The business meeting is open to the public, subject to space availability. To make special arrangements for physically challenged persons, contact Judith Russell, Deputy Director, 1110 Vermont Avenue, NW., Suite 820, Washington, DC 20005, e-mail *jrussell@nclis.gov* fax 202–606–9203 or telephone 202–606–9200.

Summary: The U.S. National Commission on Libraries and Information Science is also holding a closed meeting to review the nominations for the National Award for Library Service. Closing this meeting is in accordance with the exemption provided under 45 CFR 1703.202(a)(9).

Date and Time: NCLIS Closed Meeting—June 27, 2002, 8:30 a.m. until 10 a.m.

Address: Conference Room, NCLIS Office, 1110 Vermont Avenue, NW., Suite 820 Washington, DC 20005.

Status: Closed meeting.

FOR FURTHER INFORMATION CONTACT: Judith Russell, Deputy Director, U.S. National Commission on Libraries and Information Science, 1110 Vermont Avenue, NW., Suite 820, Washington, DC 20005, e-mail *jrussell@nclis.gov,* fax 202–606–9203 or telephone 202–606 9200.

Dated: May 31, 2002.

Robert S. Willard,

NCLIS Executive Director.

[FR Doc. 02–14058 Filed 6–4–02; 8:45 am]

BILLING CODE 7527–$$–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before July 22, 2002. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML),

National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–837–3698 or by e-mail to *records.mgt@nara.gov.* Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of the Air Force, Agency-wide (N1–AFU–02–14, 103 items, 103 temporary items). Electronic copies of documents created using electronic mail and word processing that relate to command and control and to flying, missile, space, and other operations as well as electronic records that supplement or replace paper records relating to these matters that were previously approved for disposal. Records pertain to such subjects as wartime planning, Joint Chiefs of Staff communications, combat operations, search and rescue missions, space and missile operations, electronic warfare, radar, air defense and surveillance, planning for exercises and maneuvers, flight operations, aircrew management and training, aircraft utilization, air traffic control, and airfield management.

2. Department of the Air Force, Agency-wide (N1–AFU–02–15, 81 items, 81 temporary items). Electronic copies of documents created using electronic mail and word processing that relate to communications as well as electronic records that supplement or replace paper records relating to communications that were previously approved for disposal. Records relate to such subjects as systems policy and guidance, program management, general operations, telephone services, radio stations, communications security, and telecommunications service leasing.

3. Department of the Air Force, Agency-wide (N1–AFU–02–16, 93 items, 93 temporary items). Electronic copies of documents created using electronic mail and word processing that relate to Air Force health services, medical education, and the aerospace medicine program as well as electronic records that supplement or replace paper records relating to these matters that were previously approved for disposal. Records relate to such subjects as medical meetings, physical examinations, aeromedical evacuation, medical logistics, the treatment of patients, hospital accreditation, radiology, aerospace medicine programs, and bioenvironmental surveys.

4. Department of the Army, Agency-wide (N1–AU–02–13, 2 items, 1 temporary item). Electronic copies of documents created using electronic mail and word processing that relate to advanced technology assessments. Recordkeeping copies of these files are proposed for permanent retention. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

5. Department of the Army, Agency-wide (N1–AU–02–14, 2 items, 2 temporary items). Records relating to Army Reserve military technician requirement exceptions, including requests to extend active military status and exceptions to same unit and same skills requirements. Also included are electronic copies of documents created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

6. Department of Defense, Defense Commissary Agency (N1–506–02–2, 26 items, 26 temporary items). Short term records relating to internal agency evaluations and the equal employment opportunity (EEO) program. Included are such records as internal reviews and supporting documentation, copies of audits conducted by the General Accounting Office, the Department of Defense Inspector General, and the Defense Contract Audit Agency, EEO instructions, and files relating to special EEO events and awards. Also included are electronic copies of documents created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

7. Department of Defense, Defense Information Systems Agency (N1–371–02–4, 18 items, 16 temporary items). Inspector general records. Included are such records as routine inspection reports, inspection work papers, complaint and investigation files, internal audit files, and audit reports. Also included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of selected inspection reports are proposed for permanent retention.

8. Department of the Interior, Office of the Secretary (N1–48–01–3, 12 items, 11 temporary items). Records relating to Year 2000 (Y2K) Computer Century Conversion activities, including policies and planning, budget matters, actions take to protect specific systems, web pages, and electronic copies of records created using electronic mail or word processing systems. Proposed for permanent retention are Y2K

informational posters and Y2K public awareness videotapes.

9. Department of State, Bureau of Political-Military Affairs (N1–59–01–22, 30 items, 22 temporary items). Records of the Office of Defense Trade Controls relating to the regulation of the export of defense articles and services. Records include arms export case files, arms exporter license registration files, disclosure files, correspondence files, and procedures files. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of reports on exports, international arms traffic regulations files, technical assistance to foreign countries agreement files, and compliance files. Also proposed for permanent retention is a database containing information about munitions-related items being sent to foreign countries.

10. Department of State, Bureau of Political-Military Affairs (N1–59–01–18, 14 items, 7 temporary items). Electronic copies of documents created in the Office of Plans, Policy, and Analysis using electronic mail and word processing. Proposed for retention are recordkeeping copies of files on small arms and light weapons, critical infrastructure and information security, non-lethal weapons, security assistance, land mine policy, defense planning, and defense trade.

11. Department of Transportation, Federal Motor Carrier Safety Administration (N1–557–01–1), 9 items, 9 temporary items). Inputs, master files, outputs, and system documentation pertaining to the Licensing and Insurance System, an electronic system relating to the issuance of interstate operating authority for for-hire motor carriers, freight forwarders, and property brokers. Data includes applications for operating authorities, designation of process agents, certifications of insurance, surety bonds, and cancellation notices. Also included are electronic copies of documents created using electronic mail and word processing.

12. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms (N1–436–02–1, 4 items, 4 temporary items). Records of polygraph examinations given as part of criminal investigations or pre-employment applicant screening. This schedule reduces the retention period for employment examinations, which were previously approved for disposal. Also included are electronic copies of documents created using electronic mail and word processing.

13. Department of Veterans Affairs, Veterans Health Administration (N1–15–01–3, 10 items, 8 temporary items). Paper and electronic records used by the Environmental Agents Service to create, update, and modify records in the Agent Orange Registry, including electronic copies of records created using electronic mail and word processing. The registry is used to track patient demographics, generate hypotheses for research studies, report birth defects among veterans' children, and assist in the planning and delivery of health care services. The master data files maintained on optical disk and related documentation are proposed for permanent retention.

14. Department of Veterans Affairs, Veterans Health Administration (N1–15–01–4, 7 items, 7 temporary items). Paper and electronic records relating to the National Prosthetic Patient Database, including electronic copies of records created using electronic mail and word processing. Records include personal identifying information of patients, names of suppliers and issuers, transaction descriptions, and other information pertaining to the procurement of prosthetic devices.

15. Administrative Office of the U.S. Courts, Office of the General Counsel (N1–116–02–2, 6 items, 5 temporary items). Legal precedent reference files, tort claims files, and citizen and prisoner correspondence files. Also included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of tort claims involving extensive litigation or widespread media attention are proposed for permanent retention. Recordkeeping copies of the legal precedent subject files were previously scheduled for permanent retention.

16. Environmental Protection Agency, Office of Prevention, Pesticides, and Toxic Substances (N1–412–01–7, 3 items, 2 temporary items). Records accumulated in connection with citizen petitions for changes to rules relating to the Toxic Substances and Control Act that have been microfilmed. Also included are electronic copies of documents created using electronic mail and word processing. Microfilm copies of records and paper records that have not been filmed are proposed for permanent retention.

Dated: May 24, 2002.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 02–13862 Filed 6–4–02; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on the Records of Congress; Meeting

AGENCY: National Archives and Records Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Archives and Records Administration (NARA) announces a meeting of the Advisory Committee on the Records of Congress. The committee advises NARA on the full range of programs, policies, and plans for the Center for Legislative Archives in the Office of Records Services.

DATES: June 24, 2002, from 10 a.m. to 11 a.m.

ADDRESSES: Whittall Pavilion, Library of Congress, Thomas Jefferson Building, Ground Floor.

FOR FURTHER INFORMATION CONTACT: Michael L. Gillette, Director, Center for Legislative Archives, (202) 501–5350.

SUPPLEMENTARY INFORMATION:

Agenda

Report of the task force on the Congressional Papers Roundtable Forum Legislative records outside of official custody Activities report of the Center for Legislative Archives Other current issues and new business.

The meeting is open to the public.

Dated: May 29, 2002.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. 02–13995 Filed 6–4–02; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that two meetings of the Combined Arts Advisory Panel, to the National Council on the Arts, Music section (Creativity and Organizational Capacity categories) will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506 as follows:

Music (A): July 8–10, 2002, Room 714 (Creativity category). The panel will meet from 9 a.m. to 6 p.m. on July 8th and 9th and from 9 a.m. to 5:30 p.m. on July 10th. This meeting will be closed.

Music (B): July 22–25, 2002, Room 714 (Creativity and Organizational

Capacity categories). A portion of this meeting, from 4 p.m. to 5 p.m. on July 25th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 5:30 p.m. on June 22nd, from 9 a.m. to 6 p.m. on July 23rd and 24th, and from 9 a.m. to 4 p.m. and 5 p.m. to 5:30 p.m. on July 25th, will be closed.

The closed portions of these meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 2, 2002, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: May 29, 2002.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 02–14025 Filed 6–4–02; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–6940]

Cabot Performance Materials

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for hearing.

SUMMARY: The U. S. Nuclear Regulatory Commission (NRC) has received, by letter dated April 3, 2002, and acknowledged a request from Cabot Performance Materials for the renewal of NRC Source Material License SMB–920 for the Boyertown, Pennsylvania facility. The Commission hereby provides a notice of opportunity for a hearing as part of the proceeding in accordance with the requirements of 10 CFR part 2, subpart L.

FOR FURTHER INFORMATION CONTACT: Ms. Elaine Brummett, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T8–A33, Washington, DC 20555–0001. Telephone 301/415–6606.

SUPPLEMENTARY INFORMATION: Cabot Performance Materials is licensed by the U. S. Nuclear Regulatory Commission (NRC) under Source Material License SMB–920 for operations at the Boyertown, Pennsylvania site. All the processes in the plant and most of the radiological procedures have remained unchanged, except for the detailed procedures for monitoring and analyzing radiological conditions, in accordance with the reviews and agreements from the inspectors from Region I office of the U.S. Nuclear Regulatory Commission (NRC) in King of Prussia, Pennsylvania. Also, Cabot Performance Materials has modified the radiation safety programs, in order to strengthen and improve the levels of management, and the employee involvement.

The Commission hereby provides notice of an opportunity for a hearing on an application for license renewal, which is a proceeding falling within the scope of 10 CFR part 2, subpart L, ''Informal Hearing Procedures for Adjudications in Materials and Operators Licensing Proceedings,'' of the Commission's Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(d), a request for a hearing must be filed within thirty (30) days from the date of publication of this **Federal Register** notice. The request for a hearing must be filed with the Office of the Secretary either:

(1) By delivery to the Rulemakings and Adjudications Staff of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail to:

(1) The applicant, Cabot Performance Materials, County Line, P.O. Box 1628, Boyertown, PA 19512–1608;

(2) The NRC staff, by delivery to the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(3) By mail addressed to the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the Commission's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

Any hearing that is requested and granted will be held in accordance with the Commission's ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings'' in 10 CFR part 2, subpart L.

Dated at Rockville, Maryland, this 24th day of May, 2002.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Chief, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–14062 Filed 6–4–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–327 and 50–328]

Tennessee Valley Authority; Notice of Partial Denial of Amendment to Facility Operating License; and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has denied a portion of a request by the Tennessee Valley Authority (the licensee) for an amendment to Facility Operating License Nos. DPR–77 and

DPR–79, issued to the licensee for operation of the Sequoyah Nuclear Plant, Unit Nos. 1 and 2, located in Hamilton County, Tennessee.

Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on February 5, 2002 (67 FR 5339).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) by changing TS 4.4.5.5.C and Table 4.4–2, which involve reporting Category C–3 steam generator tube inspection results to the NRC. The request also involved eliminating several other reporting requirements.

The NRC staff has concluded that the licensee's request regarding steam generator Category C–3 condition reporting cannot be granted. The licensee was notified of the Commission's denial of the proposed change by a letter dated May 24, 2002.

By July 5, 2002, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated February 5, 2002, and (2) the Commission's letter to the licensee dated May 24, 2002.

Documents may be examined, and/or copied for a fee, at the NRC's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and will be accessible electronically through the Agencywide Documents Access and Management System's Public Electronic Reading Room link 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 documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 24th day of May, 2002.

Herbert N. Berkow,

Director, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–14063 Filed 6–4–02; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* NRC Form 354, Data Report on Spouse.

3. *The form number if applicable:* NRC Form 354.

4. *How often the collection is required:* On occasion.

5. *Who will be required or asked to report:* NRC employees, contractors, licensees, and applicants who marry after completing NRC's Personnel Security forms, or marry after having been granted an NRC access authorization or employment clearance.

6. *An estimate of the number of responses:* 60.

7. *The estimated number of annual respondents:* 60.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 12 hours (.20 hours or 12 minutes per response).

9. *An indication of whether Section 3507(d), Public Law 104–13 applies:* N/A.

10. *Abstract:* Completion of the NRC Form 354 is a mandatory requirement for NRC employees, contractors, licensees, and applicants who marry after submission of the Personnel Security Forms, or after receiving an access authorization or employment clearance to permit the NRC to assure there is no increased risk to the common defense and security.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by July 5, 2002. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Bryon Allen, Office of Information and Regulatory Affairs (3150–0026), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 30th day of May, 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–14061 Filed 6–4–02; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections. *Comments are invited on:* (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to

the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection: Annual Earnings Questionnaire for Annuitants in Last Pre-Retirement Non-Railroad Employment; OMB3220–0179.

Under section 2(e)(3) of the Railroad Retirement Act (RRA), an annuity is not payable for any month in which a beneficiary works for a railroad. In addition, an annuity is reduced for any month in which the beneficiary works for an employer other than a railroad employer and earns more than a prescribed amount. Under the 1988 amendments to the RRA, the Tier II portion of the regular annuity and any supplemental annuity must be reduced by one dollar for each two dollars of Last Pre-Retirement Non-Railroad Employment (LPE) earnings for each month of such service. However, the reduction cannot exceed fifty percent of the Tier II and supplemental annuity amount for the month to which such deductions apply. LPE generally refers to an annuitant's last employment with a non-railroad person, company, or institution prior to retirement which was performed whether at the same time of, or after an annuitant stopped railroad employment. The collection obtains earnings information needed by the RRB to determine if possible reductions in annuities because of Last Pre-Retirement Non-Railroads Employment Earnings (LPE) are in order.

The RRB utilizes Form G–19L to obtain LPE earnings information from annuitants. Companion Form G–19L.1, which serves as an instruction sheet and contains the Paperwork Reduction/Privacy Act Notice for the collection accompanies each Form G–19L sent to an annuitant. One response is requested of each respondent. Completion is required to retain a benefit.

The RRB proposes no changes to Forms G–19L and G–19L.1.

The estimated annual respondent burden is as follows:

Estimated number of responses: 1,000.

Estimated completion time per response: 15 minutes.

Estimated annual burden hours: 250.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroads Retirement Board, 844 No. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 02–14067 Filed 6–4–02; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25594; 812–12390]

Barclays Global Fund Advisors, et al.; Notice of Application

May 29, 2002.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 2(a)(32), 5(a)(1), and 22(d) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act.

Summary of Application: Applicants request an order that would permit: (a) Series of an open-end management investment company, whose portfolios will consist of the component securities of certain fixed income indices, to issue shares of limited redeemability; (b) secondary market transactions in the shares of the series at negotiated prices; and (c) affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of aggregations of the series' shares.

Applicants: Barclays Global Fund Advisors (''Adviser''), iShares Trust (''Trust'') and SEI Investments Distribution Co. (''Distributor'').

Filing Dates: The application was filed on January 2, 2001 and was amended on November 20, 2001, May 17, 2002, and May 28, 2002.

Hearing or Notification of Hearing: An order granting the requested relief 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 June 24, 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 may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 5th Street, NW, Washington, DC 20549–0609. Applicants: Joanne T. Medero, Esq., Barclays Global Fund Advisors, c/o Barclays Global Investors, 45 Fremont Street, San Francisco, CA 94105; Susan C. Mosher, Esq., iShares Trust, c/o Investors Bank & Trust Company, 200 Clarendon Street, Boston, MA 02116; and William Zitelli, Esq., SEI Investments Distribution Co., One Freedom Valley Drive, Oaks, PA 19456.

FOR FURTHER INFORMATION CONTACT: Laura J. Riegel, Senior Counsel, at (202) 942–0567, or Michael W. Mundt, Senior Special Counsel, at (202) 942–0564 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 5th Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Trust is an open-end management investment company registered under the Act and established in the state of Delaware. The Trust is organized as a series fund with multiple series.[1] The Company intends to offer seven (7) new series of shares (each, a ''New Fund''). The Adviser, an investment adviser registered under the Investment Advisers Act of 1940, will serve as investment adviser to each New Fund. The Distributor, a broker-dealer unaffiliated with the Adviser and registered under the Securities Exchange Act of 1934 (''Exchange Act''), will serve as the principal underwriter of the New Fund's shares.

2. Each New Fund will invest in a portfolio of securities (''Portfolio Securities'') generally consisting of the component securities of a specified fixed income securities index (each, an ''Underlying Index'').[2] No entity that

[1] The existing series of the Trust operate under the terms of three prior orders. See Barclays Global Fund Advisors, et al., Investment Company Act Release Nos. 24394 (Apr. 17, 2000) (notice) and 24451 (May 12, 2000) (order); Barclays Global Fund Advisors, *et al.,* Investment Company Act Release Nos. 24393 (Apr. 17, 2000) (notice) and 24452 (May 12, 2000) (order); and Barclays Global Fund Advisors, et al., Investment Company Act Release Nos. 25078 (July 24, 2001) (notice) and 25111 (Aug. 15, 2001) (order).

[2] The Underlying Indices for the New Funds are Lehman Brothers 1–3 Year Treasury Index, Lehman Brothers 7–10 Year Treasury Index, Lehman Brothers 20+ Year Treasury Index, Lehman Brothers Treasury Index, Lehman Brothers Government/Credit Index, Lehman Brothers Credit VLI Index, and Goldman Sachs InvesTop Index.

Continued

creates, compiles, sponsors, or maintains an Underlying Index will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Trust, the Adviser, the Distributor, or a promoter of a New Fund.

3. The investment objective of each New Fund will be to provide investment results that correspond generally to the price and yield performance of its relevant Underlying Index. Each New Fund will utilize as an investment approach a representative sampling strategy where each New Fund will seek to hold a representative sample of the component securities of the Underlying Index. [3] Applicants expect that each New Fund will have a tracking error relative to the performance of its respective Underlying Index of no more than 5 percent.

4. Shares of each New Fund (''Shares'') will be sold in aggregations of 50,000 Shares or more (''Creation Unit Aggregations''). It is currently anticipated that the price of a Creation Unit Aggregation will be approximately $5,000,000. Creation Unit Aggregations may be purchased only by or through a party that has entered into a participant agreement with the Distributor (''Authorized Participant''). Each Authorized Participant must be a participant in the Depository Trust Company (''DTC''). Creation Unit Aggregations generally will be issued in exchange for an in-kind deposit of securities and cash. An investor wishing to make an in-kind purchase of a Creation Unit Aggregation from a New Fund will have to transfer to the New Fund a ''Portfolio Deposit'' consisting of (a) A portfolio of securities that has been selected by the Adviser to correspond generally to the price and yield performance of the relevant Underlying Index (''Deposit Securities''), and (b) a cash payment to equalize any difference between the total aggregate market value per Creation Unit Aggregation of the Deposit Securities and the net asset value (''NAV'') per Creation Unit Aggregation of the New Fund (the ''Balancing Amount'').[4] An investor purchasing a Creation Unit Aggregation from a New Fund will be charged a fee (''Transaction Fee'') to prevent the dilution of the interests of the remaining shareholders resulting from the New Fund incurring costs in connection with the purchase of the Creation Unit Aggregations.[5] Each New Fund will disclose the maximum Transaction Fees charged by the New Fund in its prospectus and the method of calculating the Transaction Fees in its statement of additional information (''SAI'').

5. Orders to purchase Creation Unit Aggregations will be placed with the Distributor, who will be responsible for transmitting the orders to the applicable New Fund. The Distributor will issue confirmations of acceptance, issue delivery instructions to the applicable New Fund to implement the delivery of Creation Unit Aggregations, and maintain records of the orders and confirmations. The Distributor also will be responsible for delivering prospectuses to purchasers of Creation Unit Aggregations.

6. Persons purchasing Creation Unit Aggregations from a New Fund may hold the Shares or sell some or all of them in the secondary market. Shares will be listed on the AMEX. One or more AMEX specialists will be assigned to make a market in Shares. The price of Shares traded on the AMEX will be based on a current bid/offer market, and each Share is expected to have a market value of approximately $100. Transactions involving the sale of Shares in the secondary market will be subject to customary brokerage commissions and charges.

7. Applicants expect that purchasers of Creation Unit Aggregations will include institutional investors and arbitrageurs (which could include institutional investors). The AMEX specialist, in providing for a fair and orderly secondary market for Shares, also may purchase Shares for use in its market-making activities on the AMEX. Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors. [6] Applicants believe that arbitrageurs and other institutional investors will purchase or redeem Creation Unit Aggregations to take advantage of discrepancies between the Shares' market price and the Shares' underlying NAV. Applicants expect that this arbitrage activity will provide a market ''discipline'' that will result in a close correspondence between the price at which Shares trade and their NAV. In other words, applicants do not expect the Shares to trade at a significant premium or discount to their NAV.

8. Shares will not be individually redeemable. Shares will only be redeemable in Creation Unit Aggregations through each New Fund. To redeem, an investor will have to accumulate enough Shares to constitute a Creation Unit Aggregation. An investor redeeming a Creation Unit Aggregation generally will receive (a) A portfolio of Portfolio Securities specified on the date the request for redemption is made (''Redemption Securities''), which may not be identical to the Deposit Securities applicable to the purchase of Creation Unit Aggregations, and (b) a ''Cash Redemption Payment,'' consisting of an amount calculated in the same manner as the Balancing Amount, although the actual amounts may differ if the Redemption Securities are not identical to the Deposit Securities on the same day. An investor may receive the cash equivalent of a Redemption Security in unusual circumstances, such as where a redeeming entity is restrained by

Except for the New Funds that track the Lehman Brothers Credit VLI Index (''Lehman Corporate Bond Fund'') and Goldman Sachs InvesTop Index (''Goldman Sachs Corporate Bond Fund''), each New Fund will invest at least 90% of its assets in the component securities of its Underlying Index and may invest the remainder of its assets in certain futures, options, and swap contracts, cash and cash equivalents, and in bonds not included in its Underlying Index, which the Adviser believes will help the New Fund track its Underlying Index. Each of the Lehman Corporate Bond Fund and Goldman Sachs Corporate Bond Fund generally will invest at least 90% of its assets in the component securities of its Underlying Index. At times, each of those New Funds may invest up to 20% of its assets in certain futures, options and swap contracts, cash and cash equivalents, as well as in bonds not included in its Underlying Index, but which the Adviser believes will help the New Fund track its Underlying Index and which are either: (a) Included in the broader index upon which such Underlying Index is based; or (b) new issues entering or about to enter the Underlying Index or the broader index upon such Underlying Index is based.

[3] The bonds selected for inclusion in a New Fund by the Adviser will have aggregate duration, sector, credit rating, coupon, and embedded option characteristics that closely correlate to those characteristics of the Underlying Index as a whole.

[4] On each business day, the Adviser will make available through the National Securities Clearing Corporation, immediately prior to the opening of trading on the American Stock Exchange LLC (''AMEX''), the list of the names and the required number of shares of each Deposit Security for each New Fund. The Portfolio Deposit will be applicable to purchases of Creation Unit Aggregations until the Portfolio Deposit composition is next announced. In addition, the Trust reserves the right to permit or require the substitution of an amount of cash to be added to the Balancing Amount to replace any Deposit Security that may be unavailable or unavailable in sufficient quantity for delivery to the Trust upon the purchase of a Creation Unit Aggregation, or which may be ineligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting. In addition, AMEX and Bloomberg L.P. will disseminate every 15 seconds throughout the trading day on AMEX Consolidated Tape B an amount representing on a per Share basis the sum of the Balancing Amount effective through and including the prior business day, plus the current value of the Deposit Securities.

[5] In situations where a New Fund permits a purchaser to substitute cash for Deposit Securities, the purchaser may be assessed an additional fee to offset the New Fund's brokerage and other transaction costs associated with using cash to purchase the requisite Deposit Securities.

[6] Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Shares. Records reflecting the beneficial owners of Shares will be maintained by DTC or its participants.

regulation or policy from transacting in the Redemption Security. A redeeming investor will pay a Transaction Fee to offset the New Fund's transaction costs, whether the redemption proceeds are in-kind or cash. An additional variable charge expressed as a percentage of the redemption proceeds, will be made for cash redemptions.

9. Applicants state that neither the Trust nor any New Fund will be marketed or otherwise held out as an ''open-end investment company'' or a ''mutual fund.'' Rather, the designation of the Trust and each New Fund in all marketing materials will be limited to the terms ''exchange-traded fund,'' ''investment company,'' ''fund'' or ''trust'' without reference to an ''open-end fund'' or ''mutual fund,'' except to contrast the Trust and each New Fund with a conventional open-end management investment company. Any marketing materials that describe the purchase or sale of Creation Unit Aggregations, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and that owners of Shares may tender Shares for redemption to each New Fund in Creation Unit Aggregations only. The same type of disclosure will be provided in each New Fund's prospectus, SAI and all reports to shareholders. [7] The New Fund will provide copies of its annual and semi-annual shareholder reports to DTC participants for distribution to beneficial holders of Shares.

10. Applicants state that the Trust's website includes quantitative information updated on a daily basis, including, for each New Fund, daily trading volume, the previous business day's NAV and the reported closing price. The website will also include, for each New Fund, a calculation of the premium or discount of the mid-point of the bid-ask spread at the time of calculation of the NAV (the ''Bid/Ask Price'') against NAV, and data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against NAV, within appropriate ranges, for each of the four previous calendar quarters. [8]

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act granting an exemption from sections 2(a)(32), 5(a)(1), and 22(d) of the Act and rule 22c–1 under the Act; and under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and (a)(2) of the Act.[9]

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order under section 6(c) of the Act that would permit the Trust to register each New Fund as a series of an open-end management investment company and issue Shares that are redeemable in Creation Unit Aggregations. Applicants state that investors may purchase Shares in Creation Unit Aggregations from each New Fund and redeem Creation Unit Aggregations through each New Fund.

Applicants further state that because the market price of Creation Unit Aggregations will be disciplined by arbitrage opportunities, investors generally should be able to sell Shares in the secondary market at approximately their NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is being currently offered to the public by or through an underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in the prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) and rule 22c–1. Applicants request an exemption under section 6(c) of the Act from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to: (a) Prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers; (b) prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices; and (c) assure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state (a) that secondary market trading in Shares would not cause dilution for owners of Shares because such transactions do not directly involve the assets of a New

[7] Applicants state that persons purchasing Creation Unit Aggregations will be cautioned in the prospectus that some activities on their part may, depending on the circumstances, result in their being deemed statutory underwriters and subject them to the prospectus delivery and liability provisions of the Securities Act of 1933 (''Securities Act''). For example, a broker-dealer firm and/or its client may be deemed a statutory underwriter if it takes Creation Unit Aggregations after placing an order with the Distributor, breaks them down into the constituent Shares, and sells Shares directly to its customers; or if it chooses to couple the purchase of a supply of new Shares with an active selling effort involving solicitation of secondary market demand for Shares. The prospectus will state that whether a person is an underwriter depends upon all the facts and circumstances pertaining to that person's activities. The prospectus also will state that broker-dealer firms should also note that dealers who are not ''underwriters'' but are participating in a distribution (as contrasted to ordinary secondary trading transactions), and thus dealing with Shares that are part of an ''unsold allotment'' within the meaning of section 4(3)(C) of the Securities Act, would be unable to take advantage of the prospectus delivery exemption provided by section 4(3) of the Securities Act.

[8] The Bid/Ask Price of a New Fund is determined using the highest bid and the lowest offer on the national securities exchange on which the Shares are listed for trading.

[9] Applicants, along the iShares, Inc., have filed a separate exemptive application (the ''Prospectus Delivery Application'') that would allow dealers to sell Shares to secondary market purchasers unaccompanied by a prospectus, when prospectus delivery is not required by the Securities Act. The Prospectus Delivery Application would require Applicants to make available a product description (''Product Description'') for distribution in accordance with an AMEX rule requiring AMEX members and member organizations effecting transactions in Shares to deliver a Product Description to investors purchasing those Shares.

Fund, and (b) to the extent different prices exist during a given trading day, or from day to day, these variances will occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity will ensure that the difference between the market price of Shares and their NAV remains narrow.

Section 17(a) of the Act

7. Section 17(a) of the Act makes it unlawful, except under certain circumstances, for any affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, to sell any security to, or purchase any security from, such registered investment company. Section 2(a)(3) of the Act defines ''affiliated person'' to include 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 and any person directly or indirectly controlling, controlled by, or under common control, with the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities.

8. Applicants state that any person owning 5% or more of a New Fund's Shares or more than 25% of a New Fund's Shares will be affiliated with the New Fund. Applicants state that section 17(a) may prohibit such affiliated persons of a New Fund (and affiliated persons of these affiliated persons that are not otherwise affiliated with the Trust or the New Fund) from purchasing or redeeming Creation Unit Aggregations in kind. Applicants request an exemption from section 17(a) under sections 6(c) and 17(b) to permit these affiliated persons of the New Fund (and affiliated persons of these affiliated persons that are not otherwise affiliated with the Trust or the New Fund) to effect such transactions in Creation Unit Aggregations.

9. Section 17(b) authorizes the Commission to exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the 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 the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Applicants contend that no useful purpose would be served by prohibiting persons with the types of affiliations described above from purchasing or redeeming Creation Unit Aggregations. The deposit procedure for in-kind purchases and redemption procedure for in-kind redemptions will be the same for all purchases and redemptions. Deposit Securities and Redemption Securities will be valued under the same objective standards applied to valuing Portfolio Securities. Therefore, applicants state that in-kind purchases and redemptions will not favor affiliated persons, and affiliated persons of these affiliated persons, described above.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Applicants will not register a future series of the Trust that would rely on the requested relief, by means of filing a post-effective amendment to the Trust's registration statement or by any other means, unless applicants have requested and received with respect to such future series, either exemptive relief from the Commission or a no-action letter from the Division of Investment Management of the Commission.

2. Each New Fund's prospectus and the Product Description will clearly disclose that, for purposes of the Act, Shares are issued by the New Fund and that the acquisition of Shares by investment companies is subject to the restrictions of section 12(d)(1) of the Act.

3. As long as each New Fund operates in reliance on the requested order, the Shares of such New Fund will be listed on a national securities exchange.

4. Neither the Trust nor any New Fund will be advertised or marketed as an open-end fund or a mutual fund. Each New Fund's prospectus will prominently disclose that Shares are not individually redeemable shares and will disclose that the owners of Shares may acquire those Shares from the New Fund and tender those Shares for redemption to the New Fund in Creation Unit Aggregations only. Any advertising material that describes the purchase or sale of Creation Unit Aggregations or refers to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire those Shares from the New Fund and tender those Shares for redemption to the New Fund in Creation Unit Aggregations only.

5. The website for the Trust, which will be publicly accessible at no charge, will contain the following information, on a per Share basis, for each New Fund: (a) the prior business day's NAV and the Bid/Ask Price, and a calculation of the premium or discount of such Bid/Ask Price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. In addition, the Product Description for each New Fund will state that the website for the Trust has information about the premiums and discounts at which a New Fund's Shares have traded.

6. The prospectus and annual report for each New Fund will also include: (a) the information listed in condition 5(b), (i) in the case of the prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable) and (ii) in the case of the annual report, for the immediately preceding five years, as applicable; and (b) the following data, calculated on a per Share basis for one, five and ten year periods (or life of the New Fund), (i) the cumulative total return and the average annual total return based on NAV and Bid/Ask Price, and (ii) the cumulative total return of the relevant Underlying Index.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–14007 Filed 6–4–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25595; 812–10884]

iShares, Inc., et al.; Notice of Application

May 29, 2002.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 24(d) of the Act.

APPLICANTS: iShares, Inc. and iShares Trust (the ''Companies''), Barclays Global Fund Advisors (the ''Adviser''), and SEI Investments Distribution Co. (the ''Distributor'').

SUMMARY OF APPLICATION: Applicants request an order amending certain prior

orders (the ''Prior Orders'')[1] to permit dealers to sell shares of series of the Companies to purchasers in the secondary market unaccompanied by a prospectus, when prospectus delivery is not required by the Securities Act of 1933 (the ''Securities Act''). The order would also provide such relief to certain series of iShares Trust that are the subject of a pending application for exemptive relief (the ''Fixed Income Application'').[2]

FILING DATES: The application was filed on December 4, 1997 and amended on November 24, 1998 and May 17, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief 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 June 24, 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 may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 5th St., NW, Washington, DC 20549–0609. Applicants: iShares, Inc., 400 Bellevue Parkway, Wilmington, DE 19809, Attention: John Falco; iShares Trust, c/o Investors Bank & Trust Co., 200 Clarendon St., Boston, MA 02116, Attention: Susan C. Mosher, Esq.; Barclays Global Fund Advisors, c/o Barclays Global Investors, 45 Fremont St., San Francisco, CA 94105, Attention: Joanne T. Medero, Esq.; and SEI Investments Distribution Co., One Freedom Valley Dr., Oaks, PA 19456, Attention: William E. Zitelli, Esq.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Senior Counsel, at (202) 942–0582, or Michael W. Mundt, Senior Special Counsel, at (202) 942–0564 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 5th St., NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. iShares, Inc.[3] is an open-end management investment company registered under the Act and incorporated in the state of Maryland. iShares Trust is an open-end management investment company registered under the Act and organized as a Delaware business trust. Each of the Companies is comprised of separate series, referred to as ''Index Funds.'' The shares of each Index Fund are referred to as ''iShares.''

2. The Adviser, which is registered as an investment adviser under the Investment Advisers Act of 1940, serves as investment adviser to the Companies. The Adviser may enter into sub-advisory agreements with additional investment advisers to act as subadvisers with respect to particular Index Funds. The Distributor, a broker-dealer registered under the Securities Exchange Act of 1934 (the ''Exchange Act'') and a member of the National Association of Securities Dealers, Inc., serves as the principal underwriter and distributor of the Companies' shares.

3. Each Index Fund seeks to provide investment results that correspond generally to the price and yield performance of publicly traded securities in the aggregate in particular markets, as represented by a particular securities index (each, a ''Benchmark Index''). No entity that creates, compiles, sponsors or maintains any Benchmark Index is, or will be, an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Adviser, the Distributor, either Company or any subadviser or promoter of an Index Fund.

4. In the future, the applicants may offer additional Index Funds pursuant to certain of the Prior Orders (''Future Funds'') based on other Benchmark Indices. The applicants request that the order granted pursuant to the application apply to any Future Funds. Any Future Funds will (a) By advised by the Adviser or an entity controlled by or under common control with the Adviser and (b) comply with the terms and conditions of the order. References to the Index Funds include the Future Funds.

5. iShares are issued in large aggregations called ''Creation Units.'' Purchasers of Creation Units may separate a Creation Unit into individual iShares.[4] iShares are listed on a national securities exchange, as defined in section 2(a)(26) of the Act (an ''Exchange'')[5] and traded in the secondary market in the same manner as other equity securities. Except when aggregated in Creation Units, iShares are not redeemable from the Companies. iShares are purchased and redeemed primarily on an ''in-kind'' basis: an investor purchasing a Creation Unit on an in-kind basis generally must deliver and an investor redeeming a Creation Unit on an in-kind basis generally will receive securities reflecting the names and weightings of the securities that comprise the Index Fund's portfolio.[6]

6. Applicants will make available an iShares product description (''Product Description'') for distribution in accordance with an Exchange rule requiring Exchange members and member organizations effecting transactions in iShares to deliver a Product Description to investors purchasing iShares. Applicants state that any other Exchange that applies for unlisted trading privileges in iShares will have to adopt a similar rule.[7] The

[1] *See* Foreign Fund, Inc., Investment Company Act Release No. 21803 (Mar. 5, 1996); WEBS Index Fund, Inc., Investment Company Act Release No. 23890 (July 6, 1999); Barclays Global Fund Advisors, Investment Company Act Release No. 24451 (May 12, 2000); Barclays Global Fund Advisors, Investment Company Act Release No. 24452 (May 12, 2000); iShares Trust, Investment Company Act Release No. 25111 (Aug. 15, 2001); iShares, Inc., Investment Company Act Release No. 25215 (Oct. 18, 2001).

[2] The Fixed Income Application, filed on January 2, 2001, by iShares Trust, Barclays Global Fund Advisors and SEI Distribution Co., relates to certain new series of iShares Trust that would track fixed income indices.

[3] Formerly ''Foreign Fund, Inc.'' and ''WEBS Index Fund, Inc.''

[4] Applicants state that persons purchasing Creation Units will be cautioned in each Index Fund's prospectus (''Prospectus'') that some activities on their part may, depending on the circumstances, result in their being deemed statutory underwriters and subject them to the prospectus delivery and liability provisions of the Securities Act. For example, a broker-dealer firm and/or its client may be deemed a statutory underwriter if it takes Creation Units after placing an order with the Distributor, breaks them down into the constituent iShares, and sells iShares directly to its customers; or if it chooses to couple the creation of a supply of new iShares with an active selling effort involving solicitation of secondary market demand for iShares. The Prospectus will state that whether a person is an underwriter depends upon all the facts and circumstances pertaining to that person's activities. The Prospectus also will state that broker-dealer firms should also note that dealers who are not ''underwriters'' but are participating in a distribution (as contrasted to ordinary secondary transactions), and thus dealing with iShares that are part of an ''unsold allotment'' within the meaning of section 4(3)(C) of the Securities Act, would be unable to take advantage of the prospectus delivery exemption provided by section 4(3) of the Securities Act.

[5] With two exceptions, the iShares of all Index Funds currently offered to the public are listed on the American Stock Exchange LLC. The iShares of the iShares S&P 100 Index Fund are listed on the Chicago Board Options Exchange, Inc., and the iShares of the iShares S&P Global 100 Index Fund are listed on The New York Stock Exchange, Inc.

[6] A Company also may effect redemptions for cash in certain circumstances.

[7] Applicants expect that the number of purchases of iShares in which an investor will not receive a Product Description will not constitute a significant portion of the market activity in iShares.

Product Description for an Index Fund will provide a plain English overview of the Index Fund, including its investment objective and investment strategies and the material risks and potential rewards of investing in the Index Fund. The Product Description also will provide a brief, plain English description of the salient aspects of the Index Fund's iShares. The Product Description will advise investors that a Prospectus and the Index Fund's Statement of Additional Information may be obtained, without charge, from the investor's broker or from the Distributor. The Product Description also will provide a website address (in most cases to a website maintained by the sponsor of the relevant Benchmark Index) where investors can obtain information about the composition and compilation methodology of an Index Fund's Benchmark Index.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act granting an exemption from section 24(d) of the Act. The requested order would amend the Prior Orders and provide relief to the Index Funds that are the subject of the Fixed Income Application.

2. Section 24(d) of the Act provides, in relevant part, that the prospectus delivery exemption provided to dealer transactions by section 4(3) of the Securities Act does not apply to any transaction in a redeemable security issued by an open-end investment company. Applicants request an exemption from section 24(d) to permit dealers selling iShares to rely on the prospectus delivery exemption provided by section 4(3) of the Securities Act.[8]

3. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction, or any class of persons, securities, or transactions, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that for the reasons discussed below the requested relief meets these standards.

4. Applicants state that iShares will be listed on an Exchange and will be traded in a manner similar to other equity securities, including the shares of closed-end investment companies. Applicants note that dealers selling shares of closed-end investment companies in the secondary market generally are not required to deliver a prospectus to the purchaser.

5. Applicants contend that iShares, as a listed security, merit a reduction in the compliance costs and regulatory burdens resulting from the imposition of prospectus delivery obligations in the secondary market. Because iShares will be exchange-listed, prospective investors will have access to several types of market information about iShares. Applicants state that information regarding market price and volume will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's price and volume information also will be published daily in the financial section of newspapers. In addition, the iShares Web site (*http://www.ishares.com*) includes quantitative information updated on a daily basis, including, for each Index Fund, daily trading volume, the previous business day's net asset value (''NAV'') and the reported closing price. The Web site will also include, for each Index Fund, a calculation of the premium or discount of the mid-point of the bid-ask spread at the time of calculation of the NAV (the ''Bid/Ask Price'') against NAV, and data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.[9] The iShares Web site also contains information with respect to the portfolio securities of each Index Fund, including their names, numbers of shares held by the Index Fund and the percentages of the Index Fund's portfolio, and reported closing prices of such securities.

6. Investors also will receive a Product Description describing the Index Fund and its iShares. Applicants state that, while not intended as a substitute for a prospectus, the Product Description will contain information about iShares that is tailored to meet the needs of investors purchasing iShares in the secondary market.

Applicants' Conditions

Prior Orders

Applicants agree that the order of the Commission would amend the Prior Orders to grant the requested relief and to replace the existing conditions with the following conditions:

1. Applicants will not register any Future Fund by means of filing a post-effective amendment to a Company's registration statement or by any other means, unless (a) applicants have requested and received with respect to such Future Fund, either exemptive relief from the Commission or a no-action letter from the Division of Investment Management of the Commission or (b) such Future Fund will be listed on an Exchange without the need for a filing pursuant to rule 19b–4 under the Exchange Act.

2. Each Index Fund's Prospectus and Product Description will clearly disclose that, for purposes of the Act, iShares are issued by the Index Fund and that the acquisition of iShares by investment companies is subject to the restrictions of section 12(d)(1) of the Act.

3. As long as a Company operates in reliance on the requested order, the individual iShares will be listed on an Exchange.

4. Neither of the Companies nor any Index Fund will be advertised or marketed as an open-end fund or a mutual fund. Each Index Fund's Prospectus will prominently disclose that iShares are not individually redeemable shares and will disclose that the owners of iShares may acquire those iShares from the Index Fund and tender those iShares for redemption to the Index Fund in Creation Units only. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that iShares are not individually redeemable and that owners of iShares may acquire those iShares from the Index Fund and tender those iShares for redemption to the Index Fund in Creation Units only.

5. Before an Index Fund may rely on the order, the Commission will have approved, pursuant to rule 19b-4 under the Exchange Act, an Exchange rule requiring Exchange members and member organizations effecting transactions in iShares to deliver a Product Description to purchasers of iShares.

6. The Web site(s) for the Companies, which is and will be publicly accessible

[8] Applicants do not seek relief from the prospectus delivery requirement for non-secondary market transactions, including purchases of Creation Units or those involving an underwriter.

[9] The Bid/Ask Price of an Index Fund is determined using the highest bid and the lowest offer on the Exchange on which the iShares are listed for trading. In the case of any Index Fund the NAV of which is determined after the close of the regular trading day on its listing Exchange, the ''Bid/Ask Price'' will be the mid-point of the bid/ask spread as of the close of regular trading on its listing Exchange, and in the case of any Index Fund the NAV of which is determined prior to the opening of the regular trading day on its listing Exchange, the ''Bid/Ask Price'' will be the mid-point of the bid/ask spread as of the opening of regular trading on its listing Exchange. Currently, four Index Funds calculate NAV at times outside the regular trading day on their listing Exchange (iShares MSCI Brazil Index Fund, iShares MSCI Malaysia Index Fund, iShares MSCI South Korea Index Fund, and iShares MSCI Taiwan Index Fund).

at no charge, will contain the following information, on a per iShare basis, for each Index Fund: (a) the prior business day's NAV and Bid/Ask Price, and a calculation of the premium or discount of such Bid/Ask Price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. In addition, the Product Description for each Index Fund will state that the website(s) for the Companies has information about the premiums and discounts at which the Index Fund's iShares have traded.

7. The Prospectus and annual report for each Index Fund will also include: (a) the information listed in condition 6(b), (i) in the case of the Prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable) and (ii) in the case of the annual report, for the immediately preceding five years, as applicable; and (b) the following data, calculated on a per iShare basis for one, five and ten year periods (or life of the Index Fund), (i) the cumulative total return and the average annual total return based on NAV and Bid/Ask Price, and (ii) the cumulative total return of the relevant Benchmark Index.

Fixed Income Index Funds

The applicants agree that the order granting the requested relief with respect to the Index Funds proposed in the Fixed Income Application will be subject to the following condition:

8. Before an Index Fund may rely on the order, the Commission will have approved, pursuant to rule 19b-4 under the Exchange Act, an Exchange rule requiring Exchange members and member organizations effecting transactions in iShares of such Index Fund to deliver a Product Description to purchasers of iShares.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–14008 Filed 6–4–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46001; File No. 4–429]

Joint Industry Plan; Order Granting Approval of Joint Amendments Nos. 2 and 3 to the Options Intermarket Linkage Plan Relating to Satisfaction of Trade-Throughs, the Procedures for Handling Multiple Principal Orders, Restrictions on Withdrawal, and an Implementation Timetable

May 30, 2002.

On November 20, 2001, November 21, 2001, December 10, 2001, December 10, 2001, and December 26, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx''), International Stock Exchange LLC (''ISE''), Chicago Board Options Exchange, Inc. (''CBOE''), Pacific Exchange, Inc. (''PCX''), and American Stock Exchange LLC (''AMEX'') (collectively, the ''Participants''), respectively, filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 11A(a)(3) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 11Aa3–2 thereunder,[2] an amendment (''Joint Amendment No. 2'') to the Options Intermarket Linkage Plan.[3] In addition, on April 5, 2002, April 9, 2002, April 15, 2002, April 15, 2002 and April 16, 2002, CBOE, ISE, Phlx, PCX, and Amex, respectively, filed with the Commission an additional amendment (''Joint Amendment No. 3'') to the Linkage Plan.

The proposed amendments to the Linkage Plan were published for comment in the **Federal Register** on April 30, 2002.[4] No comments were received on the proposal. This order approves the proposed amendments to the Linkage Plan.

I. Description of the Proposed Amendments

A. Proposed Joint Amendment No. 2

In Proposed Joint Amendment No. 2, the Participants propose changes to two provisions of the Linkage Plan to modify: (1) The manner in which a Participant displaying the best published quote may be compensated when its quote represents a customer order and another Participant executes an order for a listed option at a price inferior to the best-published quote displayed on that exchange (''intermarket trade-through''); and (2) the procedures for monitoring restrictions on how often orders for the account of market makers (''Principal Orders'') may be sent through the Linkage.

1. Satisfaction of Trade-Throughs

One of the main goals of the Linkage Plan is to limit the incidence of intermarket trade-throughs. As part of achieving this goal, the Linkage Plan provides that if a customer order is the best-published quote and a trade is executed at a worse price, the exchange representing that customer order may request compensation from the exchange that executed the trade-through.

Currently, the Linkage Plan requires that, to be compensated by another Participant, a Participant generally must lodge a complaint with that Participant within three minutes of the time that the transaction report was disseminated. The Linkage Plan requires that the complaint specify the number of customer contracts at the disseminated quotation that were traded-through. The Participant that traded through is then required to respond to the complaint, either by claiming an exception to liability [5] or by taking corrective action. If no exception to liability applies, the Participant initiating the trade-through may either: (1) Send a Satisfaction Order [6] to the Participant that sent the complaint; or (2) adjust the price of the trade to a price at which a trade-through would not have occurred.

The proposed amendment would simplify this procedure by combining the complaint and satisfaction process. Specifically, if a Participant identifies a trade-through by another exchange, that Participant would send a Satisfaction Order to the exchange that traded-through for the number of customer

[1] 15 U.S.C. 78k-1(a)(3).

[2] 17 CFR 240.11Aa3–2.

[3] On July 28, 2000, the Commission approved a national market system plan (''Linkage Plan'') for the purpose of creating and operating an intermarket options market linkage (''Linkage'') proposed by Amex, CBOE, and ISE. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, Phlx and PCX joined the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70850 (November 28, 2000) and 43574 (November 16, 2000), 65 FR 70851 (November 28, 2000). On June 27, 2001, the Commission approved an amendment to the Linkage Plan. *See* Securities Exchange Act Release No. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001).

[5] The exceptions to liability are set forth in § 8(c)(iii) of the Linkage Plan.

[6] A Satisfaction Order is currently defined in the Linkage Plan as an order for the principal account of a member who initiated a trade-through, sent through the linkage to satisfy the liability arising from that trade-through. section 2(16)(c) of the Linkage Plan. In Joint Proposed Amendment No. 2, the Participants propose to define a Satisfaction Order as an order sent through the linkage to notify a Participant of a trade-through and to seek satisfaction of liability arising from that trade-through. *See* Proposed amendments to § 2(16)(c) of the Linkage Plan.

contracts at the disseminated quotation. The exchange receiving the Satisfaction Order can: (1) Fill the order; (2) claim an exemption from liability; or (3) take other action currently permitted under the Linkage Plan (such as correcting the price of the transaction to a price that would not be a trade-through). Due to the uncertainty as to whether a Participant will receive an execution of the Satisfaction Order, the proposed amendment would permit the Participant that sent the Satisfaction Order to reject any execution it receives if the customer order(s) underlying the Satisfaction Order had been executed or canceled while the Satisfaction Order was pending.[7]

2. Sending Principal Orders Through the Linkage

Currently, the Linkage Plan provides that a market maker may send a Principal Order for automatic execution to another exchange for up to 10 contracts. If a market maker of a Participant sends such a Principal Order for automatic execution to another Participant, there are limits and prohibitions on any market maker from that Participant sending additional Principal Orders to the same exchange in the same options class. Specifically, subject to certain exceptions, a Participant cannot send another Principal Order for automatic execution for 15 seconds, and for the following 45 seconds it can only send Principal Orders larger than the automatic execution size.

The Participants propose to place the responsibility for monitoring compliance with these limitations on the receiving, not the sending, Participant. Specifically, proposed amended Section 7(a)(ii)(C) of the Linkage Plan states that if a Participant received a second Principal Order for automatic execution from a Participant within 15 seconds, it could reject such order. Similarly, for the next 45 seconds, the receiving Participant could deny automatic execution to any Principal Orders it receives from the same Participant. The same exceptions to these provisions contained in the current Linkage Plan would continue to apply.[8]

B. Proposed Joint Amendment No. 3

Proposed Joint Amendment No. 3 would substantively modify the Linkage Plan by: (1) Restricting Participants' withdrawal from the Linkage Plan; (2) incorporating a timetable for implementing the linkage; and (3) requiring each Participant to submit to the Commission a project plan for implementation and monthly status reports.[9]

1. Withdrawal from the Linkage Plan

Currently, a Participant is required to provide only 30 days written notice to the other Participants and the facilities manager to withdraw from the Linkage Plan. The proposed amendment would delete this provision and require, instead, that a Participant wishing to withdraw from the Linkage Plan effect an amendment to the Linkage Plan, which would be subject to Commission approval. The Participant would be required to state how it plans to accomplish, by alternate means, the goals of the Linkage Plan regarding limiting trade-throughs of prices on other exchanges trading the same options classes. A Participant would be permitted to propose such an amendment unilaterally, and approval of the other Participants would not be required.[10]

2. Implementation Timetable

The proposed amendment would incorporate into the Linkage Plan a specific implementation timetable. The Participants propose to implement the linkage in two phases: the first phase would be limited to those aspects of the Linkage Plan providing for automatic execution, and the second phase would implement all other linkage functionality. The proposal would require the Participants to begin full intermarket testing of phase 1 no later than December 1, 2002, and testing of phase 2 no later than March 1, 2003. The Participants would be required to implement phase 1 and phase 2 as soon as practical after successful testing, and no later than February 1, 2003 and April 30, 2003, respectively.[11]

3. Project Plan and Monthly Status Reports

Finally, proposed Joint Amendment No. 3 would require each Participant to provide the Commission with a detailed project plan and monthly status reports regarding implementation of such project plan.[12]

II. Discussion

After careful consideration, the Commission finds that the proposed Joint Amendments to the Linkage Plan are consistent with the requirements of the Act and the rules and regulations thereunder. Specifically, the Commission finds that the proposed Joint Amendments are consistent with section 11A of the Act,[13] and Rule 11Aa3–2 thereunder,[14] in that it is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system.

The Commission believes that the proposed streamlined procedures for achieving satisfaction of trade-throughs set forth in proposed Joint Amendment No. 2 should enable each Participant to more easily seek compensation on behalf of customer orders represented in the quote in circumstances in which it believes that a trade-through of that quote has occurred. In addition, the proposal to place the responsibility for monitoring the handling of multiple principal orders on the receiving, rather than the sending, Participant should address the Participants' technical concerns regarding implementation of this provision, without modifying the substance or intent of the provision.

The Commission further believes that the proposed restrictions on withdrawal from the Linkage Plan, proposed in Joint Amendment No. 3, will ensure that each of the Participants remains subject to the requirements of the Linkage Plan to avoid trading through better prices displayed on the other options markets, unless the Participant can demonstrate to the Commission's satisfaction that it can accomplish the same goal by an alternate means. Because each Participant would be required to obtain Commission approval before it could withdraw from the Linkage Plan, the Commission is assured of an opportunity to carefully consider the full implications of any such proposed withdrawal from the Linkage Plan.

Moreover, the proposed implementation timetable provides

[7] *See* Proposed amendments to the definitions of ''Satisfaction Order'' and ''Reference Price,'' and § 8(c) of the Linkage Plan.

[8] If there is a change of price in the receiving Participant's disseminated offer (bid) and such price continues to be at the NBBO, the receiving Participant may not reject a second order received from the same Participant within 15 seconds of the initial order; if there is a change of price in the receiving Participant's disseminated offer (bid), the receiving Participant may not reject a second order received from the same Participant after 15 seconds and within one minute of the initial order. *See* section 7(a)(ii)(C) of the Linkage Plan.

[9] Proposed Joint Amendment No. 3 also would conform two Linkage Plan provisions to Joint Amendment No. 2 by replacing references to trade-through complaints with references to Satisfaction Orders. *See* proposed Amendments to § 8(c) of the Linkage Plan.

[10] *See* Proposed section 4(d) of the Linkage Plan.

[11] *See* Proposed section 12(a) of the Linkage Plan.

[12] *See* Proposed section 12(b) of the Linkage Plan.

[13] 15 U.S.C. 78k-1.

[14] 17 CFR 240.11Aa3–2.

certainty regarding the dates by which an intermarket linkage in the options market will be available. Finally, the submission by the exchanges to the Commission of detailed project plans and monthly status reports will enhance the Commission's ability to continue monitoring the Participants' progress in achieving full implementation of the Linkage Plan within the established timetables.

Accordingly, *It is ordered,* pursuant to section 11A of the Act,[15] and Rule 11Aa3–2 thereunder,[16] that the proposed Joint Amendments No. 2 and 3 to the Options Intermarket Linkage Plan are approved.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–14011 Filed 6–4–02; 8:45 am]

BILLING CODE 8010–01–P

[15] 15 U.S.C. 78k-1.

[16] [16]: 17 CFR 240.11Aa3–2.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46003; File No. S7–17–00]

Order Granting Temporary Exemption for Broker-Dealers from the Trade-Through Disclosure Rule

May 30, 2002.

In July 2000, the Commission approved an intermarket linkage plan, in which all five options exchanges [1] are currently participants (''Linkage Plan'').[2] Also in July 2000, the Commission proposed, and in November 2000 adopted, Rule 11Ac1–7 (''Trade-Through Disclosure Rule'') under the Securities Exchange Act of 1934 (''Exchange Act'').[3]

The Trade-Through Disclosure Rule requires a broker-dealer to disclose to a customer when the customer's order for a listed option is executed at a price inferior to the best-published quote (''intermarket trade-through''), and to disclose the better published quote available at that time. However, a broker-dealer is not required to disclose to its customer an intermarket trade-through if the broker-dealer effects the transaction on an exchange that participates in an approved linkage plan that includes provisions reasonably designed to limit customers' orders from being executed at prices that trade through a better published price. In addition, broker-dealers are not required to provide the disclosure required by the rule if the customer's order is executed as part of a block trade. Once implemented, the Linkage Plan would reasonably limit intermarket trade-throughs on each of the options markets,[4] provided that the Options Exchanges remain participants in the Linkage Plan.[5] Under these circumstances, broker-dealers effecting transactions on options exchanges that participate in the Linkage Plan would be excepted from the disclosure requirements of the Trade-Through Disclosure Rule.

To date, the options exchanges have taken steps to implement the Linkage Plan. Specifically, the options exchanges have selected The Options Clearing Corporation (''OCC'') to be the linkage provider and have worked closely with OCC to develop the technical requirements related to the linkage's central core or ''hub'' to and from which all linkage orders would be routed. The Options Exchanges have informed the Commission that they are completing the process of evaluating their internal systems to determine the extent of modification necessary to integrate their systems into the central hub and beginning to modify those systems.

The Commission has twice extended the compliance date of the Trade-Through Disclosure Rule for broker-dealers, most recently until April 1, 2002, because of its reluctance to impose on broker-dealers the costs of complying with the disclosure requirements of the rule while the Options Exchanges are working to implement the Linkage Plan, which would render such disclosures unnecessary.[6]

In addition, on March 27, 2002, the Commission issued an Order temporarily exempting for 90 days broker-dealers from compliance with the Trade-Through Disclosure Rule.[7] At that time, the Commission stated that it would consider a further extension of the 90-day temporary exemption at the time it considered a proposal to repeal the Trade-Through Disclosure Rule, which it directed the staff to develop.[8] Today, the Commission has separately proposed a repeal of the Trade-Through Disclosure Rule.[9]

Today, the Commission also approved amendments to the Linkage Plan, proposed by the Options Exchanges on April 15, 2002, that permit an exchange to withdraw from participation in the Linkage Plan only if it can satisfy the Commission that it can accomplish, by alternative means, the same goals as the Linkage Plan of limiting intermarket trade-throughs of prices on other markets.[10] The amendment also requires the Options Exchanges to implement the linkage in two phases by specified dates.[11] As a result of the Commission's approval of the amendments to the Linkage Plan, the principal purpose of the Trade-Through Disclosure Rule '' to require customers'' orders to be executed on exchanges that participate in a linkage that limits intermarket trade-throughs or, in the alternative, to provide customers with additional information about the execution of their orders '' has been accomplished.

The Commission, therefore, believes it is appropriate in the public interest and consistent with the protection of investors at this time to temporarily

[1] The exchanges currently trading options are the American Stock Exchange (''Amex''), the Chicago Board Options Exchange (''CBOE''), the International Securities Exchange (''ISE''), the Pacific Exchange (''PCX''), and the Philadelphia Stock Exchange (''Phlx'') (collectively, ''Options Exchanges'').

[2] *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). The Linkage Plan approved by the Commission in July 2000 is the plan filed by the Amex, CBOE, and ISE. Subsequently, the PCX and Phlx joined the Linkage Plan. *See* Securities Exchange Act Release Nos. 43310 (September 20, 2000), 65 FR 58583 (September 29, 2000) (approving an amendment to the Linkage Plan adding the PCX as a participant); and 43311 (September 20, 2000), 65 FR 58584 (September 29, 2000) (approving an amendment to the Linkage Plan adding the Phlx as a participant).

[3] 17 CFR 240.11Ac1–7. *See also* Securities Exchange Act Release Nos. 43591 (November 17, 2000), 65 FR 75439 (December 1, 2000); and 43085 (July 28, 2000), 65 FR 47918 (August 4, 2000).

[4] The Commission approved an amendment to the previously-approved Linkage Plan that would permit broker-dealers executing orders on participating exchanges to satisfy the exception to the disclosure requirements of the Trade-Through Disclosure Rule. Securities Exchange Act Release No. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001).

[5] The Commission today is approving an amendment to the Linkage Plan proposed by the options exchanges that deletes the provision that permits any participant to withdraw after 30 days written notice and requires, instead, that a participant wishing to withdraw from the Linkage Plan must first satisfy the Commission that it can accomplish, by alternative means, the same goals as the Linkage Plan of limiting trade-throughs of prices on other markets. Securities Exchange Act Release No. 46001 (May 30, 2002).

[6] *See* Securities Exchange Act Release Nos. 44078 (March 15, 2001), 66 FR 15792 (March 21, 2001); and 44852 (September 26, 2001), 66 FR 50103 (October 2, 2001).

[7] Securities Exchange Act Release No. 45654 (March 27, 2002), 67 FR 15637 (April 2, 2002).

[8] *Id.*

[9] Securities Exchange Act Release No. 46002 (May 30, 2002).

[10] Securities Exchange Act Release No. 46001 (May 30, 2002).

[11] *Id.* The first phase will comprise those elements of the linkage that are necessary to send and receive orders required under the Linkage Plan to be automatically executed by the exchange receiving the order. The Options Exchanges will begin full intermarket testing of the first phase by December 1, 2002, and will implement this phase no later than February 1, 2003. The second phase will comprise the remaining elements of the linkage. The exchanges will begin testing of this second phase by March 1, 2003, and will implement this phase no later than April 30, 2003.

exempt until January 1, 2003 broker-dealers from the requirements of the Trade-Through Disclosure Rule while the Commission receives and considers comments on the proposed repeal of the Trade-Through Disclosure Rule.

Accordingly, *It is ordered*, pursuant to section 36 of the Act,[12] that broker-dealers are exempt from compliance with the Trade-Through Disclosure Rule until January 1, 2003.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–14012 Filed 6–4–02; 8:45 am]

BILLING CODE 8010–01–P

[12] 15 U.S.C. 78mm.

SELECTIVE SERVICE SYSTEM

Solicitation of Public Comments on Agency Information Quality Guidelines for Ensuring Information Quality

AGENCY: Selective Service System.

ACTION: Notice; request for public comment.

These are the Information Quality Guidelines required by the Office of Management and Budget (OMB) in implementing section 515(a) of the Treasury and Government Appropriations Act for Fiscal Year 2001, Public Law 106–554, section 515, 114 Stat. 2763, 2763A–153 (2000), reprinted at 44 U.S.C.A. 3516 Historical and Statutory Notes (''Data Quality Act'').

I. Background

1. The Data Quality Act requires the development of government-wide standards on the quality of governmental information disseminated to the public. It directs the Director of OMB to issue guidelines under the Paperwork Reduction Act (PRA), 44 U.S.C. 3504(d)(1) and 3516, providing guidance to Federal agencies ''for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies in fulfillment of the provisions of [the PRA].'' The Data Quality Act states that OMB guidelines shall apply to sharing by agencies of and access to information disseminated by agencies (section 515(b)(1)); requires agencies to issue their own guidelines (section 515(b)(2)(A)); and requires agencies to establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by an agency that does not comply with OMB guidelines (section 515(b)(2)(B)). Finally, the statute requires periodic reports by agencies to OMB concerning the number of complaints filed and how the complaints were handled (section 515(b)(2)(C)).

2. OMB's guidelines implementing the Data Quality Act require each agency to publish in the **Federal Register** a notice of the availability of the agency's draft information quality guidelines. After considering public comment, agencies are required to provide OMB with appropriately revised draft guidelines by July 1, 2002. Finally, by October 1, 2002, agencies must publish in the **Federal Register** a notice that the agency's final guidelines are available on the Internet. In accordance with these requirements, the Selective Service System (hereafter identified as the SSS) makes available its Draft Information Quality Guidelines, set forth in Appendix A, for public review and comment between June 1, 2002 to June 28, 2002.

II. Summary of the Proposed Guidelines

1. SSS' draft guidelines substantially follow the provisions of the *OMB Guidelines.* First, the *OMB Guidelines* interpret many key statutory terms, such as ''information,'' ''disseminate,'' ''quality,'' ''objectivity,'' ''utility,'' and ''integrity.''

2. SSS also proposes procedures for reviewing and substantiating the quality, objectivity, utility, and integrity of information before it is disseminated by the SSS. SSS seeks comment on whether any variations may be necessary because of the nature of the SSS' practice and procedures.

3. The Data Quality Act and *OMB Guidelines* require that SSS establishes an administrative mechanism to allow affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with the OMB or SSS guidelines. SSS' proposal provides that initial complaints are to be filed with a central office in the SSS that assigns the complaint to the Office where the information dissemination product in question originated. The Data Quality Act permits only ''affected persons'' to file complaints. SSS therefore proposes requiring that an information quality complaint contain a description of how a person is affected by the information dissemination product alleged to violate OMB or SSS guidelines.

4. The *OMB Guidelines* require that agencies set time limits for action on complaints. SSS proposes that the relevant Office should respond to initial complaints within 60 days. As provided in the *OMB Guidelines,* the Office handling the initial complaint will respond in a manner appropriate to the nature and extent of the complaint. Inconsequential, trivial, or frivolous complaints may require no response at all. SSS may also reject complaints made in bad faith or without justification. SSS proposes that if a complaint requires corrective action, the appropriate level of correction shall occur within 60 days of the decision on the complaint. The *OMB Guidelines* require that persons who do not agree with the initial decision be afforded the opportunity to seek administrative review of that decision. The proposed procedures provide that applications for review should be presented to the Selective Service System for determination. SSS' proposed procedures provide that action on applications for review should occur within 120 days. Where warranted, the SSS may deny applications for review without providing reasons. SSS seeks comment on the proposed procedures.

III. Procedural Matters and Ordering Paragraphs

1. *Comment Filing.* The *OMB Guidelines* require that upon consideration of public comments and after appropriate revision, SSS must submit a draft of final agency guidelines to OMB by July 1, 2002. Interested parties may file written comments on or before June 28, 2002.

2. Parties interested in commenting on these Draft Information Quality Guidelines must submit written comments on or before June 28, 2002. Hand-delivered or messenger-delivered comments, including comments sent by mail must be addressed to Selective Service System, Office of Public and Congressional Affairs, 1515 Wilson Blvd., Arlington, Virginia, 22209–2425. This location is open 8 a.m. to 5:30 p.m.

3. Parties wishing to submit written comments by electronic mail should address them to Information@sss.gov with a subject line that notes that this electronic communication contains comments on the SSS's Draft Information Quality Guidelines.

4. All relevant and timely comments will be considered before these guidelines are finalized.

5. *Ex Parte.* This proceeding is deemed exempt for purposes of the ex parte rules.

6. *Further Information.* For further information, contact the Selective Service System, Office of Public & Congressional Affairs, 1515 Wilson Blvd., Arlington, Virginia, 22209–2425 or by e-mail to Information@sss.gov.

Appendix A

Draft Information Quality Guidelines

I. Purpose and Scope

1. The Selective Service System (hereafter identified as the SSS) is publishing these guidelines to ensure and maximize the quality, objectivity, utility, and integrity of specific types of information it disseminates, as required by section 515(a) of the Treasury and Government Appropriations Act for Fiscal Year 2001, Public Law 106–554, sec. 515, 114 Stat. 2763, 2763A–153 (2000), reprinted at 44 U.S.C.A. 3516 Historical and Statutory Notes (''Data Quality Act'').

2. The purpose of this Appendix is to describe the SSS' policy and procedures for reviewing and substantiating the quality of information before it is disseminated to the public, and to describe the SSS' administrative mechanisms allowing affected persons to seek and obtain, where appropriate, correction of information disseminated that does not comply with the Office of Management and Budget (OMB) Guidelines, *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies,* 66 FR 49718 (Sept. 28, 2001) (interim final guidelines), and 67 FR 369 (Jan. 3, 2002) (final guidelines), corrected, 67 FR 5365 (Feb. 5, 2002), reprinted correcting errors, 67 FR 8452 (Feb. 22, 2002), or the SSS' final Information Quality Guidelines, which will be issued October 1, 2002.

3. These guidelines apply only to information disseminated by the SSS as defined in these guidelines. Other information distributed by the SSS that is not addressed by these guidelines may be subject to other SSS policies and correction procedures.

4. This document provides guidance to SSS staff and informs the public of the SSS' policies and procedures. These guidelines are not rules or regulations. They are not legally enforceable and do not create any legal rights or impose any legally binding requirements or obligations on the SSS or the public. Nothing in these guidelines affects any otherwise available judicial review of SSS action. These guidelines may not apply to a particular situation based on the circumstances, and the SSS retains discretion to adopt approaches on a case-by-case basis that differ from the guidelines where appropriate. Any decisions regarding a particular case, matter or action will be made based on applicable statutes, regulations and requirements. Interested parties are free to raise questions and objections regarding the substance of the guidelines and the appropriateness of using them in a particular situation. The SSS will consider whether or not the guidelines are appropriate in that situation. Factors such as imminent threats to public health or homeland security, statutory or court-ordered deadlines, or other time constraints, may limit or preclude applicability of these guidelines.

II. Definitions

For purposes of these guidelines, the following definitions apply:

1. Affected person means anyone (including a group, organization or corporation as defined in the Paperwork Reduction Act) who may benefit or be harmed by the publicly disseminated information, including those who are seeking to correct information about themselves and those who use the information.

2. Complaint refers to a written communication to the SSS that includes enough information so that the SSS can readily determine the specific information dissemination product the complaining party believes needs correcting, how the complaining party is affected by the information dissemination product sought to be corrected, the sections of these guidelines or the *OMB Guidelines* the complaining party believes have not been followed, what resolution the complaining party would like, and how to get in contact with the comment writer.

3. Data are the basic or underlying elements of information. All information dissemination products covered by these guidelines are based upon data. Additionally, covered information dissemination products may contain analysis of the data and conclusions drawn from this analysis.

4. Dissemination means SSS-initiated or sponsored distribution of information to the public. Dissemination does not include distribution limited to government employees or agency contractors or grantees; intra- or inter-agency use or sharing of government information; responses to requests for agency records under the Freedom of Information Act, the Privacy Act, or other similar laws; correspondence with individuals or persons; archival records; press releases and other non-scientific/non-statistical general, procedural, or organizational information; and public filings, subpoenas, or adjudicative processes.

5. Influential, when used in the phrase ''influential scientific, financial, or statistical information,'' means that the SSS can reasonably determine that dissemination of the information will have or does have a clear and substantial impact on important public policies or important private sector decisions.

6. Information means any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms. This definition includes information disseminated from an Internet page, but does not include the provision of hyperlinks to information that others disseminate. This definition does not include opinions where the presentation makes it clear that what is being offered is someone's opinion rather than an official view.

7. Information dissemination product means any book, paper, map, machine-readable material, audiovisual production, or other documentary material regardless of physical form or characteristic that is covered by these guidelines and disseminated to the public as an expression of an official SSS position. This definition can include electronic documents, CD–ROMs, or web pages.

8. Integrity refers to the security of information—protection of the information from unauthorized access or revision to ensure that the information is not compromised through corruption or falsification.

9. Non-scientific/non-statistical general, procedural, or organizational information includes but is not limited to:

a. Press releases
b. Fact sheets and brochures
c. Speeches/Remarks/Presentations and their accompanying visual materials
d. Listings of:
  i. Licensees, registrations, fees paid
  ii. Phone directories
  iii. Job openings
  iv. Transcriptions or minutes (video, audio, or print) of meetings
  v. Glossaries
  vi. Links to non-SSS sites
  vii. Standards
  viii. FAQ's
e. Organizational descriptions
  i. Organization charts
  ii. Budget submittals
  iii. Strategic and performance plans
  iv. Descriptions of laws, regulations, rules that underpin SSS activities
  v. Biographies
f. Applications, standards, and help products
g. Forms (for printing or on-line filing)
h. Database search results
i. How-to-file materials
j. Fee information
k. Electronic comment filings

10. Objectivity involves two distinct elements, presentation and substance. In a substantive sense objectivity means that, where appropriate, data should have full, accurate, transparent documentation; and error sources affecting data quality should be identified and disclosed to users. In a scientific, financial, or statistical context, substantive objectivity means that the original and supporting data shall be generated, and the analytic results shall be developed, using sound statistical and research methods. Presentational objectivity involves a focus on ensuring clarity, accuracy, completeness, and reliability.

11. Quality is a term encompassing utility, objectivity, and integrity. Therefore, the guidelines sometimes refer to these statutory terms, collectively, as ''quality.''

12. Reproducibility means that the information is capable of being substantially reproduced, subject to an acceptable degree of imprecision. For information judged to have more influence or important impact, the degree of imprecision that is tolerated is reduced. With respect to analytic results, ''capable of being substantially reproduced'' means that independent analysis of the original or supporting data using identical methods would generate similar analytic results, subject to an acceptable degree of imprecision or error.

13. Transparency refers to practices of describing the data and methods used in developing an information dissemination product in a way that it would be possible for an independent re-analysis to occur by a qualified individual or organization. Transparency does not require that information be disclosed where disclosure would result in harm to other compelling interests such as privacy, trade secrets,

intellectual property, confidentiality protections, or public safety.

14. Utility refers to the usefulness of the information to its intended users, including the public. In assessing the usefulness of information that the SSS disseminates to the public, the SSS will consider the uses of the information not only from the perspective of the SSS but also from the perspective of the public.

III. Pre-Dissemination Information Review and Substantiation Process

1. Beginning October 1, 2002, the following process will apply to information dissemination products distributed by the SSS to ensure and maximize the quality, objectivity, utility, and integrity of the information. The information dissemination products covered by these guidelines include reports prepared for Congress or required by legislation, such as the annual reports of services.

2. Information exempt from these guidelines includes information associated with public filings, subpoenas, or adjudicative processes; non-scientific/non-statistical general, procedural, or organizational information; information that is not initiated or sponsored by the SSS; information that expresses personal opinions rather than formal agency views; information for the primary use of federal employees (inter- or intra-agency), contractors, or grantees; responses to requests made under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act, or similar laws; agency correspondence; archival records; trade secrets, intellectual property, confidential data or information; and non-routine or emergency public safety information.

3. For each information dissemination product covered by these guidelines every Office shall conduct a pre-dissemination review using the standards below:

A. Quality will be demonstrated through the incorporation of a methodological section or appendix that describes, at a minimum, the design and methods used during the creation, collection, and processing of the data; the compilation and/or analysis of the data; and the pre-release review of the information dissemination product for clarity, completeness, accuracy, and reliability.

B. Objectivity will be demonstrated by including in the information dissemination product's methodology section or appendix a discussion of other scientifically, financially, or statistically responsible and reliable alternative views and perspectives, if these alternative views or perspectives are not already noted in other sections of the information dissemination product.

C. Utility will be demonstrated by the responsible Office incorporating into the methodology section or appendix examples of the use of the information dissemination product. These examples could include, but are not limited to, listing of the legislation requiring the information dissemination product or the specific request for the information dissemination product.

D. Integrity is demonstrated by the SSS' routine, day-to-day compliance across all operations and processes with relevant data protection and security sections of applicable statues and regulations and therefore does not have to be specifically addressed in information dissemination products covered by these guidelines.

IV. The Complaint and Appeals Process

1. Filing a Complaint

A. Affected persons may seek timely correction of information dissemination products maintained and distributed by the SSS that do not comply with the SSS' or OMB's guidelines by completing the Data Quality Comment form that will be found, beginning October 1, 2002, at *http://www.sss.gov/dataquality.* This form can be submitted electronically by clicking on the link found at the end of the form, or by printing a copy and mailing it to the Selective Service System, 1515 Wilson Blvd., Arlington, Virginia, 22209–2425.

B. Initial Correction Request.

(1) Any person affected by the information SSS publicly disseminates, as intended by Section 515, may request the timely correction of that information.

(2) Any ''affected person'' may submit a timely request for correction to the Office of the Director of SSS, who will direct the request to the appropriate Directorate Head for consideration.

(3) The request for correction under Section 515 and these guidelines must—

a. Be in writing;

b. Clearly explain how the person is an ''affected person,'' as defined by these guidelines;

c. Clearly identify the information dissemination product;

d. Clearly identify the information within that product alleged to be incorrect;

e. Suggest and explain appropriate corrective action, including the justifications for the changes or other remedial actions being sought;

f. Identify the comment writer and how to contact him or her; and

g. Be clearly marked ''Information Correction Request'' and addressed to: Selective Service System,1515 Wilson Blvd., Arlington, Virginia, 22209–2425. The request can also be emailed to *Information@sss.gov.*

(4) If the information disseminated by SSS and contested by an affected person was previously disseminated by another Federal agency in virtually identical form, then the complaint should be directed to the originating agency.

(5) Once an Information Correction Request has been received, it is SSS' intention for the Office Director (OD) to respond within 60 days, beginning at the time of SSS receipt. The OD may extend the response period for an additional 30 days if: The OD determines an extension is appropriate, and promptly provides the requestor the reasons why more time is needed. Such reasons may include the need to review multiple records encompassed by a single request, or the need to consult with other Federal agencies that have a substantial interest in the information at issue and the change being sought.

(6) Once received, the OD shall initially determine whether the request meets threshold requirements for standing, such as whether the request:

a. Is timely;

b. Is from an ''affected person,'' as defined in these guidelines;

c. Is appropriately directed to SSS;

d. Alleges errors in information subject to correction (i.e., implicates ''information'' as defined in these guidelines); or

e. Reasonably describes:

(1) The information source,

(2) The information alleged to be incorrect; and

(3) A suggested remedy, including justifications for the remedy being sought.

f. Contains information from the comment writer to facilitate his or her contact for response.

(7) If the OD determines the request does not satisfy one or more of the threshold requirements for standing, the OD will respond to the requester explaining why the request was deficient. If the request was deficient due to an insufficient description of the disseminated information source or the information alleged to be incorrect, as a matter of discretion the OD may advise the requester what additional clarification is required and provide a reasonable time for a proper clarification to be submitted. Otherwise, the OD shall determine whether the request for correction has merit, as well as the type of remedy that is most appropriate for the alleged error at issue, if proven. Given the multiple types of information that may be involved, as well as the wide range in possible levels of the information's importance, a great variety of remedies may be appropriate. The OD has discretion to implement the requester's suggested remedy, or to choose another remedy the OD deems most appropriate in the given circumstances. The OD will respond to the affected person with an explanation of the decisions that were made on both the error at issue and the remedy, if any, selected to address it.

2. Complaint Resolution

A. A determination will be made within 60 days of receipt of the complaint on whether correction is warranted.

B. The decision on appropriate corrective action will be based upon the nature and timeliness of the information dissemination product involved and such factors as the significance of the correction on the use of the information dissemination product and the magnitude of the correction. Inconsequential, trivial, or frivolous complaints may require no response at all. If corrective action is warranted, the correction will occur within 60 days of this notification to the complaining party.

C. If a correction is warranted, the appropriate Office handling the complaint will respond to the complaint in a manner appropriate to the nature and extent of the complaint. Examples of appropriate responses include personal contacts via letter or telephone, form letters, errata notices, press releases, or mass mailings that correct a widely disseminated error or address a frequently raised complaint.

3. Right To Appeal

If the person who requested correction does not agree with the initial decision (including corrective action, if any), the

person may file an application for review by the SSS within 30 days of the date of the notification of action on the complaint or the corrective action. Applications for review must be submitted in writing to the SSS, Office of the Director, 1515 Wilson Blvd., Arlington, Virginia, 22209–2425. E-mail copies of the written appeal may be sent, beginning October 1, 2002, to *Information@sss.gov.*

A. The written appeal must include a copy of the original complaint and the response thereto, and an explanation of how the initial resolution of the complaint or the corrective action was contrary to the SSS' or OMB's information quality guidelines.

B. Applications for review will be resolved within 120 days. The SSS, in appropriate cases, may deny an application for review without providing reasons.

V. Reporting Requirements

1. On an annual fiscal-year basis, the SSS shall submit a report to the Director of OMB providing information (both quantitative and qualitative, where appropriate) on the number and nature of complaints received regarding compliance with OMB guidelines, and how such complaints were resolved.

2. The report shall be submitted no later than January 1 of each following year.

3. The first report shall be submitted by January 1, 2004.

VI. Effective Dates

1. Pre-dissemination review under section III, above, shall apply to information dissemination products that the SSS first disseminates on or after October 1, 2002.

2. The administrative mechanisms noted in section IV shall apply only to information dissemination products that the SSS disseminates on or after October 1, 2002, regardless of when the SSS first disseminated the information.

Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies, 66 FR 49718 (Sept. 28, 2001) (interim final guidelines), and 67 FR 369 (Jan. 3, 2002) (final guidelines), *corrected,* 67 FR 5365 (Feb. 5, 2002), *reprinted correcting errors,* 67 FR 8452 (Feb. 22, 2002) (collectively referred to as ''*OMB Guidelines*'').

Dated: May 30, 2002.

Norman W. Miller,

Chief Information Officer.

[FR Doc. 02–14029 Filed 6–4–02; 8:45 am]

BILLING CODE 8015–01–P

DEPARTMENT OF STATE

[Public Notice 3987]

United States International Telecommunication Advisory Committee Telecommunication Advisory Committee Radiocommunication Sector (ITAC–R); Notice of Meeting

The Department of State announces a meeting of the National Committee of the Radiocommunications Sector of the U.S. International Telecommunication Advisory Committee. The purpose of the Committee is to advise the Department on policy and technical issues with respect to the International Telecommunication Union (ITU). This meeting will address ongoing activities of the Study Groups in the Radiocommunications Sector, preparations for the upcoming WRC–03 and guidelines for ITAC–R participation.

- The ITAC R will meet from 1:30 to 3:30 on June 21, 2002 at the Department of State in Room 1408.

Persons intending to attend the meeting should send a fax to (202) 647–7407 not later than 24 hours before the meeting. On this fax, please include the name of the meeting, your name, social security number, date of birth and organization. One of the following valid photo identifications will be required for admittance: U.S. driver's license with your picture on it, U.S. passport, or U.S. Government identification (company ID's are no longer accepted by Diplomatic Security). Directions to the meeting location and on which entrance to use may be determined by calling the ITAC Secretariat at 202 647–2592 or e-mail to *worsleydm@state.gov.* Attendees may join in the discussions, subject to the instructions of the Chair. Admission of participants will be limited to seating available.

Dated: May 24, 2002.

Cecily Holiday,

Director, ITU–R Affairs, Department of State.

[FR Doc. 02–14064 Filed 6–4–02; 8:45 am]

BILLING CODE 4710–45–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Procedures for Consideration of New Requests for Exclusion of Particular Products From Actions With Regard to Certain Steel Products Under Section 203 of the Trade Act of 1974, as Established in Presidential Proclamation 7529 of March 5, 2002

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Presidential Proclamation 7529 of March 5, 2002 established actions under section 203 of the Trade Act of 1974, as amended, (19 U.S.C. 2253) (safeguard measures) with regard to certain steel products, and authorized the United States Trade Representative (USTR) to further consider requests for exclusion of particular products from the safeguard measure that had been submitted in accordance with a **Federal Register** notice published on October 26, 2001 (66 FR 54321). In a notice published on April 18, 2002 (67 FR 19307), USTR established procedures for further consideration of such requests and provided that, to the extent possible, it would consider new exclusion requests submitted after the time period specified in the notice of October 26, 2001. It asked interested persons requesting new exclusion requests to submit such requests by May 20, 2002. Subsequently, in a **Federal Register** notice published on May 21, 2002, (67 FR 35852), USTR indicated that it would announce a date for submitting objections to those new exclusion requests submitted by May 20, 2002. The process for submitting objections is described below.

DATES: For exclusion requests submitted on May 20, 2002, and posted on the USTR Web site on June 5, submit completed objector's questionnaires by 5:00 p.m. on June 19, 2002. For exclusion requests posted on subsequent dates, a date and time for submission of the objector's questionnaires will be posted on the USTR Web site.

FOR FURTHER INFORMATION CONTACT: Office of Industry, Office of the United States Trade Representative, 600 17th Street, NW, Room 501, Washington DC 20508. Telephone (202) 395–5656.

SUPPLEMENTARY INFORMATION: On October 22, 2001, the U.S. International Trade Commission (ITC) issued affirmative determinations under section 202(b) of the Trade Act (22 U.S.C. 2252(b)) that (1) carbon and alloy steel slabs, plate (including cut-to-length plate and clad plate), hot-rolled sheet and strip (including plate in coils), cold-rolled sheet and strip (other than grain-oriented electrical steel), and corrosion-resistant and other coated sheet and strip; (2) carbon and alloy hot-rolled bar and light shapes; (3) carbon and alloy cold-finished bar; (4) rebar; (5) carbon and alloy welded tubular products (other than oil country tubular goods); (6) carbon and alloy flanges, fittings, and tool joints; (7) stainless steel bar and light shapes; and (8)

stainless steel rod are being imported in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industries producing those products. The Commissioners voting were equally divided with respect to the determination under section 202(b) of the Trade Act as to whether increased imports of (9) carbon and alloy tin mill products; (10) tool steel, all forms; (11) stainless steel wire; and (12) stainless steel flanges and fittings are being imported in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industries producing those products.

On March 5, 2002, the President issued Proclamation 7529, which established safeguard measures in the form of increases in duty and a tariff-rate quota pursuant to section 203 of the Trade Act on imports of the ten steel products described in paragraph 7 of that proclamation. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m., EST, on March 20, 2002, Proclamation 7529 modified the HTS so as to provide for such increased duties and a tariff-rate quota. Proclamation 7529 also authorized the USTR to further consider requests for the exclusion of particular products and, upon publication in the **Federal Register** of his finding that a particular product should be excluded, to modify the HTS provisions created by the Annex to that proclamation to exclude such particular product from the pertinent safeguard measure.

On April 18, 2002, USTR published a notice in the **Federal Register** informing interested persons that, to the extent possible, USTR would consider new requests for exclusion of products. It asked interested persons requesting the exclusion of such a product to respond to an exclusion requester's questionnaire by May 20, 2002, and indicated that procedures for submitting such additional requests for exclusion would be announced in a subsequent **Federal Register** notice.

USTR posted procedures for requesting new exclusions on its Web site, along with a new requester's questionnaire, and instructed interested persons to submit any requests by May 20, 2002. In a **Federal Register** notice published on May 21, 2002 (67 FR 35842), USTR indicated that interested persons objecting to these new exclusion requests should submit a new objector's questionnaire by a date to be announced later. We will post short descriptions of the products covered by the new exclusion requests on the USTR Web site, *www.ustr.gov*, in groups. The first group will be posted by June 5, 2002. Any interested person wishing to object to the exclusion of a product in this group, or otherwise comment on the product descriptions, should do so by 5:00 p.m. on June 19. Additional groups will be subsequently posted on the USTR Web site, along with an indication of the date and time for submission of objector's questionnaires.

Each request will be evaluated on a case-by-case basis. USTR will grant only those exclusions that do not undermine the objectives of the safeguard measures. In analyzing the requests, USTR will consider whether the product is currently being produced in the United States, whether substitution of the product is possible, whether qualification requirements affect the requester's ability to use domestic products, inventories, whether the requested product is under development by a U.S. producer who will imminently be able to produce it in commercial quantities and any other relevant factors. Where necessary, USTR and/or the Commerce Department will meet with interested persons to discuss the information that was submitted and/or to gain additional information.

Every effort will be made to process requests as soon as possible consistent with the availability of resources and the quality of information that is received.

Interested persons should follow the instructions posted on the USTR and Commerce Department Web sites at *http://ia.ita.doc.gov/steel/exclusion/*. Failure to follow the instructions posted there may result in rejection of the questionnaire submission.

We strongly discourage the submission of business confidential information. Any questionnaire response that contains business confidential information must be accompanied by six copies of a public summary that does not contain business confidential information, and a diskette containing an electronic version of the public summary. Any paper submission and diskette containing business confidential information must be clearly marked ''Business Confidential'' at the top and bottom of the cover page (or letter) and each succeeding page of the submission, and on the label of the diskette. The version that does not contain business confidential information should also be clearly marked, at the top and bottom of each page, ''public version'' or ''nonconfidential,'' and on the label of the diskette.

Paperwork Reduction Act

This notice contains a collection of information provision subject to the Paperwork Reduction Act (PRA) that the Office of Management and Budget (OMB) has approved. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB number. This notice's collection of information burden is only for those persons who wish voluntarily to object to a request for the exclusion of a product from the safeguard measures. USTR has submitted the new objector's questionnaire to OMB for approval under the Paperwork Reduction Act. It is expected that the collection of information burden will be no more than 11 hours per questionnaire and we estimate the submission of approximately 800 questionnaires. This collection of information contains no annual reporting or record keeping burden. Please send comments regarding the collection of information burden or any other aspect of the information collection to USTR at the address above.

Robert B. Zoellick,

United States Trade Representative.

[FR Doc. 02–14232 Filed 6–3–02; 2:41 pm]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2002–12375]

National Boating Safety Advisory Council; Vacancies

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the National Boating Safety Advisory Council (NBSAC). NBSAC advises the Coast Guard on matters related to recreational boating safety.

DATES: Application forms should reach us on or before September 10, 2002.

ADDRESSES: You may request an application form by writing to Commandant, Office of Boating Safety (G–OPB–1), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001; by calling 202–267–1077; or by faxing 202–267–4285. Send your application in written form to the above street address. This notice and the

application form are available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Bruce H. Schmidt, Executive Director of NBSAC, telephone 202–267–0955, fax 202–267–4285.

SUPPLEMENTARY INFORMATION: The National Boating Safety Advisory Council (NBSAC) is a Federal advisory committee under 5 U.S.C. App. 2. It advises the Coast Guard regarding regulations and other major boating safety matters. NBSAC members are drawn equally from the following three sectors of the boating community: State officials responsible for State boating safety programs, recreational boat and associated equipment manufacturers, and national recreational boating organizations and the general public. Members are appointed by the Secretary of Transportation.

NBSAC normally meets twice each year at a location selected by the Coast Guard. When attending meetings of the Council, members are provided travel expenses and per diem.

We will consider applications for the following six positions that expire or become vacant in December 2002: Two representatives of State officials responsible for State boating safety programs, two representatives of recreational boat and associated equipment manufacturers, and two representatives of national recreational boating organizations. Applicants are considered for membership on the basis of their particular expertise, knowledge, and experience in recreational boating safety. Each member serves for a term of 3 years. Some members may serve consecutive terms.

In support of the policy of the Department of Transportation on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply.

If you are selected as a member who represents the general public, we will require you to complete a Confidential Financial Disclosure Report (OGE Form 450). We may not release the report or the information in it to the public, except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a).

Dated: May 30, 2002.

Kenneth T. Venuto,

Rear Admiral, U.S. Coast Guard, Director of Operations Policy.

[FR Doc. 02–14053 Filed 6–4–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Twin Cities and Western Railroad Company

[Docket Number FRA–2002–12113]

The Twin Cities and Western Railroad Company (TC&W) seeks relief for a temporary test waiver of compliance from Control Circuits requirements of the *Grade Crossing Signal System Safety Standards,* 49 CFR part 234, section 234.203, which requires that all control circuits that affect the safe operation of a highway-rail grade crossing warning system shall operate on the fail-safe principle. The waiver request is to permit TC&W and its project partners to develop, test and implement technology designed to activate highway-rail grade crossing warning devices. The fail-safe principle requires that such circuits shall operate so that the failure of any part or component shall cause the warning system to activate.

The application section of 234.203 states that a crossing warning system activated by means other than train detection track circuit may not comply with this section. TC&W contents that the system under development is designed to meet the spirit and intent of the fail-safe principle through a means other than track circuit based train detection, and the system operation is being examined in every mode of failure. The designed system will operate so that the failure of any part or component shall cause the warning system to activate or warn the train crew so that the train can be stopped before reaching the crossing. TC&W indicates the ability of the system to warn the train crew of a crossing failure is made possible by redundant radio based technology. TC&W states they fully intends to comply with the fail-safe intent of 234.203 and will provide regulatory authorities the opportunity to review the system, its design and test results, in order to determine if the fail-safe principle has been met.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2002–12113) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, DC, 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

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

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–14051 Filed 6–4–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket Number: FRA–2002–12176.

Applicant: CSX Transportation, Incorporated, Mr. Eric G. Peterson, Assistant Chief Engineer, Signal Design and Construction, 4901 Belfort Road, Suite 130 (S/C J–370), Jacksonville, Florida 32256.

CSX Transportation, Incorporated seeks approval of the proposed modification of the signal systems on the two main tracks between Barney Street, milepost BAM0.0 and Leadenhall, milepost BAM0.5, on the Baltimore Service Lane, Baltimore Terminal Subdivision, near, Baltimore, Maryland, consisting of the discontinuance of the present traffic control system (TCS) Rules 265–272 and Yard Limit Rule 93 which are in effect, and establish the sole method of operation as Rule 105 (Other than main track) and Rule 46 (Operating Speeds on other than main tracks).

The reason given for the proposed changes is that present day operation does not warrant retention of the TCS.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, S.W., Washington, D.C. 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

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

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and, Program Development.

[FR Doc. 02–14048 Filed 6–4–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket Number: FRA–2002–12177.

Applicant: CSX Transportation, Incorporated, Mr. Eric G. Peterson, Assistant Chief Engineer, Signal Design and Construction, 4901 Belfort Road, Suite 130 (S/C J–370), Jacksonville, Florida 32256.

CSX Transportation, Incorporated (CSX) seeks relief from the requirements of the Rules, Standard and Instructions, Title 49 CFR, Part 236, Section 236.312, to the extent that CSX not be required to install bridge locking devices at either end of Bridge 407, milepost BIF 40.7, on the single main track near Joliet, Illinois, on the Chicago Division, New Rock Subdivision, Western Region.

Applicant's justification for relief: The end locking devices have not been in place since the late 1960's. The movable bridge is a vertical lift span type, and has been field checked and is in balance; there has been no inclination for the bridge to rise from the seated position or not seat fully when lowered. The present functional signal controls checks the vertical position of the rail when the bridge is lowered and will not permit a signal for train movements if the rail position is not verified. The 298 foot lift span bridge is tended while trains pass and the maximum authorized speed is 10 mph. The bridge has no tendency to rise from the seated position while carrying train load, and the when the bridge is in the seated position, the mechanical motor brakes are applied, preventing the bridge from raising while engaged.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

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

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and, Program Development.

[FR Doc. 02–14052 Filed 6–4–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From Requirements

Pursuant to title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket Number: FRA–2002–12267.

Applicant: Kansas City Southern Railway, Mr. Vernon A. Jones, Signal Engineer, 4601 Blanchard Highway, Shreveport, Louisiana 71107–5799.

Kansas City Southern Railway seeks approval of the proposed modification of the Mississippi River Drawbridge, milepost 274.50 on Mid-Continent Division, near Louisiana, Missouri, consisting of the removal of the antiquated pipeline driven rail lock surface detection system; allowing proximity sensors attached to the self-

aligning Conley joints, monitored by logic controllers, to continuity detect and verify rail surfaces and alignment.

The reason given for the proposed changes is to improve safety and reliability.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, D.C. 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC. 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, D.C. on May 29, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–14049 Filed 6–4–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket: RSPA–98–4957]

Information Collection; Request for Comments and OMB Approval

AGENCY: Research and Special Programs Administration, Department of Transportation.

ACTION: Request for comments and OMB approval.

SUMMARY: This notice seeks comments from the public regarding the need for the Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) to collect paperwork information from gas distribution service line operators to ensure that those operators who do not maintain all of their piping notify their customers that they must maintain the piping. This notice is published to measure the need for the proposed paperwork collection, ways to minimize the burden on operators who must respond, ways to enhance the quality of the information collected, and to verify the accuracy of the agency's estimate of the burden (measured in work hours) on the regulated industry. By advising customers of the need to maintain their buried gas piping, the notices reduce the risk of accidents. RSPA/OPS published a notice on March 5, 2002, requesting public comment. No comments were received. This notice also seeks approval from the Office of Management and Budget to renew the existing approval of this paperwork collection.

DATES: Comments on this notice must be received by July 5, 2002, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, OPS, RSPA, Department of Transportation (DOT), 400 Seventh Street, SW., Washington, DC 20590 or call at (202) 366–6205 by e-mail to *marvin.fell@rspa.dot.gov.*

SUPPLEMENTARY INFORMATION:

Title of Information Collection: Customer-Owned Service Lines, Customer Notification.

Type of Request: Existing information collection.

Abstract: RSPA regulation (49 CFR 192.16) requires operators of gas service lines who do not maintain buried customer piping up to building walls or certain other locations to notify their customers of the need to maintain that piping. Congress directed DOT to take this action in view of service line accidents. By advising customers of the need to maintain their buried gas piping, the notices may reduce the risk of further accidents.

In addition, each operator must make the following records available for inspection by RSPA/OPS or a State agency participating under 49 U.S.C. 60105 or 60106: (1) A copy of the notice currently in use; and (2) evidence that notices have been sent to customers within the previous 3 years.

As used in this notice, the terms ''information collection'' and ''paperwork collection'' are synonymous, and include all work related to preparing and disseminating information related to this customer notification requirement including completing paperwork, gathering information and conducting telephone calls.

Estimate of Burden: Minimal.

Respondents: Gas transmission and distribution operators.

Estimated Number of Respondents: 1,590.

Estimated Number of Responses per Respondent: 350.

Estimated Total Annual Burden on Respondents: 9,137 hours.

ADDRESSES: You must identify the docket number RSPA–98–4957 at the beginning of you comments. Comments can be mailed directly to the Office of Regulatory Affairs, OMB, 726 Jackson Place, NW., Washington, DC 20503, ATTN: Desk Officer for the Department of Transportation.

You may review the public docket containing comments in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday except Federal Holidays. The Dockets Office is on the plaza level of the NASSIF Building at DOT at the above address. Also, you may review public dockets on the Internet at *http.//dms.dot.gov/search.* Once on the search page, type in the last four digits of the docket number shown at the beginning of this notice (in this case 4957) and click on ''search.''

Comments are invited on: (a) The need for the proposed collection of information 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Issued in Washington, DC, on May 30, 2002.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 02–14046 Filed 6–4–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket RSPA–99–4957]

Information Collection; Request for Public Comments and OMB Approval

AGENCY: Research and Special Programs Administration, Department of Transportation.

ACTION: Request for public comments and OMB approval.

SUMMARY: This notice seeks comments from the public regarding the need for RSPA to collect paperwork from gas service line operators to ensure that customers receiving gas pipeline service are aware of the availability of excess flow valves (EFV's). This notice is published (pursuant to the Paperwork Reduction Act of 1995) to measure the need for the paperwork collection on EFV's, ways to minimize the burden on operators who must respond, ways to enhance the quality of the information collected, and to verify the accuracy of the agency's estimate of the burden (measured in work hours) on pipeline operators. By advising customers of the availability of excess flow valves, the notices give customers information to help them decide if they would like to purchase excess flow valves for gas lines running into their homes. The RSPA published a notice on March 5, 2002, requesting public comment. No comments were received. This notice also seeks approval from the Office of Management and Budget to renew the existing approval of this paperwork collection.

DATES: Comments on this notice must be received by July 5, 2002, to ensure consideration.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, OPS, RSPA, U.S. Department of Transportation (DOT), 400 Seventh Street, SW., Washington, DC 20950, telephone (202) 366–6205 or e-mail *marvin.fell@rspa.dot.gov.*

SUPPLEMENTARY INFORMATION:

Title of Information Collection: Excess Flow Valves, Customer Notification.

OMB Number: 2137–0593.

Abstract: 49 U.S.C. 60110 directed DOT to prescribe regulations requiring operators to notify customers in writing about EFV availability, the safety benefits derived from installation, and the costs associated with installation. The regulations provide that, except where installation is already required, the operator will install an EFV that meets prescribed performance criteria at the customer's request, if the customer pays for the installation.

Respondents: Gas Distribution Pipeline Operators.

Estimated Number of Respondents: 1590.

Estimated Total Annual Burden on Respondents: 20,000 hours.

As used in this notice, the terms 'paperwork information' and 'paperwork collection' are synonymous, and include all work related to preparing and disseminating information related to this customer notification requirement including completing paperwork, gathering information and conducting telephone calls.

ADDRESSES: You must identify the docket number RSPA–98–4957 at the beginning of your comments. Comments can be mailed to the Office of Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, Attn: Desk Officer for DOT.

You may review the public docket containing comments in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday except Federal Holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http.//dms.dot.gov/search.* Once on the search page, type in the last four digits of the docket number shown at the beginning of this notice (in this case 4957) and click on ''search.''

Comments are invited on: (a) The need for the proposed collection of information 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Issued in Washington, DC on May 30, 2002.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 02–14045 Filed 6–4–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Pipeline Safety: Revised Natural Gas Transmission Pipeline Incident and Annual Report Forms

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice; issuance of an advisory bulletin.

SUMMARY: The Research and Special Programs Administration's (RSPA), Office of Pipeline Safety (OPS), advises owners and operators of natural gas transmission pipeline operators of changes in the annual report and incident reporting forms.

FOR FURTHER INFORMATION CONTACT: Roger Little, (202) 366–4569, or by e-mail, *roger.little@rspa.dot.gov.* This document can be viewed at the OPS home page at *http://ops.dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In a **Federal Register** notice on August 2, 2000, (65 FR 47585) RSPA/OPS proposed to revise the incident and annual reports for gas transmission and gathering systems. After considering public comments, RSPA/OPS published a **Federal Register** notice on May 8, 2001 (66 FR 23316) to revise forms RSPA F 7100.2, *Incident Report for Gas Transmission and Gathering Systems,* and RSPA F 7100.2–1, *Annual Report for Gas Transmission and Gathering Systems* for use by operators in filing reports due on or after January 1, 2002.

The Federal pipeline safety regulations require gas transmission pipeline operators to file incident reports as specified at 49 CFR 191.15 and annual reports as specified at 49 CFR 191.17. The information collected on natural gas pipeline systems and incidents are an important source of data for identifying safety trends and for managing RSPA/OPS pipeline safety programs.

The studies of natural gas transmission pipeline incident report information revealed deficiencies in the data collected on these forms. In addition, the National Transportation Safety Board (NTSB) and the General Accounting Office have urged RSPA/OPS to revise the information collected on the natural gas pipeline incident and annual report forms to improve its usefulness. NTSB Safety Recommendation P–96–1 suggests that RSPA/OPS:

* * * develop within 1 year and implement within 2 years a comprehensive plan for the

collection and use of gas and hazardous liquid pipeline accident data that details the type and extent of data to be collected, to provide [RSPA] with the capability to perform methodologically sound accident trend analyses and evaluations of pipeline operator performance using normalized accident data.

Additional information is needed on natural gas transmission operator annual reports for normalizing the incident information and for adequately characterizing the nation's natural gas pipeline infrastructure. RSPA/OPS worked with representatives of the Interstate Natural Gas Association of America and the American Gas Association to review the natural gas transmission incident and annual report forms to make the information collected more useful to industry, government, and the public.

RSPA/OPS has revised the incident and annual report forms to improve the usefulness of the reported data. The failure cause categories have been expanded from five to 25 on the incident report. The annual report form includes two new sections: (1) Mileage by decade of installation and (2) mileage by class location.

II. Advisory Bulletin (ADB–02–01)

To: Owners and Operators of Natural Gas Transmission Systems.

Subject: Revised Natural Gas Transmission Pipeline Incident and Annual Report Forms.

Purpose: To inform gas transmission pipeline owners and operators that revised forms RSPA F 7100.2, *Incident Report for Gas Transmission and Gathering Systems,* and RSPA F 7100.2–1, *Annual Report for Gas Transmission and Gathering Systems,* are ready and available for use by natural gas transmission pipeline owners and operators, and accessible from the OPS website.

Advisory: As of January 1, 2002, owners and operators of gas transmission pipeline systems should use only the revised forms RSPA F 7100.2, *Incident Report for Gas Transmission and Gathering Systems,* and RSPA F 7100.2–1, *Annual Report for Gas Transmission and Gathering Systems.* As of January 1, 2002, all incidents meeting the reporting criteria in 49 CFR 191.15 are to be reported using the revised form RSPA F 7100.2. Beginning March 15, 2002, the annual reports required by 49 CFR 191.17 are to be filed using the revised form RSPA F 7100.2–1.

Forms and instructions are available upon request as described in 49 CFR 191.19 or are downloadable from the OPS home page at http://ops.dot.gov (in the ''FORMS'' section under ''ONLINE LIBRARY''). RSPA/OPS is also implementing electronic reporting for natural gas transmission pipeline incidents by January 1, 2002, and for annual reports by January 15, 2002, for the annual report due March 15, 2002. Details are available on the OPS home page.

RSPA/OPS has revised the incident report form to improve the usefulness of incident reporting by expanding the cause categories from five to 25. This will assist in trending and normalization of incident data. The natural gas transmission operator annual report form has also been revised to improve its usefulness. The annual report form includes two new sections: (1) Mileage by decade of installation and (2) mileage by class location.

RSPA/OPS understands that operators may need some time to adjust information collection systems and research the new information requested for the annual report filing. If exact information is unavailable, requests for extensions of the filing date may be made to OPS' Information Resources Manager at (202) 366–4569. Pipeline owners and operators may estimate mileage by decade and mileage by class location.

RSPA/OPS reminds owners and operators to file supplemental written reports (on RSPA Form F7100.2) if additional information on an incident later becomes available.

Owners and operators are reminded that all relevant costs must be included in the estimated property damage total on the initial written incident or accident report as well as on supplemental reports. This includes (but is not limited to) costs of: Property damage to the operator's facilities and to property of others; commodity/product not recovered; facility repair and replacement; gas distribution service restoration and relighting; leak locating; right-of-way clean-up, and environmental clean-up and damage. Facility repair, replacement, or change that is not necessitated by the incident should not be included.

Issued in Washington, DC on May 29, 2002.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 02–14047 Filed 6–4–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120–REIT

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120–REIT, U.S. Income Tax Return for Real Estate Investment Trusts.

DATES: Written comments should be received on or before August 5, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the Internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U.S. Income Tax Return for Real Estate Investment Trusts.

OMB Number: 1545–1004.

Form Number: 1120–REIT.

Abstract: Form 1120–REIT is filed by a corporation, trust, or association electing to be taxed as a real estate investment trust in order to report its income and deductions and to compute its tax liability. IRS uses Form 1120–REIT to determine whether the income, deductions, credits, and tax liability have been correctly reported.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 363.

Estimated Time Per Respondent: 127 hours, 28 minutes.

Estimated Total Annual Burden Hours: 46,268.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 30, 2002.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–14080 Filed 6–4–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8582

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8582, Passive Activity Loss Limitations.

DATES: Written comments should be received on or before August 5, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Shear, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the Internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Passive Activity Loss Limitations.

OMB Number: 1545–1008.

Form Number: 8582.

Abstract: Under Internal Revenue Code section 469, losses from passive activities, to the extent that they exceed income from passive activities, cannot be deducted against nonpassive income. Form 8582 is used to figure the passive activity loss allowed and the loss to be reported on the tax returns.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, and farms.

Estimated Number of Respondents: 3,622.282.

Estimated Time Per Respondent: 4 hours, 46 minutes.

Estimated Total Annual Burden Hours: 17,254,834.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 30, 2002.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–14081 Filed 6–4–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0064]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 5, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@maiI.va.gov.* Please refer to ''OMB Control No. 2900–0064.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New

Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0064'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Application for Amounts Due Estates of Persons Entitled to Benefits, VA Form 21–609.

OMB Control Number: 2900–0064.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Abstract: The form is used to gather information to determine the individual(s) who may be entitled to accrued benefits of deceased beneficiaries.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 6, 2002, at pages 10256–10257.

Affected Public: Individuals or Households.

Estimated Annual Burden: 375 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 750.

Dated: May 16, 2002.

By direction of the Secretary:

Genie McCully,

Acting Director, Information Management Service.

[FR Doc. 02–14004 Filed 6–4–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0379]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 5, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denis.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0379.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0379'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Time Record (Work-Study Program), VA Form 22–8690.

OMB Control Number: 2900–0379.

Type of Review: Extension of a currently approved collection.

Abstract: When a claimant elects to receive an advance payment, VA will make the advance payment for 50 hours, but will withhold benefits (to recoup the advance payment) until the claimant completes his or her 50 hours of service. VA will not pay any additional amount in advance payment cases until the claimant completes a total of 100 hours of service (50 hours for the advance payment and 50 hours for an additional payment). If the claimant elects not to receive an advance payment, benefits are payable when the claimant completes 50 hours of service. VA Form 22–8690 is used to report the number of hours completed and to ensure that the amount of benefits payable to a claimant who is pursuing work-study is correct.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 6, 2002, at pages 10255–10256.

Affected Public: Individuals or households, Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Governments.

Estimated Annual Burden: 13,667 hours.

Total annual responses: 164,000.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 41,000.

Dated: May 16, 2002.

By direction of the Secretary:

Genie McCully,

Acting Director, Information Management Service.

[FR Doc. 02–14005 Filed 6–4–02; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Wednesday,
June 5, 2002

Part II

Department of Transportation

National Highway and Traffic Safety Administration

49 CFR Parts 571 and 590

Federal Motor Vehicle Safety Standards; Tire Pressure Monitoring Systems; Controls and Displays; Final Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 590

[Docket No. NHTSA 2000–8572]

RIN 2127–AI33

Federal Motor Vehicle Safety Standards; Tire Pressure Monitoring Systems; Controls and Displays

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: In response to a mandate in the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act of 2000, this agency is issuing a two-part final rule.

The first part is contained in this document. It establishes a new Federal Motor Vehicle Safety Standard that requires the installation of tire pressure monitoring systems (TPMSs) that warn the driver when a tire is significantly under-inflated. The standard applies to passenger cars, trucks, multipurpose passenger vehicles, and buses with a gross vehicle weight rating of 10,000 pounds or less, except those vehicles with dual wheels on an axle.

This document establishes two compliance options for the short-term, for the period between November 1, 2003, and October 31, 2006. Under the first compliance option, a vehicle's TPMS must warn the driver when the pressure in any single tire or in each tire in any combination of tires, up to a total of four tires, has fallen to 25 percent or more below the vehicle manufacturer's recommended cold inflation pressure for the tires, or a minimum level of pressure specified in the standard, whichever pressure is higher. Under the second compliance option, a vehicle's TPMS must warn the driver when the pressure in any single tire has fallen to 30 percent or more below the vehicle manufacturer's recommended cold inflation pressure for the tires, or a minimum level of pressure specified in the standard, whichever pressure is higher. Compliance with the options would be phased in during that period by increasing percentages of production.

The second part of this final rule will be issued by March 1, 2005, and will establish performance requirements for the long-term, *i.e.,* for the period beginning on November 1, 2006. In the meantime, the agency will leave the rulemaking docket open for the submission of new data and analyses concerning the performance of TPMSs. The agency also will conduct a study comparing the tire pressures of vehicles without any TPMS to the pressures of vehicles with TPMSs, especially TPMSs that do not comply with the four-tire, 25 percent compliance option.

Based on the record now before the agency, NHTSA tentatively believes that the four-tire, 25 percent option would best meet the mandate in the TREAD Act. However, it is possible that the agency may obtain or receive new information that is sufficient to justify a continuation of the options established by this first part of this rule, or the adoption of some other alternative.

DATES: This final rule is effective August 5, 2002. Under the rule, vehicles will be required to comply with the requirements of the standard according to a phase-in beginning on November 1, 2003. If you wish to submit a petition for reconsideration of this rule, your petition must be received by July 22, 2002.

ADDRESSES: Petitions for reconsideration should refer to the docket number and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For technical and other non-legal issues, you may call Mr. George Soodoo or Mr. Joseph Scott, Office of Crash Avoidance Standards (Telephone: 202–366–2720) (Fax: 202–366–4329).

For legal issues, you may call Mr. Dion Casey, Office of Chief Counsel (Telephone: 202–366–2992) (Fax: 202–366–3820).

You may send mail to these officials at National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

You may call Docket Management at 202–366–9324. You may visit the Docket on the plaza level at 400 Seventh Street, SW, Washington, DC, from 10:00 a.m. to 5:00 p.m., Monday through Friday.

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I. Executive Summary

A. Highlights of the Notice of Proposed Rulemaking

NHTSA initiated this rulemaking with the publication of a Notice of Proposed Rulemaking (NPRM)(66 FR 38982, Docket No. NHTSA–2000–8572) on July 26, 2001. The NPRM proposed to require passenger cars, light trucks, multipurpose passenger vehicles, and buses with a gross vehicle weight rating of 10,000 pounds or less, except those vehicles with dual wheels on an axle, to be equipped with a tire pressure monitoring system (TPMS).

The agency sought comment on two alternative sets of performance requirements for TPMSs and proposed adopting one of them in the final rule. The first alternative would have required that the driver be warned when the pressure in any single tire or in each tire in any combination of tires, up to a total of four tires, had fallen to 20 percent or more below the vehicle manufacturer's recommended cold inflation pressure for the vehicle's tires (the placard pressure), or a minimum level of pressure specified in the standard, whichever was higher. (This alternative is referred to below as the four-tire, 20 percent alternative.) The second alternative would have required that the driver be warned when the pressure in any single tire or in each tire in any combination of tires, up to a total of three tires, had fallen to 25 percent or more below the placard pressure, or a minimum level of pressure specified in the standard, whichever was higher. (This alternative is referred to below as the three-tire, 25 percent alternative.) The minimum levels of pressure were the same in both proposed alternatives. The adoption of four-tire, 20 percent alternative would have required that drivers be warned of under-inflation sooner and in a greater array of circumstances. It would also have narrowed the range of technologies that manufacturers could use to comply with the new standard.

There are two types of TPMSs currently available, direct TPMSs and indirect TPMSs. Direct TPMSs have a tire pressure sensor in each tire. The sensors transmit pressure information to a receiver. Indirect TPMSs do not have tire pressure sensors. Current indirect TPMSs rely on the wheel speed sensors in an anti-lock braking system (ABS) to detect and compare differences in the rotational speed of a vehicle's wheels. Those differences correlate to differences in tire pressure because decreases in tire pressure cause decreases in tire diameter that, in turn, cause increases in wheel speed.

To meet the four-tire, 20 percent alternative, vehicle manufacturers likely would have had to use direct TPMSs because even improved indirect systems would not likely be able to detect loss of pressure until pressure has fallen 25 percent and could not detect all combinations of significantly under-inflated tires. To meet the three-tire, 25 percent alternative, vehicle manufacturers would have been able to install either direct TPMSs or improved indirect TPMSs, but not current indirect TPMSs.

B. Highlights of the Preliminary Determination About the Final Rule

NHTSA preliminarily determined to issue a final rule that would have specified a four-year phase-in schedule[1] and allowed compliance with either of two options during the phase-in, i.e., between November 1, 2003 and October 31, 2006. Under the first option, a vehicle's TPMS would have had to warn the driver when the pressure in one or more of the vehicle's tires, up to a total of four tires, was 25 percent or more below the placard pressure, or a minimum level of pressure specified in the standard, whichever pressure was higher. (This option is referred to below as the four-tire, 25 percent option.) Under the second option, a vehicle's TPMS would have had to warn the driver when the pressure in any one of the vehicle's tires was 30 percent or more below the placard pressure, or a minimum level of pressure specified in the standard, whichever pressure was higher. (This option is referred to below as the one-tire, 30 percent option.) The minimum levels of pressure specified in the standard were the same for both compliance options.

After the phase-in, *i.e.,* after October 31, 2006, the second option would have been terminated, and the provisions of the first option would have become mandatory for all new vehicles. Thus, all vehicles would have been required to meet a four-tire, 25 percent requirement.

C. OMB Return Letter

After reviewing the draft final rule, OMB returned it to NHTSA for reconsideration, with a letter explaining its reasons for doing so, on February 12, 2002. In the letter, OMB stated its belief that the draft final rule and accompanying regulatory impact analysis did not adequately demonstrate that the agency had selected the best available method of improving overall vehicle safety.

D. Highlights of the Final Rule

In response to the OMB return letter, the agency has decided to divide the final rule into two parts. The first part is contained in this document, which establishes requirements for vehicles manufactured during the first three years, *i.e.,* between November 1, 2003, and October 31, 2006, and phases them in by increasing percentages of production. The second part will establish requirements for vehicles manufactured on or after November 1, 2006.

The agency has divided the final rule into two parts because it has decided to

[1] The phase-in schedule was as follows: 10 percent of a manufacturer's affected vehicles would have had to comply with either compliance option in the first year; 35 percent in the second year; and 65 percent in the third year. In the fourth year, 100 percent of a manufacturer's affected vehicles would have had to comply with the long-term requirements, i.e., the four-tire, 25 percent compliance option.

defer its decision as to which long-term performance requirements for TPMS would best satisfy the mandate of the TREAD Act. This deferral will allow the agency's consideration of additional data on the effect and performance of TPMSs. From the beginning, the agency has sought to comply with the mandate and safety goals of the TREAD Act in a way that encourages innovation and allows a range of technologies to the extent consistent with providing drivers with sufficient warning of low tire pressure under a broad variety of the reasonably foreseeable circumstances in which tires become under-inflated.

1. Part One—Phase-in (November 2003 through October 2006)

NHTSA has decided to require vehicle manufacturers to equip their light vehicles (*i.e.,* those with a gross vehicle weight rating (GVWR) of 10,000 lbs. or less) with TPMSs and to give them the option for complying with either of two sets of performance requirements during the period covered by the first part of the final rule, *i.e.,* from November 1, 2003 to October 31, 2006. The options are the same as those in the preliminary determination about the final rule.

Under the first set or compliance option, the vehicle's TPMS will be required to warn the driver when the pressure in any single tire or in each tire in any combination of tires, up to a total of four tires, is 25 percent or more below the vehicle manufacturer's recommended cold inflation pressure for the tires, or a minimum level of pressure specified in the standard, whichever pressure is higher. Under the second compliance option, the vehicle's TPMS will be required to warn the driver when the pressure in any single tire is 30 percent or more below the vehicle manufacturer's recommended cold inflation pressure for the tires, or a minimum level of pressure specified in the standard, whichever pressure is higher.[2]

The two compliance options are outgrowths of the alternative sets of requirements proposed in the NPRM. In response to comments confirming that current indirect TPMSs cannot meet the proposed three-tire, 25 percent under-inflation requirements, and in order to allow those systems to be used during the phase-in, the agency is adopting requirements for detection of one-tire, 30 percent under-inflation as the first option. For the second option, the agency is adopting requirements for detection of 4-tire, 25 percent under-inflation. Adopting those requirements, instead of the proposed requirements for four-tire, 20 percent under-inflation, will permit manufacturers to use either direct TPMSs or hybrid TPMSs, *i.e.,* TPMSs that combine direct and indirect TPMS technologies. One TPMS supplier indicated the potential for developing and producing hybrid systems, although it also indicated that it did not currently have plans for doing so. The agency believes that the difference in benefits between TPMSs meeting four-tire, 20 percent requirements and TPMSs meeting four-tire, 25 percent requirements should not be substantial.

To facilitate compliance with the options, the rule phases them in by increasing percentages of production. Ten percent of a vehicle manufacturer's light vehicles will be required to comply with either compliance option during the first year (November 1, 2003 to October 31, 2004), 35 percent during the second year (November 1, 2004 to October 31, 2005), and 65 percent during the third year (November 1, 2005 to October 31, 2006). These percentages are the same as those in the preliminary determination about the final rule. The agency is allowing carry-forward credits for vehicles that are manufactured during the phase-in and are equipped with TPMSs that comply with the four-tire, 25 percent option. It is not allowing credits for TPMSs complying with the other option for the same reason that the agency is requiring manufacturers to provide consumers with information about the performance limitations of those systems.

The combination of the two compliance options and the phase-in will allow manufacturers to continue to use current indirect TPMSs during that period and ease the implementation of the TPMS standard. The agency notes that, for vehicles already equipped with ABS, the installation of a current indirect TPMS is the least expensive way of complying with a TPMS standard. The compliance options and phase-in will also give manufacturers the flexibility needed to innovate and improve the performance of their TPMSs. This flexibility will improve the chances that ways can be found to improve the detection of under-inflation as well as reduce the costs of doing so.

The owner's manual for vehicles certified to either compliance option will be required to include written information explaining the purpose of the low tire pressure warning telltale, the potential consequences of driving on significantly under-inflated tires, the meaning of the telltale when it is illuminated, and the actions that drivers should take when the telltale is illuminated. In addition, the owner's manual in vehicles certified to the one-tire, 30 percent option will be required to include information on the inherent performance limitations of current indirect TPMSs because the agency anticipates that most indirect TPMSs installed to comply with that option will exhibit those limitations and because a vehicle owner survey indicates that a significant majority of drivers would be less concerned, to either a great extent or a very great extent, with routinely maintaining the pressure of their tires if their vehicle were equipped with a TPMS. Under both compliance options, the TPMS will be required to have a low tire pressure-warning telltale (yellow).

2. Part Two—November 2006 and Thereafter

Beginning November 1, 2006, all passenger cars and light trucks, multipurpose passenger vehicles, and buses under 10,000 pounds GVWR will be required to comply with the requirements in the second part of this final rule. The agency will publish the second part of this final rule by March 1, 2005, in order to give manufacturers sufficient lead time before vehicles must meet the requirements.

In anticipation of making the decision in part two of this final rule about the long-term requirements, the agency will leave the rulemaking docket open for the submission of new data and analyses. The agency also will conduct a study comparing the tire pressures of vehicles without any TPMS to the pressures of vehicles with TPMSs that do not comply with the four-tire, 25 percent compliance option. When completed, it will be placed in the docket for public examination. After consideration of the record compiled to this date, as supplemented by the results of the tire pressure study and any other new information submitted to the agency, NHTSA will issue the second part of this rule by March 1, 2005.

Based on the record now before the agency, NHTSA tentatively believes that the four-tire, 25 percent option would best meet the mandate in the TREAD Act. However, it is possible that the agency may obtain or receive new information that is sufficient to justify a continuation of the compliance options established by the first part of this final rule, or the adoption of some other alternative.

[2] The minimum levels of pressure are the same for both compliance options.

E. Summary Comparison of the Preliminary Determination and the Final Rule

The primary difference between the preliminary determination and the final rule is one of timing, instead of substance. The options and percentages of production for the phase-in years are unchanged.[3] The final rule does differ from the preliminary determination in the timing of the agency's decision about the performance requirements for the years following the phase-in period.

SUMMARY COMPARISON OF THE PRELIMINARY DETERMINATION AND THE FINAL RULE

	Preliminary determination	Final rule
Application	Passenger cars, trucks, multipurpose passenger vehicles, and buses with a GVWR of 10,000 pounds or less, except those vehicles with dual wheels on an axle.	Same.
Short-term (11/1/03—10/31/06): Compliance Options	Option 1: TPMS must warn the driver when the pressure in any single tire or in each tire in any combination of tires, up to a total of four tires, has fallen to 25 percent or more below the vehicle manufacturer's recommended cold inflation pressure for the tires, or a minimum level of pressure specified in the standard, whichever pressure is higher.	Same.
	Option 2: TPMS must warn the driver when the pressure in any single tire has fallen to 30 percent or more below the vehicle manufacturer's recommended cold inflation pressure for the tires, or a minimum level of pressure specified in the standard, whichever pressure is higher.	Same.
Phase-in Schedule	10% of a vehicle manufacturer's light vehicles will be required to comply with either compliance option during the first year (November 1, 2003 to October 31, 2004), 35 percent during the second year (November 1, 2004 to October 31, 2005), and 65 percent during the third year (November 1, 2005 to October 31, 2006).	Same.
Long-term (11/1/06 & thereafter): Performance Requirements	TPMS must warn the driver when the pressure in any single tire or in each tire in any combination of tires, up to a total of four tires, has fallen to 25 percent or more below the vehicle manufacturer's recommended cold inflation pressure for the tires, or a minimum level of pressure specified in the standard, whichever pressure is higher.	Decision to be made by March 1, 2005.

II. Background

A. The Transportation Recall Enhancement, Accountability, and Documentation Act

Congress enacted the TREAD Act on November 1, 2000.[4] Section 13 of the TREAD Act mandated the completion of ''a rulemaking for a regulation to require a warning system in new motor vehicles to indicate to the operator when a tire is significantly under inflated'' within one year of the TREAD Act's enactment. Section 13 also requires the regulation to take effect within two years of the completion of the rulemaking.

B. Previous Rulemaking on Tire Pressure Monitoring Systems

NHTSA first considered requiring a ''low tire pressure warning'' device in 1970. However, the agency determined that the only warning device available at that time was an in-vehicle indicator whose cost was too high.

During the 1970s, several manufacturers developed inexpensive, on-tire warning devices. In addition, the price of in-vehicle warning devices dropped significantly.

As a result, on January 26, 1981, NHTSA published an Advanced Notice of Proposed Rulemaking (ANPRM) soliciting public comment on whether the agency should propose a new Federal motor vehicle safety standard requiring each new motor vehicle to have a low tire pressure warning device which would ''warn the driver when the tire pressure in any of the vehicle's tires was significantly below the recommended operating levels.'' (46 FR 8062.)

NHTSA noted in the ANPRM that under-inflation increases the rolling resistance of tires and, correspondingly, decreases the fuel economy of vehicles. Research data at the time indicated that the under-inflation of a vehicle's radial tires by 10 pounds per square inch (psi) reduced the fuel economy of the vehicle by 3 percent. Because of the worldwide oil shortages in the late 1970s and early 1980s, NHTSA was interested in finding ways to increase the fuel economy of passenger vehicles (i.e., passenger cars and multipurpose passenger vehicles). Since surveys by the agency showed that about 50 percent of passenger car tires and 13 percent of truck tires were operated at pressures below the vehicle manufacturer's recommended (placard) pressure, the agency believed that low tire pressure warning devices would encourage drivers to maintain their tires at the proper inflation level, thus maximizing their vehicles' fuel economy.

Moreover, a 1977 study by Indiana University concluded that under-inflated tires were a probable cause of 1.4 percent of all motor vehicle crashes.[5] Based on that figure, and the approximately 18.3 million motor vehicle crashes then occurring annually in the United States, the agency suggested that under-inflated tires were probably responsible for 260,000 crashes each year (1.4 percent x 18.3 million crashes).

In the ANPRM, NHTSA sought answers from the public to several questions, including:

(1) What tire pressure level should trigger the warning device?

[3] The final rule does require that additional information be placed in the vehicle's owner manual.

[4] Public Law 106–414.

[5] Tri-Level Study of the Causes of Traffic Accidents, Treat, J.R., et al. (1979) (Contract No. DOT HS 034–3–535), DOT HS 805 099, Washington, DC: U.S. Department of Transportation, National Highway Traffic Safety Administration.

(2) Should the agency specify the type of warning device (i.e., on-tire or in-vehicle) to be used?

(3) What would it cost to produce and install an on-tire or in-vehicle warning device?

(4) What is the fuel saving potential of low tire pressure warning devices?

(5) What studies have been performed which would show cause and effect relationships between low tire pressure and auto crashes?

(6) What would be the costs and benefits of a program to educate the public on the benefits of maintaining proper tire pressure?

NHTSA terminated the rulemaking on August 31, 1981, because public comments indicated that the low tire pressure warning devices available at the time either had not been proven to be accurate and reliable (on-tire devices) or were too expensive (in-vehicle devices). (46 FR 43721.) The comments indicated that in-vehicle warning devices had been proven to be accurate and reliable, but would have had a retail cost of $200 (in 1981 dollars) per vehicle. NHTSA stated, ''Such a cost increase cannot be justified by the potential benefits, although those benefits might be significant.'' (46 FR 43721.) The comments also indicated that on-tire warning devices cost only about $5 (in 1981 dollars), but they had not been developed to the point where they were accurate and reliable enough to be required. The comments also suggested that on-tire warning devices were subject to damage by road hazards, such as ice and mud, as well as scuffing at curbs. Despite terminating the rulemaking, the agency stated that it still believed that ''[m]aintaining proper tire inflation pressure results in direct savings to drivers in terms of better gas mileage and longer tire life, as well as offering increased safety.'' (46 FR 43721.)

C. Summary of the Notice of Proposed Rulemaking

On July 26, 2001, the agency published the NPRM proposing to establish a standard for TPMSs pursuant to section 13 of the TREAD Act. (66 FR 38982.) The agency proposed two alternative versions of the standard.

The two alternatives differed in two important respects: in how they defined ''significantly under-inflated,'' and in the number of significantly under-inflated tires that they would be required to be able to detect at any one time. The first alternative (four tires, 20 percent) would have defined ''significantly under-inflated'' as the tire pressure 20 percent or more below the placard pressure, or a minimum level of pressure specified in the standard, whichever was higher. It would have required the low tire pressure warning telltale to illuminate when any tire, or when each tire in any combination of tires, on the vehicle became significantly under-inflated.

The second alternative (three tires, 25 percent) would have defined ''significantly under-inflated'' as the tire pressure 25 percent or more below the placard pressure, or a minimum level of pressure specified in the standard, whichever was higher. The minimum levels of pressure were the same in both proposed alternatives. The alternative would have required the low tire pressure warning telltale to illuminate when any tire, or when each tire in any combination of tires, up to a total of three tires, became significantly under-inflated.

In most other respects, the two alternatives were identical. Both would have required passenger cars, multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kilograms (10,000 pounds) or less, manufactured on or after November 1, 2003, to be equipped with a TPMS and a low tire pressure warning telltale (yellow) to alert the driver. They would have required the telltale to illuminate within 10 minutes of driving after any tire on the vehicle became significantly under-inflated. They would have required the telltale to remain illuminated as long as any of the vehicle's tires remained significantly under-inflated, and the key locking system was in the ''On'' (''Run'') position. They would have required that the telltale be deactivatable, manually or automatically, only when the vehicle no longer had a tire that was significantly under-inflated. They would have required the TPMS in each vehicle to be compatible with all replacement or optional tires/rims of the size recommended for that vehicle by the vehicle manufacturer, i.e., each TPMS would have been required to continue to meet the requirements of the standard when the vehicle's original tires were replaced with tires of any optional or replacement size(s) recommended for the vehicle by the vehicle manufacturer. Finally, they would have required vehicle manufacturers to provide written instructions, in the owner's manual if one is provided, explaining the purpose of the low tire pressure warning telltale, the potential consequences of significantly under-inflated tires, and what actions drivers should take when the low tire pressure warning telltale is illuminated.

NHTSA believed that the only currently available TPMSs that would have been able to meet the requirements of the four-tire, 20 percent alternative were direct TPMSs. There were two reasons for this belief. First, currently available indirect TPMSs typically cannot detect significant under-inflation until the pressure in one of the vehicle's tires is about 30 percent below the pressure in at least some of the other tires. Second, they cannot detect when all four tires lose inflation pressure equally.

The agency believed that both currently available direct TPMSs and improved indirect TPMSs, but not current indirect TPMSs, would have been able to meet the requirements of the three-tire, 25 percent alternative.

In the NPRM, NHTSA anticipated that vehicle manufacturers would minimize their costs of complying with the three-tire, 25 percent alternative by installing improved indirect TPMSs in vehicles already equipped with ABSs and direct TPMSs in vehicles without ABSs. For vehicles already equipped with an ABS, the cost of modifying that system to serve the additional purpose of indirectly monitoring tire pressure would be significantly less than the cost of adding a direct TPMS. For vehicles not so equipped, adding a direct TPMS would be significantly less expensive than adding ABS to monitor tire pressure.

For the NPRM, NHTSA had two sets of data, one from Goodyear and another from NHTSA's Vehicle Research and Test Center (VRTC), on the effect of under-inflated tires on a vehicle's stopping distance. The Goodyear data indicated that a vehicle's stopping distance on wet surfaces is significantly reduced when its tires are properly inflated, as compared to when its tires are significantly under-inflated. The VRTC data indicated little or no effect on a vehicle's stopping distance. For purposes of the NPRM, NHTSA used the Goodyear data to establish an upper bound of benefits and the VRTC data to establish a lower bound. The benefit estimates below are the mid-points between those upper and lower bounds.

NHTSA estimated that the four-tire, 20 percent alternative would have prevented 10,635 injuries and 79 deaths at an average net cost of $23.08 per vehicle.[6] NHTSA estimated that the

[6] 6 The range of injuries prevented was 0 to 21,270, and the range of deaths prevented was 0 to 158. These benefit estimates did not include deaths and injuries prevented due to reductions in crashes caused by blowouts and skidding/loss of control because the agency was unable to quantify those benefits at the time the NPRM was published. For this final rule, the agency was able to quantify those benefits. They are discussed in the Benefits section below. Net costs included $66.33 in vehicle costs minus $32.22 in fuel savings and $11.03 in tread wear savings. These cost estimates did not include maintenance costs. For this final rule, the agency has estimated maintenance costs. They are discussed in the Costs section below.

three-tire, 25 percent alternative would have prevented 6,585 injuries and 49 deaths at an average net cost of $8.63 per vehicle.[7] NHTSA estimated that the net cost per equivalent life saved would have been $1.9 million for the four-tire, 20 percent alternative and $1.1 million for the three-tire, 25 percent alternative.

Finally, the agency requested comments on whether a compliance phase-in with carry-forward credits would be appropriate. The agency suggested a phase-in period of 35 percent of production in the first year (2003), 65 percent in the second year, and 100 percent in the third year.

D. Summary of Public Comments on Notice

The agency received comments from tire, vehicle, and TPMS manufacturers, consumer advocacy groups, and the general public. In general, the tire manufacturers' comments, including the comments of the international tire industry associations European Tyre and Rim Technical Organisation (ETRTO), Japan Automobile Tyre Manufacturers Association (JATMA), and International Tire & Rubber Association (ITRA), echoed the comments of the Rubber Manufacturers Association (RMA). In general, the vehicle manufacturers' comments, including the comments of the Association of International Automobile Manufacturers (AIAM), were similar to the comments of the Alliance of Automobile Manufacturers (Alliance).

The tire manufacturers generally supported the four-tire, 20 percent alternative. The vehicle manufacturers generally supported requirements that would permit both direct and current indirect TPMSs to comply. TPMS manufacturers generally supported the alternative that would allow the type of system they manufacture. The consumer advocacy groups—Consumers Union and Advocates for Highway and Auto Safety (Advocates) supported by Public Citizen, Consumer Federation of America, and Trauma Foundation—generally supported the four-tire, 20 percent alternative. The general public was about evenly divided between those who supported and those who opposed a Federal standard requiring TPMSs.

The major issues discussed by the commenters are summarized below. The comments are addressed in the discussion of the final rule below

1. Vehicles Covered

The agency proposed to require TPMSs on passenger cars, multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kilograms (10,000 pounds) or less. The agency did not propose to require TPMSs on motorcycles, trailers, or low speed vehicles, or on medium (10,001–26,000 pounds GVWR) vehicles, or heavy (greater than 26,000 pounds GVWR) vehicles for reasons explained in the NPRM.

The Alliance recommended that the agency limit the applicability of the standard to these types of vehicles to those having a GVWR of 3,856 kilograms (8,500 pounds or less). The Alliance stated that the majority of vehicles above 8,500 pounds GVWR are used commercially. The Alliance argued that those vehicles are maintained on a regular basis and do not need a TPMS to assist in maintaining proper inflation pressure in the vehicles' tires.

The Alliance also recommended that the agency explicitly exclude incomplete vehicles, i.e., vehicles that are built in more than one stage, from the standard. Normally, the first-stage vehicle manufacturer is responsible for certifying that all vehicle systems that are not directly modified by subsequent-stage manufacturers meet all Federal motor vehicle safety standards. The Alliance stated that in the case of direct TPMSs, the first-stage manufacturer will be unable to guarantee that, even if physically undisturbed, a non-defective TPMS will function as designed after vehicle modifications (such as adding metal hardware to the vehicle or lengthening its wheelbase) are made by subsequent-stage manufacturers.

Advocates recommended that the agency expand the application of the standard to include medium (10,001–26,000 pounds GVWR) and heavy (over 26,000 pounds) trucks and buses. Advocates stated that tire under-inflation is a pervasive problem with these vehicles, especially given the high percentage of these vehicles that are equipped with re-treaded tires.

2. Phase-In Options and Long-Term Requirements

a. Definition of ''Significantly Under-Inflated''

RMA recommended that the agency define ''significantly under-inflated'' as any inflation pressure that is less than the pressure required to carry the actual vehicle load on the tire per tire industry standards (or any pressure required to carry the maximum vehicle load on the tire if the actual load is unknown), or the minimum activation pressure specified in the standard, whichever is higher. RMA argued that some vehicles have a placard pressure that is barely adequate to carry the vehicle's maximum load. If the tire pressure falls 20 or 25 percent below the placard pressure, the tire pressure will be insufficient to carry the load. RMA stated that the definition of ''significantly under-inflated'' should not be tied to placard pressure unless the standard includes a requirement for all vehicles to have a reserve in the placard pressure above a specified minimum (e.g., 20 or 25 percent).

RMA also recommended that the agency change the minimum activation pressures for P-metric standard load tires from 20 to 22 psi and for P-metric extra load tires from 23 to 22 psi. Finally, RMA recommended that the agency change the ''Maximum Pressure'' heading in Table 1 to ''Maximum or Rated Pressure'' because light truck tires are not subject to maximum permissible inflation pressure labeling requirements. RMA recommended that the agency change the rated pressure for Load Range E tires from 87 to 80 psi. Finally, RMA, supported by the Retread/Repair Industry Government Advisory Council (RIGAC),[8] recommended that the agency adopt, in this rulemaking proceeding, an amendment to upgrade Standard No. 109, ''New Pneumatic Tires,'' by requiring that ''a tire for a particular vehicle must have sufficient inflation and load reserve, such that an inflation pressure 20 or 25 percent less than the vehicle manufacturer's recommended inflation pressure is sufficient for the vehicle maximum load on the tire, as defined by FMVSS–110.''[9]

The ITRA recommended that the agency consider only direct TPMSs. The ITRA stated that indirect TPMSs have too many limitations, including the inability to detect when all four of a vehicle's tires are significantly under-inflated. The ITRA claimed that, although direct TPMSs are more expensive than indirect TPMSs, their cost is minor when compared to their safety, handling, tread wear, and fuel economy benefits.

The Alliance recommended that the agency define ''significantly under-inflated'' as any inflation pressure 20 percent below a tire's load carrying

[7] The range of injuries prevented was 0 to 13,170, and the range of deaths prevented was 0 to 97. Net costs included $30.54 in vehicle costs minus $16.40 in fuel savings and $5.51 in tread wear savings. These estimates did not include maintenance costs. The agency has estimated maintenance costs for this final rule.

[8] RIGAC consists of representatives from the Tire Association of North America (TANA), Tread Rubber Manufacturers Group (TRMG), ITRA, and RMA.

[9] Standard No. 110 specifies requirements for tire selection to prevent tire overloading.

limit, as determined by a tire industry standardizing body (such as the Tire and Rim Association) or the minimum activation pressure specified in the standard, whichever is higher. The Alliance agreed with the agency's minimum activation pressure of 20 psi for P-metric standard load tires. The Alliance cited data from tests performed by RMA indicating that the average tire was able to operate at high speeds (120 and 140 km/h) at load-inflation conditions more extreme than the worst case that the Alliance proposal would allow.

The Alliance also stated that a 25 percent differential from placard pressure would be inadequate to allow the use of indirect TPMSs. The Alliance claimed that a minimum of 30 percent differential is necessary to ensure accuracy with an indirect TPMS and avoid excessive nuisance warnings.

The AIAM recommended that the agency define ''significantly under-inflated'' as any pressure more than 30 percent below the placard pressure. Alternatively, the AIAM suggested that the agency use the load-carrying limit of the tire as defined by a tire industry standardizing body as the baseline for determining the warning threshold.

Several manufacturers indicated that they are either developing or could develop indirect or hybrid TPMSs that perform better than current indirect TPMSs. In its comments on the NPRM, TRW Automotive Electronics (TRW), which manufactures both direct and indirect TPMSs, stated that it could, in concept, combine direct and indirect TPMS technologies to produce a hybrid TPMS that performs better than TRW's current indirect TPMS. TRW stated this could be accomplished by adding the equivalent of two direct pressure-monitoring sensors and a radio frequency receiver to an indirect TPMS. TRW suggested that this hybrid TPMS could comply detect 25 under-inflation for about 60 percent of the cost of a full direct TPMS. However, it did not indicate whether it had any plans to develop a hybrid system.

Sumitomo Rubber Industries, which manufactures indirect TPMSs, indicated that indirect TPMSs will be able to detect a 25 percent differential in inflation pressure.

Toyota, which uses an indirect TPMS on its Sienna van, stated that its next generation of indirect TPMSs (i.e., TPMSs not available for current production) would be able to detect a 20 percent differential in tire pressure by monitoring the resonance frequency as well as the dynamic radius changes of the tires. However, Toyota stated that this performance will be achieved only under ideal conditions, i.e., the vehicle is traveling in a relatively straight line at 30 to 60 km/h for at least 20 minutes. Thus, Toyota recommended that the agency adopt the Alliance proposal of 30 percent under-inflation. Toyota also stated that its next generation of indirect TPMSs would be able to detect significant under-inflation in all four tires. Toyota was not certain when its next generation of indirect TPMSs will be ready for implementation.

Advocates supported the definition of ''significantly under-inflated'' contained in the four-tire, 20 percent alternative, i.e., any pressure 20 percent or more below the placard pressure, or the minimum activation pressure specified in the standard. Advocates also supported the agency's minimum activation pressures.

b. Number of Tires Monitored

Advocates, the ITRA, and RMA recommended that the agency require TPMSs to be able to detect when all four of a vehicle's tires become significantly under-inflated. RMA argued that it is very likely that all four tires will lose air pressure at a similar rate and become significantly under-inflated within a six-month period.[10] RMA stated that drivers would rely heavily on TPMSs for tire pressure maintenance, which will make this scenario even more likely.

The Alliance and AIAM recommended that the agency require only that TPMSs be able to detect significant under-inflation in a single tire. The Alliance argued that TPMSs are not meant to replace the normal tire maintenance that would detect pressure losses due to natural leakage and permeation. Instead, TPMSs are intended to detect a relatively slow leak due to a serviceable condition, such as a nail through the tread or a leaky valve stem. Since such leaks rarely affect more than one tire simultaneously, the Alliance argued, it is sufficient to require only that TPMSs be able to detect a single significantly under-inflated tire. In further support of this position, the Alliance argued that tires do not lose pressure at the same rate.

As noted above, TRW commented that a hybrid TPMS could be developed that would be capable of monitoring all four of a vehicle's tires. According to TRW, a hybrid system would involve installing two direct pressure sensors, one in a front wheel and one in a back wheel located diagonally from each other (*e.g.,* the front left and back right wheels), on a vehicle already equipped with an indirect TPMS. The pressure sensors would directly monitor the pressure in those two tires, while the indirect TPMS would use the wheel speed sensors to indirectly monitor the pressure in the other two tires. This would solve the problem indirect TPMSs have in detecting when two tires on the same axle or the same side of the vehicle become significantly under-inflated because a direct pressure sensor will be in a wheel on each axle and on each side of the vehicle. It would also solve the problem indirect TPMSs have in detecting when all four tires become significantly under-inflated.

Advocates and RMA also recommended that the agency require TPMSs to monitor a vehicle's spare tire. RMA argued that the spare tire should be monitored to ensure its functionality, if and when it is needed. Advocates stated, ''Vehicle owners chronically neglect to maintain minimal air pressure in spare tires.''

The Alliance recommended that the agency require only that TPMSs monitor full-size, matching spare tires, and only when they are installed on the vehicle (i.e., not when they are stowed). The Alliance stated that temporary-use spare tires, including full-size, non-matching and compact spare tires, are not intended to be part of the normal tire rotation cycle for the vehicle. Because these temporary-use spare tires degrade the aesthetic appearance of a vehicle or have speed and distance limitations, vehicle owners normally replace them quickly. Thus, the Alliance recommended that the agency not require TPMSs to monitor temporary-use tires, whether stowed or installed on the vehicle.

RMA supported the agency's proposed requirement that TPMSs function properly with all replacement tires and rims of the size(s) recommended by the vehicle manufacturer. Advocates recommended that the agency require TPMSs to function properly with all replacement tires and rims, regardless of size.

The Alliance recommended that the agency require only that TPMSs function properly with those tires and rims offered as original or optional equipment by the vehicle manufacturer. The Alliance stated that there are a large number of replacement brands and types of tires and rims with different dynamic rolling radii, size variations, load variations, and temperature characteristics. The Alliance argued that since vehicle manufacturers do not control tire compliance for aftermarket tires and rims, they could not guarantee that the TPMS will work, or will work with the same level of precision, in all cases.

[10] RMA stated that normal air pressure loss is approximately 1 to 2 psi per month.

3. Lead Time

The Alliance and most vehicle manufacturers recommended the following four-year phase-in schedule: 15 percent of a manufacturer's affected products equipped with a semi- or fully-compliant TPMS in the first year; 35 percent in the second year; 70 percent in the third year; and 100 percent of a manufacturer's affected products equipped with a fully compliant TPMS in the final year. According to the Alliance, a semi-compliant TPMS is one that meets all but specified interface requirements, i.e., those concerning the display of information about under-inflation, and would be allowed only during the phase-in period. The Alliance and AIAM also recommended that the agency provide credits for early introduction of TPMSs to encourage early implementation of the standard.

TRW supported the agency's four-year phase-in period. TRW stated that direct TPMSs are ready so that manufacturers could start production to meet such a phase-in. However, TRW stated that the improvements in indirect TPMSs that will be necessary to meet the requirements of this final rule would make it difficult to meet the compliance date of November 1, 2003.

Ford Motor Company (Ford) commented that its recent experience with direct TPMSs demonstrates that this technology still needs a thorough prove-out. Ford stated that when it tested 138 direct pressure sensors on 30 vehicles, nine sensors experienced a malfunction. This translates to a sensor failure rate of 6.5 percent. However, Ford stated that if the final rule required five sensors per vehicle (all four tires plus the spare tire), nearly 33 percent of vehicles could experience the failure of at least one sensor. Ford recommended that the agency adopt the phase-in schedule set forth by the Alliance.

Vehicle Services Consulting, Inc. (VSC), which submitted comments on behalf of small volume vehicle manufacturers (i.e., those manufacturers who produce fewer than 5,000 vehicles worldwide each year), recommended that the agency provide phase-in discretion so that small volume manufacturers have until the end of the phase-in period before having to comply with the TPMS requirements. VSC claimed that small volume manufacturers could not obtain the TPMS technology at the same time as large volume manufacturers.

4. Reliability

In the NPRM, the agency noted that the components of direct TPMSs, especially when tires are taken off the rim, might be susceptible to damage. The agency requested comments on the likelihood of such damage. TRW stated:

> Direct TPMSs are relatively new systems and, therefore, the likelihood of damage during driving or maintenance is unknown. However, direct TPMS sensors are designed to minimize the likelihood of damage during driving or maintenance operations. Most sensors are valve-mounted and rest in the drop center well of the rim, and are contoured to minimize the likelihood of damage during tire servicing. They can be packaged in a high impact plastic material, which can withstand high G forces and mechanical vibration/shock levels associated with the tire/wheel system. The likelihood of damage during operation is also minimized by the selected mounting location and the protection offered by the rim during flat conditions. These factors, combined with training for service center technicians, should reduce the overall likelihood of damage.

Beru Corporation, which manufacturers direct TPMSs, stated that it had sold over 800,000 direct TPMS wheel electronics and had received no reports of damage during operation or failures due to mounting error.

The European Community (EC) supported a rulemaking requiring TPMSs. The EC Stated, ''The European Community is convinced (as is the NHTSA) of the appropriateness of a regulation in this field, and of its justification for the safety of road users.'' The EC stressed ''the paramount importance of reliability and accuracy of the technology.'' The EC stated that ''a temperature correction device might be a necessary feature in order to guarantee the reliability and accuracy of the device.''

5. Costs and Benefits Estimates

The Alliance stated that the benefits NHTSA estimated resulting from a reduction in stopping distance were based on three principal conclusions: (1) Properly inflated tires result in shorter stopping distances than under-inflated tires; (2) these shorter stopping distances have equal safety benefits in all types of crashes and under all environmental conditions; and (3) the benefits of shorter stopping distances associated with properly-inflated tires will be greater for direct TPMSs than for indirect TPMSs. The Alliance argued that each of these conclusions is highly questionable and not supported by the information in the rulemaking record.

The Alliance noted that in estimating the safety benefits resulting from stopping distance reductions, the agency relied on Goodyear data. The Alliance argued that these data ''are neither conclusive with respect to the effect of under-inflation on stopping distance, nor reproducible according to the agency's own study demonstrating that there is no significant effect of tire under-inflation on stopping distance.'' The Alliance also argued that even if the Goodyear data were valid, NHTSA's benefits estimates must be adjusted to claim benefits only for vehicles experiencing the same conditions as those in the Goodyear tests, i.e., all four of the vehicle's tires are at 17 psi or below and on wet pavement.[11] The Alliance questioned NHTSA's assumption that 80 percent of drivers would respond appropriately to a direct TPMS, but that only 60 percent of drivers would respond appropriately to an indirect TPMS. The Alliance argued that there was no evidence in the record supporting this assumption.

Finally, the Alliance agreed that TPMSs should produce some of the unquantified benefits listed in the NPRM. However, the Alliance stated that there was no evidence that these benefits would be greater for direct TPMSs than for indirect TPMSs.

The ITRA stated that when developing training programs, it looks closely at tire performance and has the opportunity to analyze a significant number of tires that failed in service. They find that the single most common cause of tire failure is under-inflation. Thus, the ITRA claimed that the agency's benefits estimates may be under-stated.

TRW stated that current indirect TPMSs would have to be upgraded to meet the requirements of the three-tire, 25 percent alternative. TRW estimated that these upgrades would increase the cost of indirect TPMSs to 60 percent of the cost of a direct TPMS.[12]

IQ-mobil Electronics, a TPMS manufacturer in Germany, commented that it has developed ''a batteryless transponder chip'' that ''costs half as much as the battery transmitter it replaces,'' thus reducing ''high replacement costs for the tire transmitter, and an annual environmental burden of millions of batteries.''

E. Submission of Draft Final Rule to OMB

Since this final rule is considered ''significant'' under Executive Order 12866, Regulatory Planning and Review, it was subject to review by the Office of Management and Budget (OMB) under that Order. The agency submitted a draft

[11] Goodyear conducted its tests on pavement with 0.05 inch water on the surface and found significant effects on stopping distance only when the pressure in the vehicle's tires was lowered to 17 psi.

[12] This estimate would apply only to vehicles that were already equipped with ABS.

final rule to OMB on December 18, 2001.

The draft final rule specified short and long-term performance requirements.[13] For the short term, it specified a phase-in of the TPMS requirements beginning November 1, 2003. During the phase-in, the draft final rule permitted vehicles to comply with either a four-tire, 25 percent option, which essentially would have required manufacturers to install direct TPMSs or improved indirect TPMSs, or a one-tire, 30 percent option, which would have permitted manufacturers to install either direct TPMSs or any type of indirect TPMSs, including current indirect TPMSs. For the long-term, the period beginning November 1, 2006, the requirements of the four-tire, 25 percent option would have become mandatory for all vehicles subject to the TPMS standard.

As explained further below in section V.A. ''Alternative Long-Term Requirements Analyzed in Making Preliminary Determination,'' NHTSA analyzed three alternatives for the long term requirement in developing the draft final rule: a four-tire, 20 percent alternative, a three-tire, 25 percent alternative, and a four-tire, 25 percent alternative.

F. OMB Return Letter

After reviewing the draft final rule, OMB returned it to NHTSA for reconsideration, with a letter explaining its reasons for doing so, on February 12, 2002.[14]

In the letter, OMB stated its belief that the draft final rule and accompanying regulatory impact analysis did not adequately demonstrate that the agency had selected the best available method of improving overall vehicle safety. OMB said further that: NHTSA should base its decision about the final rule on overall vehicle safety, instead of just tire safety; while direct TPMSs can detect under-inflation under a greater variety of circumstances than indirect TPMSs, the indirect system captures a substantial portion of the benefit provided by direct systems; NHTSA should consider a fourth alternative for the long-term requirement, a one-tire, 30 percent compliance option, indefinitely, since it would allow vehicle manufacturers to install current indirect TPMSs; NHTSA, in analyzing long-term alternatives, should consider both their impact on the availability of ABS as well as the potential safety benefits of ABS; and that NHTSA should provide a better explanation of the technical foundation for the agency's safety benefits estimates and subject those estimates to sensitivity analyses.

G. Public Comments on OMB's Return Letter

Consumers Union (CU) and Public Citizen (PC) submitted comments on the OMB return letter.[15]

CU stated that direct TPMSs offer significant safety advantages over indirect TPMSs. CU recently performed tire air leakage testing and found that all four tires on a vehicle will likely lose pressure at a similar rate.[16] CU said that direct TPMSs could detect such pressure losses, while indirect TPMSs could not.

CU questioned OMB's returning the TPMS final rule and asking NHTSA to consider the potential benefits of ABS in making a final decision on TPMS requirements. CU stated:

> We cannot understand the logic of delaying an important safety measure like direct tire pressure monitoring systems while NHTSA studies issues related to a less effective alternative because that alternative might encourage automakers to make ABS more widely available.

Finally, CU stated that, while Congress mandated that NHTSA issue a regulation for TPMSs, Congress did not mandate that the agency issue a regulation requiring ABS to be installed in all vehicles.

PC also supported the four-tire, 20 percent alternative. PC argued that indirect TPMSs have shortcomings, including:

- They can detect under-inflation only if one tire is more than 25 percent less inflated than the other tires.
- They cannot detect when all four tires are equally under-inflated, a likely scenario if the tires are purchased or checked at the same time.
- They also cannot detect when two tires on the same side of the vehicle or the same axle are under-inflated, but can detect when diagonal tires are under-inflated.

PC also objected to OMB's returning the TPMS final rule and asking NHTSA to consider the potential benefits of ABS in making a final decision on TPMS requirements. PC questioned OMB's return letter, arguing that it employs

> unproven assumptions about the cost and market effects of combining indirect systems with a requirement for anti-lock brakes (ABS) (a long-controversial area outside the focus of the agency's current rulemaking mandate), which, in turn, has only statistically insignificant and highly disputed safety effects.

PC also questioned the potential benefits of ABS cited by OMB. In response to OMB's reliance on a study by Charles Farmer, the PC asserted that Mr. Farmer

> found that ABS *had no statistically significant effect on crash fatalities.* [Emphasis original.] Farmer was unable to determine whether ABS ultimately saved or cost lives across the vehicle fleet, making the ''between 4 and 9 percent reduction'' in crash fatalities [cited in the OMB letter] a statistical blip that may actually be zero percent.

H. Congressional Hearing

On February 28, 2002, the House Committee on Energy and Commerce held an oversight hearing on the implementation of the TREAD Act. During the hearing, several Congressmen discussed their expectations for the TPMS rulemaking. Expressing concern about the cumulative damage done to a tire that is run while under-inflated, Congressman Tom Sawyer asked whether a warning threshold of 25 percent below placard pressure was low enough. Given the potential for catastrophic failure of tires run too long while under-inflated, the Congressman stated that it was important that the TPMS not encourage drivers to drive on under-inflated tires.

Congressman Markey, the sponsor of the amendment that added the TPMS mandate to the TREAD Act, indicated that the reliance of drivers on the TPMS warning light could lead to safety problems if the TPMS does not provide sufficient warnings. He acknowledged that, during the consideration of the TPMS amendment, he had mentioned a TPMS that was then in use (an ABS-based TPMS on the Toyota Sienna). He said that while any TPMS was acceptable during the initial implementation period for the TPMS requirements, the real intent of the amendment is to provide a warning in all instances.

III. Safety Problem

Many vehicles have significantly under-inflated tires, primarily because drivers infrequently check their

[13] The rationales for the provisions of that draft final rule are discussed below in section VI.A., ''Summary of Preliminary Determination about the Final Rule.''

[14] A copy of the return letter has been placed in the docket (Docket No. NHTSA–2000–8572–202). The letter also is available electronically at www.whitehouse.gov/omb/inforeg/dot_revised_tire_rtnltr.pdf.

[15] Both letters have been placed in the docket. The CU letter is Docket No. NHTSA–2000–8572–204, and the PC letter is Docket No. NHTSA–2000–8572–199.

[16] CU tested three samples of 36 tire models over a six-month period. CU mounted the tires on new rims and inflated the tires to 30 psi. Then CU stored the tires indoors at room temperature for six months and checked their inflation pressure each month. After six months, the average pressure loss was about 4.4 psi. A copy of CU's test procedures and the test results has been placed in the docket. (Docket No. NHTSA–2000–8572–203.)

vehicles' tire pressure. Other contributing factors are the difficulty of visually detecting when a tire is significantly under-inflated and the loss of tire pressure due to natural leakage and seasonal climatic changes.

A. Infrequent Driver Monitoring of Tire Pressure

Surveys have shown that most drivers check the inflation pressure in their vehicles' tires infrequently. For example, in September 2000, the Bureau of Transportation Statistics (BTS) conducted an omnibus survey for NHTSA. One of the questions posed was: ''How often do you, or the person who checks your tires, check the air pressure in your tires?'' The answers indicated that 29 percent of the respondents stated that they check the air pressure in their tires monthly; another 29 percent stated that they check the air pressure only when one or more of their vehicle's tires appears under-inflated; 19 percent stated that they only have the air pressure checked when the vehicle is serviced; 5 percent stated that they only check the air pressure before taking their vehicle on a long trip; and 17 percent stated that they check the air pressure on some other occasion. Thus, 71 percent of the respondents stated that they check the air pressure in the vehicles' tires less than once a month.[17]

In addition, NHTSA's National Center for Statistics and Analysis (NCSA) conducted a survey in February 2001. The survey was designed to assess the extent to which passenger vehicle drivers are aware of the recommended air pressure for their vehicles' tires, if drivers monitor air pressure, and to what extent actual tire pressure differs from placard pressure.

Data was collected through the infrastructure of the National Accident Sampling System—Crashworthiness Data System (NASS–CDS). The NASS–CDS consists of 24 Primary Sampling Units (PSUs) located across the country. Within each PSU, a random selection of zip codes was obtained from a list of eligible zip codes. Within each zip code, a random selection of two gas stations was obtained.

A total of 11,530 vehicles were inspected at these gas stations. This total comprised 6,442 passenger cars, 1,874 sports utility vehicles (SUVs), 1,376 vans, and 1,838 pick-up trucks. For analytical purposes, the data were divided into three categories: (1) Passenger cars; (2) pick-up trucks, SUVs, and vans with P-metric tires; and (3) pick-up trucks, SUVs, and vans with either light truck (LT) or flotation tires.

Drivers were asked how often they normally check their tires to determine if they are properly inflated. Their answers are in the following table:

How often is tire pressure checked?	Drivers of passenger cars (%)	Drivers of pick-up trucks, SUVs, and vans (%)	
		P-metric tires	LT or flotation tires
Weekly	8.76	8.69	8.16
Monthly	21.42	25.19	39.88
When they seem low	25.63	23.58	15.59
When serviced	30.18	27.72	25.54
For long trip	0.99	2.39	2.17
Other	6.46	8.27	6.97
Do not check	6.56	4.16	1.69

These data indicate that only about 30 percent of drivers of passenger cars, 34 percent of drivers of pick-up trucks, SUVs, and vans with P-metric tires, and 48 percent of drivers of pick-up trucks, SUVs, and vans with either LT or flotation tires claim that they check the air pressure in their vehicles' tires at least once a month.

B. Loss of Tire Pressure Due to Natural and Other Causes

According to data from the tire industry, 85 percent of all tire air pressure losses are the result of slow leaks that occur over a period of hours, days, or months. Only 15 percent are rapid air losses caused by contact with a road hazard, e.g., when a large nail that does not end up stuck in the tire punctures a tire.

Slow leaks may be caused by many factors. Tire manufacturers commented that tires typically lose air pressure through natural leakage and permeation at a rate of about 1 psi per month. Testing by CU supports those comments. In addition, tire manufacturers said that seasonal climatic changes result in air pressure losses on the order of 1 psi for every 10 degree F decrease in the ambient temperature. Slow leaks also may be caused by slight damage to a tire, such as a road hazard that punctures a small hole in the tire or a nail that sticks in the tire. NHTSA has no data indicating how often any of these causes results in a slow leak.

C. Percentage of Motor Vehicles With Under-Inflated Tires

During the February 2001 survey, NASS–CDS crash investigators measured tire pressure on each vehicle coming into the gas station and compared the measured pressures to the vehicle's placard pressure. They found that about 36 percent of passenger cars and about 40 percent of light trucks had at least one tire that was at least 20 percent below the placard pressure.[18] About 26 percent of passenger cars and 29 percent of light trucks had at least one tire that was at least 25 percent below the placard pressure. The agency notes those levels of under-inflation because they are the threshold levels for the low-tire pressure warning telltale illumination under the two alternatives the agency proposed in the NPRM for TPMSs. (66 FR 38982, July 26, 2001).

D. Consequences of Under-Inflation of Tires

1. Reduced Vehicle Safety—Tire Failures and Increases in Stopping Distance

When a tire is used while significantly under-inflated, its sidewalls flex more and the air temperature inside the tire increases, increasing stress and the risk of failure. In addition, a significantly under-inflated tire loses lateral traction,

[17] The agency notes that it seems likely that the respondents in both of the surveys cited overstated the frequency with which they check tire pressure, particularly given the fact that these surveys were conducted during the height of publicity about tire failures on sport utility vehicles in the late 2000 and early 2001.

[18] For purposes of this discussion, the agency classified pick-up trucks, SUVs, and vans with either P-metric, LT, or flotation tires as light trucks.

making handling more difficult. Under-inflation also plays a role in crashes due to flat tires and blowouts. Finally, significantly under-inflated tires can increase a vehicle's stopping distance.

NHTSA's current crash files do not contain any direct evidence that points to low tire pressure as the cause of any particular crash.[19] However, this lack of data does not imply that low tire pressure does not cause or contribute to any crashes. The agency believes that it simply reflects the fact that measurements of tire pressure are not among the vehicle information included in the crash reports received by the agency and placed in its crash data bases.[20]

The only tire-related data element in the agency's crash databases is ''flat tire or blowout.'' However, even in crashes for which a flat tire or blowout is reported, crash investigators cannot tell whether low tire pressure contributed to the tire failure.

The agency examined its crash files to gather information on tire-related problems that resulted in crashes. The NASS–CDS has trained investigators who collect data on a sample of tow-away crashes around the United States. These data can be weighted to generate national estimates.

The NASS–CDS General Vehicle Form contains a value indicating vehicle loss of control due to a blowout or flat tire. This value is used only when a vehicle's tire went flat, causing a loss of control of the vehicle and a crash. The value is not used for cases in which one or more of a vehicle's tires were under-inflated, preventing the vehicle from performing as well as it could have in an emergency situation.

NHTSA examined NASS–CDS data for 1995 through 1998 and estimated that 23,464 tow-away crashes, or 0.5 percent of all crashes, are caused by blowouts or flat tires each year. The agency placed the tow-away crashes from the NASS–CDS files into two categories: passenger car crashes and light truck crashes. Passenger cars were involved in 10,170 of the tow-away crashes caused by blowouts or flat tires, and light trucks were involved in the other 13,294.

NHTSA also examined data from the Fatality Analysis Reporting System (FARS) for evidence of tire problems in fatal crashes. In FARS, if tire problems are noted after the crash, the simple fact of their existence is all that is noted. No attempt is made to ascribe a role in the crash to those problems. Thus, the agency does not know whether the noted tire problem caused the crash, influenced the severity of the crash, or simply occurred during the crash. For example, a tire may have blown out and caused the crash, or it may have blown out during the crash when the vehicle struck some object, such as a curb.

Thus, while an indication of a tire problem in the FARS file gives some clue as to the potential magnitude of tire problems in fatal crashes, the FARS data cannot give a precise measure of the causal role played by those problems. The very existence of tire problems is sometimes difficult to detect and code accurately. Further, coding practices vary from State to State. Nevertheless, the agency notes that, from 1995 to 1998, 1.1 percent of all light vehicles involved in fatal crashes were coded as having tire problems. Over 535 fatal crashes involved vehicles coded with tire problems.

Under-inflated tires can contribute to types of crashes other than those resulting from blowouts or tire failure, including crashes which result from: skidding and/or a loss of control of the vehicle in a curve or in a lane change maneuver; an increase in a vehicle's stopping distance; or hydroplaning on a wet surface.

The 1977 Indiana Tri-level study associated low tire pressure with loss of control on both wet and dry pavements. The study never defined low tire pressure as a ''definite'' (i.e., 95 percent certainty that the crash would not have occurred absent this condition) cause of any crash, but did identify it as a ''probable'' (80 percent certainty that the crash would not have occurred absent this condition) cause of the crash in 1.4 percent of the 420 in-depth crash investigations.

The study divided ''probable'' cause into two levels: a ''causal'' factor and a ''severity-increasing'' factor. A ''causal'' factor was defined as a factor whose absence would have prevented the accident from occurring. A ''severity-increasing'' factor was defined as a factor whose presence was not sufficient, by itself, to result in the occurrence of the accident, but which resulted in an increase in speed of the initial impact. The study determined that under-inflated tires were a causal factor in 1.2 percent of the probable cause cases and a severity-increasing factor in 0.2 percent of the probable cause cases.

Note that more than one probable cause could be assigned to a crash. In fact, there were a total of 138.8 percent causes listed as probable causes (92.4 percent human factors, 33.8 percent environmental factors, and 12.6 percent vehicle factors). Thus, tire under-inflation's part of the total is one percent (1.4/138.8). The agency focused solely on the probable cause cases, which represent 0.86 percent of crashes (1.2/1.4 * 1.0).

Tires are designed to maximize their performance capabilities at a specific inflation pressure. When a tire is under-inflated, the shape of its footprint and the pressure it exerts on the road surface are both altered, especially on wet surfaces. An under-inflated tire has a larger footprint than a properly inflated tire. Although the larger footprint results in an increase in rolling resistance on dry road surfaces due to increased friction between the tire and the road surface, it also reduces the tire load per unit area. On dry road surfaces, the countervailing effects of a larger footprint and reduced load per unit of area nearly offset each other, with the result that the vehicle's stopping distance performance is only mildly affected by under-inflation.

On wet surfaces, however, under-inflation typically increases stopping distance for several reasons. First, as noted above, the larger tire footprint provides less tire load per area than a smaller footprint. Second, since the limits of adhesion are lower and achieved earlier on a wet surface than on a dry surface, a tire with a larger footprint, given the same load, is likely to slide earlier than the same tire with a smaller footprint because of the lower load per footprint area. The rolling resistance of an under-inflated tire on a wet surface is greater than the rolling resistance of the same tire properly-inflated on the same wet surface. This is because the slightly larger tire footprint on the under-inflated tire results in more rubber on the road and hence more friction to overcome. However, the rolling resistance of an under-inflated tire on a wet surface is less than the rolling resistance of the same under-inflated tire on a dry surface because of the reduced friction caused by the thin film of water between the tire and the road surface. The less tire load per area and lower limits of adhesion of an under-inflated tire on a wet surface are enough to overcome the increased friction caused by the larger footprint of the under-inflated tire. Hence, under-inflated tires cause longer stopping distance on wet surfaces than properly-inflated tires.

[19] In response to the TREAD Act, NHTSA has added new tire related variables and attributes, including tire make, model, recommended tire pressure, actual tire pressure, and tread depth to its crash databases. These new variables will provide more specific tire data for vehicles involved in crashes.

[20] These crash databases are the NASS–CDS and the Fatality Analysis Reporting System (FARS).

The agency has received data from Goodyear indicating that significantly under-inflated tires increase a vehicle's stopping distance.[21] The effects of tire under-inflation on vehicle stopping distance are discussed in greater detail in the agency's Final Economic Analysis (FEA).

As explained in the FEA, the agency did not use the VRTC data or the Goodyear data that the agency used to estimate benefits in the NPRM because of concerns with the way in which the both tests were performed.[22] The agency believes that the more recent Goodyear test methodology adequately addressed these concerns.[23]

2. Reduced Tread Life

Unpublished data submitted to the agency by Goodyear indicate that when a tire is under-inflated, more pressure is placed on the shoulders of the tire, causing the tread to wear incorrectly.[24] The Goodyear data also indicate that the tread on an under-inflated tire wears more rapidly than it would if the tire were inflated to the proper pressure.

The Goodyear data indicate that the average tread life of a tire is 45,000 miles, and the average cost of a tire is $61 (in 2000 dollars). Goodyear also estimated that a tire's average tread life would drop to 68 percent of the expected tread life if tire pressure dropped from 35 psi to 17 psi and remained there. Goodyear assumed that this relationship was linear. Thus, for every 1-psi drop in tire pressure, tread life would decrease by 1.78 percent (32 percent/18 psi). This loss of tread life would take place over the lifetime of the tire. Thus, according to Goodyear's data, if the tire remained under-inflated by 1 psi over its lifetime, its tread life would decrease by about 800 miles (1.78 percent of 45,000 miles).

As noted above, data from the NCSA tire pressure survey indicate that 26 percent of passenger cars had at least one tire that was under-inflated by at least 25 percent. The average level of under-inflation of the four tires on passenger cars with at least one tire under-inflated by at least 25 percent was 6.8 psi. Thus, on average, these passenger cars could lose about 5,440 miles (6.8 psi under-inflation x 800 miles) of tread life due to under-inflation, if their tires were under-inflated to that extent throughout the life of the tires.

Also as noted above, data from the NCSA tire pressure survey indicate that about 29 percent of light trucks had at least one tire that was under-inflated by at least 25 percent. The average level of under-inflation of the four tires on light trucks with at least one tire under-inflated by at least 25 percent was 8.7 psi. Thus, on average, these light trucks could lose about 6,960 miles (8.7 psi under-inflation x 800 miles) of tread life due to under-inflation, if their tires were under-inflated to that extent throughout the life of the tires.

3. Reduced Fuel Economy

Under-inflation increases the rolling resistance of a vehicle's tires and, correspondingly, decreases the vehicle's fuel economy. According to a 1978 report, fuel efficiency is reduced by one percent for every 3.3 psi of under-inflation.[25] More recent data provided by Goodyear indicate that fuel efficiency is reduced by one percent for every 2.96 psi of under-inflation.[26]

NHTSA notes that there is an apparent conflict between these data, which indicate that under-inflation increases rolling resistance and thus decreases fuel economy and the previously mentioned Goodyear data that indicates under-inflated tires increase a vehicle's stopping distance. While an under-inflated tire typically has a larger tread surface area (*i.e.,* tire footprint) in contact with the road, which might be thought to improve its traction during braking, the larger tire footprint also reduces the tire load per unit area. The larger footprint does result in an increase in rolling resistance on dry road surfaces due to increased friction between the tire and the road surface. On dry road surfaces, though, the countervailing effects of a larger footprint and reduced load per unit of area nearly offset each other, with the result that the vehicle's stopping distance performance is only mildly affected by under-inflation on those surfaces. However, as explained above in section III.D.1., ''Reduced Vehicle Safety—Tire Failures and Increases in Stopping Distance,'' on wet surfaces other attributes of under-inflation lead to increased stopping distances.

IV. Tire Pressure Monitoring Systems

There are currently two types of TPMSs: direct and indirect. Other types, including hybrid TPMSs that combine aspects of both direct and indirect systems, may be developed in the future. Direct TPMSs directly measure the pressure in a vehicle's tires, while indirect TPMSs estimate differences in pressure by comparing the rotational speed of the wheels. To varying degrees, both types can inform the driver when the pressure in one or more tires falls below a pre-determined level. Unless the TPMS is connected to an automatic inflation system, the driver must stop the vehicle and inflate the under-inflated tire(s), preferably to the pressure recommended by the vehicle manufacturer. Currently, TPMSs are available as original equipment on a few vehicle models. They are available also as after-market equipment, but few are sold. At this time, NHTSA does not have any information indicating that a hybrid TPMS is being planned for production. However, the agency received comments from TRW, a TPMS manufacturer, stating its belief that such a system could be produced.

The VRTC evaluated six direct and four indirect TPMSs that are currently available.[27] The VRTC found that the direct TPMSs were accurate to within an average of ±1.0 psi.[28] This leads the agency to believe that those current TPMSs are more accurate than the systems that were available at the time of the agency s 1981 rulemaking on TPMSs.

Following is a description of the two currently available types of TPMSs and their capabilities.

[21] Goodyear submitted these data to the docket in a letter dated September 14, 2001. See Docket No. NHTSA–2000–8572–160. OMB criticized NHTSA's application of these data to certain vehicle types in estimating safety benefits for this rulemaking. The agency responds to that criticism below in section VI.F., ''Technical Foundation for NHTSA's Safety Benefit Analyses.'' The Alliance also questioned NHTSA's use of the Goodyear data. The agency explains its use of the Goodyear data below in footnotes 22 and 23, and in the agency's Final Economic Analysis (FEA).

[22] For example, the VRTC only tested new tires, not worn tires that are more typical of the tires on most vehicles. In addition, the NHTSA track surface is considered to be aggressive in that it allows for maximum friction with tire surfaces. It is more representative of a new road surface than the worn surfaces experienced by the vast majority of road traffic. The previous Goodyear tests on wet surfaces were conducted on surfaces with .05 inch of standing water. This is more than would typically be encountered under normal wet road driving conditions. The agency expressed concerns with the adequacy of both sets of test data in a memo to the docket. (Docket No. NHTSA–2000–8572–81.)

[23] For example, in its more recent tests Goodyear tested tires with two tread depths: full tread, which is representative of new tires, and half tread, which is representative of worn tires. Goodyear also conducted wet surface tests on surfaces with .02 inch of standing water, which is more representative of typical wet road driving conditions.

[24] Docket No. NHTSA–2000–8572–26.

[25] The Aerospace Corporation, Evaluation of Techniques for Reducing In-use Automotive Fuel Consumption, June 1978.

[26] Docket No. NHTSA–2000–8572–26.

[27] An Evaluation of Existing Tire Pressure Monitoring Systems, May 2001. A copy of this report is available in the docket. (Docket No. NHTSA–2000–8572–29.)

[28] This is not to say that the systems were able to detect a 1.0 psi drop in pressure. The systems were accurate within ±1.0 psi once tire pressure had fallen by a certain percentage.

A. Indirect TPMSs

Current indirect TPMSs work with a vehicle's ABS. The ABS employs wheel speed sensors to measure the rotational speed of each of the four wheels. As a tire's pressure decreases, the rolling radius decreases, and the rotational speed of that wheel increases correspondingly. Most current indirect TPMSs compare the sums of the wheel speeds on each diagonal (i.e., the sum of the speeds of the right front and left rear wheels as compared to the sum of the speeds of the left front and right rear wheels). Dividing the difference of the sums by the average of the four wheels speeds allows the indirect TPMS to have a ratio that is independent of vehicle speed. This ratio is best expressed by the following equation: [(RF + LR) − (LF + RR)/Average Speed]. If this ratio deviates from a set tolerance, one or more tires must be over- or under-inflated. A telltale then indicates to the driver that a tire is under-inflated. However, the telltale cannot identify which tire is under-inflated. Current vehicles that have indirect TPMSs include the Toyota Sienna, Ford Windstar, and Oldsmobile Alero.

Current indirect TPMSs must compare the average of the speeds of the diagonal wheels for several reasons. First, current indirect TPMSs cannot compare the speed of one wheel to the speeds of the other three wheels individually or to the average speed of the four wheels. During any degree of turning, the outside tires must rotate faster than the inside tires. Thus, all four wheel speeds deviate significantly when the vehicle is in a curve or turn. If a current indirect TPMS compared each individual wheel speed to the average of all four wheels speeds, the system would provide a false alarm each time the vehicle rounded a curve or made a turn. The same would be true if the indirect TPMS compared each individual wheel speed to the speed of the other three wheels individually. Since the outside wheels would rotate much faster than the inside wheels in a curve or turn, each outside tire would appear to be under-inflated when compared to an inside tire.

Current indirect TPMSs also cannot compare the speeds of the front wheels to the speeds of the rear wheels because in curves, the front and rear wheels (on both sides of the vehicle) rotate at different speeds. This is primarily due to the fact that the front axle is steerable and follows a different trajectory than the rear axle. As a result, current indirect TPMS must compare a tire from each side and a tire from the front and rear axles to factor out the speed difference caused by curves and turns. Thus, current indirect TPMSs must compare the average speed of the diagonal wheels.

The VRTC tested four current ABS-based indirect TPMSs. None met all the requirements of either alternative proposed in the NPRM. All but one did not illuminate the low tire pressure warning telltale when the pressure in the vehicle's tires decreased to 20 or 25 percent below the placard pressure.[29] The VRTC determined that since reductions in tire diameter with reductions in pressure are very slight in the 15–40 psi range, most current indirect TPMSs require a 20 to 30 percent drop in pressure before they are able to detect under-inflation. The VRTC also concluded that those thresholds were highly dependent on tire and loading factors.

The VRTC also found that none of the tested indirect TPMSs were able to detect significant under-inflation when all four of the vehicle's tires were equally under-inflated, or when two tires on the same axle or two tires on the same side of the vehicle were equally under-inflated. However, the VRTC did find that indirect TPMSs could detect when two tires located diagonally from each other (e.g., the front left and back right tires) became significantly under-inflated.

B. Direct TPMSs

Direct TPMSs use pressure sensors, located in each wheel, to directly measure the pressure in each tire. These sensors broadcast pressure data via a wireless radio frequency transmitter to a central receiver. The data are then analyzed and the results sent to a display mounted inside the vehicle. The type of display varies from a simple telltale, which is how most vehicles are currently equipped, to a display showing the pressure in each tire, sometimes including the spare tire. Thus, direct TPMSs can be linked to a display that tells the driver which tire is under-inflated. An example of a vehicle equipped with a direct system is the Chevrolet Corvette.

Since direct TPMSs actually measure the pressure in each tire, they are able to detect when any tire or when each tire in any combination of tires is under-inflated, including when all four of the vehicle's tires are equally under-inflated. Direct TPMSs also can detect small pressure losses. Some systems can detect a drop in pressure as small as 1 psi.

[29] The Continental Teves indirect TPMS on the BMW M3 activated the warning telltale at pressures between 9 and 21 percent below the placard pressure.

C. Hybrid TPMSs

In their comments on the NPRM, TRW, a manufacturer of both direct and indirect TPMSs, stated that in order to meet the proposed requirements of the 3-tire, 25 percent alternative, current indirect TPMSs would need the equivalent of the addition of two tire pressure sensors and a radio frequency receiver. The tire pressure sensors would be installed on wheels located diagonally from each other.

For the following reasons, the agency believes that such a ''hybrid'' TPMS would be able to overcome the limitations of current indirect TPMSs, i.e., the inability to detect when all four tires, or two tires on the same axle or same side of the vehicle are under-inflated. First, a hybrid TPMS would be able to detect when two tires on the same axle or the same side of the vehicle were under-inflated because one of those tires necessarily would contain a direct pressure sensor. Second, a hybrid TPMS would be able to detect when the two tires without a direct pressure sensor were under-inflated because they would be located diagonally from each other, and, as the VRTC found in its review of current TPMSs, current indirect TPMSs are able to detect when two tires located diagonally from each other are under-inflated. Third, a hybrid TPMS would be able to detect when three or four tires were under-inflated because one of those tires necessarily would contain a direct pressure sensor.

However, since the agency does not have any information indicating that a hybrid TPMS is currently being planned for production, the agency does not know when such a system could be produced.

V. Summary of Preliminary Determination About the Final Rule

In this section, NHTSA summarizes its preliminary determination about the final rule that was submitted to OMB in December 2001.

A. Alternative Long-Term Requirements Analyzed in Making Preliminary Determination

For purposes of the preliminary determination, the agency analyzed three alternatives. The first alternative (four tires, 20 percent) would have required a vehicle's TPMS to warn the driver when the pressure in any single tire or in each tire in any combination of tires, up to a total of four tires, fell to 20 percent or more below the placard pressure, or a minimum level of pressure specified in the standard, whichever pressure was higher. The

second alternative (three tires, 25 percent) would have required a vehicle's TPMS to warn the driver when the pressure in any single tire or in each tire in any combination of tires, up to a total of three tires, fell to 25 percent or more below the placard pressure, or a minimum level of pressure specified in the standard, whichever pressure was higher. The third alternative (four tires, 25 percent) combined aspects of the first two alternatives. It would have required a vehicle's TPMS to warn the driver when the pressure in any single tire or in each tire in any combination of tires, up to a total of four tires, fell to 25 percent or more below the placard pressure, or a minimum level of pressure specified in the standard, whichever pressure was higher. The minimum levels of pressure specified in the standard would have been the same for all three alternatives.

The agency estimated that the four-tire, 20 percent alternative would have prevented from 141 to 145 fatalities and prevented or reduced in severity from 10,271 to 10,611 injuries per year.[30] The agency estimated that the average net cost of this alternative would have been from $76.77 to $77.53 per vehicle.[31] Since approximately 16 million vehicles are produced for sale in the United States each year, the total annual net cost of this alternative would have been from $1.228 billion to $1.241 billion. The net cost per equivalent life saved would have been from $5.1 million to $5.3 million.

The agency estimated that the three-tire, 25 percent alternative would have prevented 110 fatalities and prevented or reduced in severity 7,526 injuries per year. The agency estimated that the average net cost would have been $63.64 per vehicle, and the total annual net cost would have been $1.018 billion. The net cost per equivalent life saved would have been $5.8 million.

The agency estimated that the four-tire, 25 percent alternative would have prevented 124 fatalities and prevented or reduced in severity 8,722 injuries per year. The agency estimated that the average net cost would have been $53.87 per vehicle, and the total annual net cost would have been $862 million. The net cost per equivalent life saved would have been $4.3 million.

The agency noted that the vehicle costs of these alternatives could be reduced in the future as manufacturers learned how to produce TPMSs more efficiently. Moreover, maintenance costs could be significantly reduced in the future if manufacturers could mass produce a direct TPMS that did not require the pressure sensors to be replaced when the batteries are depleted.[32]

NHTSA considered these three alternatives because the agency believed that TPMSs that complied with these alternatives would warn drivers of significantly under-inflated tires in a wide variety of reasonably foreseeable circumstances, including when more than one tire was significantly under-inflated. The agency also believed that improved indirect TPMSs could be developed to meet the requirements of the three-tire, 25 percent alternative and hybrid TPMSs could be developed to meet the three-tire, 25 percent and four-tire, 25 percent alternatives. Thus, the agency believed that these alternatives would provide an effective warning while striking a reasonable balance between encouraging further improvements in TPMS technology and stringency of the performance requirements and striking a reasonable balance between safety benefits and costs.

B. Phase-In and Long-Term Requirements

To facilitate compliance, the preliminary determination specified a four-year phase-in schedule,[33] During the phase-in, i.e., between November 1, 2003 and October 31, 2006, it would have allowed compliance with either of two options: a four-tire, 25 percent option or a one-tire, 30 percent option. Under the first option, a vehicle's TPMS would have had to warn the driver when the pressure in one or more of the vehicle's tires, up to a total of four tires, was 25 percent or more below the placard pressure, or a minimum level of pressure specified in the standard, whichever pressure was higher. Under the second option, a vehicle's TPMS would have had to warn the driver when the pressure in any one of the vehicle's tires was 30 percent or more below the placard pressure, or a minimum level of pressure specified in the standard, whichever pressure was higher. The minimum levels of pressure specified in the standard were the same for both compliance options.

Under both options, the preliminary determination would have required the low tire pressure warning telltale to remain illuminated as long as any one of the vehicle's tires remained significantly under-inflated, and the key locking system was in the ''On'' (''Run'') position. The telltale could have been deactivated automatically only when all of the vehicle's tires ceased to be significantly under-inflated, or manually in accordance with the vehicle manufacturer's instructions.

The preliminary determination would have required each TPMS to be compatible with all replacement or optional tires (but not rims) of the size(s) recommended for use on the vehicle by the vehicle manufacturer. It would also have required that the telltale perform a bulb-check at vehicle start-up. It specified written instructions explaining the purpose of the low tire pressure warning telltale, the potential consequences of significantly under-inflated tires, the meaning of the telltale when it was illuminated, and what actions drivers should take when the telltale is illuminated, to be placed in the vehicle's owner's manual.

The preliminary determination would not have required TPMSs to monitor the spare tire, either when the tire was stowed or when it was installed on the vehicle. It also would not have required the TPMS to indicate a system malfunction.

The agency created the one-tire, 30 percent option so that vehicle manufacturers could continue to install current indirect TPMSs for several more years, thus providing additional time and flexibility for innovation and technological development. The agency created the other option by adjusting the definition of ''significantly under-inflated'' for the four-tire option to 25 percent (instead of 20 percent) so that

[30] NHTSA assumed that drivers would respond differently to different information displays. To get the upper bound, the agency assumed that manufacturers that installed direct TPMSs would also install a display showing the pressure of each tire. Currently only direct TPMSs are capable of displaying individual tire pressure. The agency also assumed that 33 percent of drivers would respond to such a display by re-inflating their tires when they became under-inflated by 10 percent, and that the other 67 percent would respond by re-inflating their tires when they became under-inflated by 20 percent, i.e., when the warning telltale would have been activated. To get the lower bound, the agency assumed that manufacturers would install only a low tire pressure warning telltale, as would have been required. Thus, all drivers would not re-inflate their tires until they became under-inflated by 20 percent, and the warning telltale was activated.

[31] The net cost is the vehicle cost plus the maintenance cost minus the fuel and tread wear savings. The difference in costs is due to the cost of adding an individual tire pressure display. The agency assumed that manufacturers would install direct TPMSs on vehicles that are not equipped with ABS because the cost of adding a direct TPMS was significantly less than the cost of adding ABS and an indirect TPMS.

[32] One TPMS manufacturer, IQ-mobil Electronics of Germany, indicated in its comments that it has developed a pressure sensor that does not require a battery.

[33] The phase-in schedule was as follows: 10 percent of a manufacturer's affected vehicles would have had to comply with either compliance option in the first year; 35 percent in the second year; and 65 percent in the third year. In the fourth year, 100 percent of a manufacturer's affected vehicles would have had to comply with the long-term requirements, i.e., the four-tire, 25 percent compliance option.

improved indirect TPMSs and hybrid TPMSs could be used to comply with the TPMS standard. After the phase-in, i.e., after October 31, 2006, the second option would have been terminated, and the provisions of the first option would have become mandatory for all new vehicles.

The agency tentatively believed that a four-tire, 25 percent requirement was preferable for the long-term because it would require TPMSs that warn drivers about all combinations of significantly under-inflated tires and provide more timely and effective warnings. The agency tentatively believed that a one-tire, 30 percent requirement would allow TPMSs that do not warn about all combinations of significantly under-inflated tires and do not provide warnings until the extent of under-inflation reaches 30 percent below the placard pressure. Thus, it appeared that a four-tire, 25 percent requirement would better fulfill the purposes of the TPMS mandate in the TREAD Act, while encouraging further improvements in TPMS technology.

VI. Response to Issues Raised in OMB Return Letter About Preliminary Determination

Pursuant to section 6(a)(3) of Executive Order 12866, NHTSA is required to provide a written response to the points made by OMB in its February 12 return letter. As noted above, OMB stated in its return letter that: NHTSA should base its decision about the final rule on overall safety, instead of tire safety; while direct TPMSs can detect under-inflation under a greater variety of circumstances than indirect TPMSs, the indirect system captures a substantial portion of the benefit provided by direct systems; NHTSA should consider a fourth alternative for the long-term requirement, a one-tire, 30 percent compliance option, indefinitely, since it would allow vehicle manufacturers to install current indirect TPMSs; NHTSA, in analyzing long-term alternatives, should consider both their impact on the availability of ABS as well as the potential safety benefits of ABS; and that NHTSA should provide a better explanation of the technical foundation for the agency's safety benefits estimates and subject those estimates to sensitivity analyses.

A. Criteria for Selecting the Long-Term Requirement

1. Tire Safety and Overall Vehicle Safety

OMB stated in its return letter that ''a rule permitting indirect systems may provide more overall safety than a rule that permits only direct or hybrid systems.'' OMB said:

> Although direct systems are capable of detecting low pressure under a greater variety of circumstances than indirect systems, the indirect system captures a substantial portion of the benefit provided by direct systems. Moreover, allowing indirect systems will reduce the incremental cost of equipping vehicles with anti-lock brakes, thereby accelerating the rate of adoption of ABS technology * * *. Both experimental evidence and recent real-world data have indicated a modest net safety benefit from anti-lock brakes.

While NHTSA's general obligation under the Vehicle Safety Act is to improve overall vehicle safety, it is mindful that its specific, immediate obligation in this rulemaking is to comply with the mandate of section 13 of the TREAD Act. The agency is seeking to comply with the mandate and safety goals of the TREAD Act in a way that encourages innovation and allows a range of technologies to the extent consistent with providing drivers with sufficient warning of low tire pressure under a broad variety of the reasonably foreseeable circumstances in which tires become under-inflated.

2. Statutory Mandate

Section 13 of the TREAD Act mandated the completion of ''a rulemaking for a regulation to require a warning system in new motor vehicles to indicate to the operator when a tire is significantly under inflated'' within one year of the TREAD Act's enactment. As noted below, the agency tentatively believes, based on the current record, that a four-tire, 25 percent under-inflation requirement would best meet the mandate.

B. Relative Ability of Direct and Current Indirect TPMSs To Detect Under-Inflation

As noted above, current indirect TPMSs work, in part, by adding the speeds of diagonal sets of tires and subtracting the sum of one set from the sum of the other. As a result, if all four tires are significantly under-inflated, and the difference in the tire pressures is not 30 percent or greater, current indirect TPMSs will not provide a warning. Similarly, if two tires on the same axle or same side of the vehicle are significantly under-inflated, current indirect TPMSs will not provide a warning.

These combinations of significantly under-inflated tires occur frequently enough that current indirect TPMSs would have provided a warning in only about 50 percent of the instances in which NHTSA found significant under-inflation in the February 2001 NCSA survey. Conversely, current direct TPMSs would have provided warnings in all those instances.

The following figures indicate how often current direct and indirect TPMSs would provide warnings when a vehicle has at least one tire that is at least 30 percent below the placard pressure.

Of the 5,967 passenger cars in the February 2001 NCSA survey, 1,199 (20 percent) had at least one tire that was at least 30 percent below the placard pressure. Current direct TPMSs would have provided a warning in every case, while current indirect TPMSs would have provided a warning in only 653 cases (54 percent).

Of the 3,950 light trucks in the NCSA survey, 789 (20 percent) had at least one tire that was at least 30 percent below the placard pressure. Current direct TPMSs would have provided a warning in every case, while current indirect TPMSs would have provided a warning in only 359 cases (46 percent).

Thus, of the total 9,917 passenger cars and light trucks in the NCSA survey, 1,988 (20 percent) had at least one tire that was at least 30 percent below the placard pressure. Current direct TPMSs would have provided a warning in every case, while current indirect TPMSs would have provided a warning in only 1,012 cases (51 percent).

Current indirect TPMSs would have failed to provide a warning in the remainder of the cases for various reasons. Many of the vehicles had one tire that was 30 percent below the placard pressure, but not 30 percent below the pressure in the other tires. As noted above, current indirect TPMSs require at least a 30 percent differential in tire pressure before providing a warning. Other vehicles had more than one tire that was 30 percent below the placard pressure. As noted above, current indirect TPMSs cannot detect when all four of a vehicle's tires, or two tires on the same side of the vehicle or the same axle, are under-inflated.

The absence of a warning in approximately 50 percent of the instances of significant under-inflation is a matter of concern given that many drivers will rely on a TPMS instead of regularly checking their tire pressure. Data from the July 2001 BTS omnibus survey indicate that 65 percent of people would be less concerned, to either a great extent or a very great extent, with routinely maintaining the pressure of their tires if their vehicle were equipped with a TPMS.[34]

[34] NHTSA notes that in its prepared statement submitted in connection with the February 28, 2002 hearing before the House Committee on Energy and

C. Analysis of a Fourth Alternative Long-Term Requirement: One-Tire, 30 Percent Under-Inflation Detection

As explained above in section V.A., ''Alternative Long-Term Requirements Analyzed in Making Preliminary Determination,'' NHTSA analyzed three alternatives: a four-tire, 20 percent alternative; a three-tire, 25 percent alternative and a four-tire, 25 percent alternative.

OMB recommended that the agency analyze a fourth alternative that would require a vehicle's TPMS to warn the driver when the pressure in any one of the vehicle's tires is 30 percent or more below the vehicle manufacturer's recommended cold inflation pressure for the tires, or a minimum level of pressure specified in the standard, whichever pressure is higher. (This alternative is referred to below as the ''one-tire, 30 percent alternative.'') The agency's analysis of the benefits and costs of this alternative follows.

The agency estimates that the one-tire, 30 percent alternative would prevent 79 fatalities and prevent or reduce in severity 5,176 injuries. The agency estimates that the average per vehicle cost of this alternative would be $33.34. Since approximately 16 million light vehicles are produced for sale in the United States each year, the total annual cost of this alternative would be $533 million. The agency estimates that the average per vehicle maintenance cost would be $13.50,[35] and that the average per vehicle fuel and tread life savings over the lifetime of the vehicle would be $2.06 and $0.65, respectively. Thus, the net per vehicle cost of this alternative would be $44.13, and the total annual net cost would be $706 million. The net cost per equivalent life saved would be $5.8 million.

D. Impact of One-Tire, 30 Percent Alternative on Installation Rate of ABS

OMB said that NHTSA should analyze the impact of adopting its long-term regulatory alternatives as well as an additional long-term alternative, a one-tire, 30 percent alternative, on the installation rate of ABS. Since the additional alternative is the only one that would permit compliance by means of installing current indirect TPMSs, and since OMB's suggestion that a TPMS standard could induce increased installation of ABS is dependent upon the manufacturers' being able to install that type of TPMS, NHTSA's analysis focuses on that alternative.

The agency believes there is no reliable basis for concluding that permitting current indirect TPMSs to comply would lead to a significant increase in installation of ABS in light vehicles for the following reasons.

First, the final rule does not mandate the installation of ABS. Vehicle manufacturers always have the option of providing a measure that exceeds NHTSA's standards. However, nothing in the final rule requires manufacturers to install ABS.

Second, the rulemaking record does not contain a reliable basis for concluding that manufacturers will voluntarily install ABS in significantly more light vehicles in response to being permitted to install current indirect TPMSs. When the Alliance addressed the issue of increased voluntary installation of ABS in its September 6, 2001 comments, it said only that a manufacturer ''may well'' opt to make ABS standard equipment on models for which optional ABS is currently available and is currently in high market demand. Further, only one manufacturer, Toyota, indicated that it might make ABS standard equipment on more vehicles if indirect TPMSs were allowed. Toyota provided this indication not in its written comments, but orally in a meeting with the agency. Nothing requires Toyota to make ABS standard equipment.

Third, several manufacturers orally indicated that they would not install ABS on their light trucks even if indirect TPMSs were allowed. General Motors (GM) and Ford told NHTSA that they would install a direct TPMS on their trucks, rather than a four-channel ABS and indirect TPMS, because ABS was significantly more expensive. Further, the agency notes that in April 2002, GM announced that it would cease offering ABS as standard equipment on a number of its less expensive models of cars to make those models more price competitive.

Fourth, it is not economically reasonable for manufacturers to install ABS voluntarily on significantly more vehicles in response to being permitted to install current indirect TPMSs. In the absence of written comments from individual manufacturers indicating that they are very likely to increase voluntarily their installation of ABS if allowed to install current indirect TPMSs, NHTSA may not simply assume that manufacturers will elect to spend $240 per vehicle to install ABS to save $53, the difference between the cost of a direct TPMS ($66) and an indirect TPMS ($13). The market for ABS has been static for several years, with the installation rate at about 63 percent. Absent a market demand for more installations, a manufacturer would not gain a market advantage by increasing the percentage of its vehicles with ABS.

In NHTSA's Final Economic Assessment (FEA), the agency states that although a manufacturer may elect to increase the installation of ABS, it is solely a marketing decision.[36] The influence, if any, this rulemaking might have on their marketing decisions is purely speculative. There are many factors that influence a manufacturer's decision to install equipment. Cost impact is only one of them.

E. Overall Safety Effects of ABS

In addition to recommending that the agency assume that the adoption of the one-tire, 30 percent compliance option would induce vehicle manufacturers to increase their installation of ABS, OMB also recommended that the agency take into account the potential safety benefits of ABS when estimating the benefits of that option. OMB suggested that ABS could reduce fatalities in light vehicles.

NHTSA has analyzed ABS and has determined that there is currently no statistically reliable basis for concluding that ABS reduces fatalities in light vehicles for the following reasons.

First, NHTSA has analyzed the impacts of ABS on light vehicle fatalities for the past decade, with mixed findings.[37] In general, test track results indicate that ABS is a very promising technology that enables drivers to keep vehicles under control under adverse road conditions. Under some pavement conditions, ABS allows the driver to stop a vehicle more rapidly while maintaining steering control, even during panic braking.

However, the agency's analysis of real world crash data shows that, on balance, ABS has not been proven, thus far, to be greatly beneficial in real world fatal crashes.

NHTSA explored the desirability of requiring ABS on light vehicles in an

Commerce on the TREAD Act, OMB stated: The 1-tire standard will provide warnings when 1 tire is underinflated but will not necessarily detect situations when 2 or more tires are underinflated. A further weakness of the 1-tire standard is that consumers may misperceive that their tires are fine (since the warning light is off) when in fact all four of their tires are equally underinflated. The 4-tire standard overcomes these problems.

[35] If the one-tire, 30 percent alternative were the only alternative available to vehicle manufacturers, the agency anticipates that the approximately ⅓ of vehicles not equipped with ABS would nevertheless comply by means of direct TPMSs. The approximately $40.91 of maintenance costs for each of those vehicles, if averaged over the entire fleet, is approximately $13.50.

[36] A copy of the FEA has been placed in the docket.

[37] See ''Preliminary Evaluation of the Effectiveness of Antilock Brake Systems for Passenger Cars,'' NHTSA, December 1994, DOT HS 808 206. This study is available from the National Technical Information Service (NTIS) or NHTSA's Technical Reference Library.

ANPRM issued in 1994 (59 FR 281; January 4, 1994) in response to the National Highway Traffic Safety Administration Authorization Act of 1991. (Public Law 102–240, December 18, 1991). The Act directed the agency to consider the need for any additional brake performance standards for passenger cars, including ABS standards. The ANPRM solicited comments about whether rulemaking was warranted to require that all light vehicles be equipped with ABS. It also posed a number of questions relative to the regulatory approaches that might be employed if requirements were imposed; the types of performance tests that might be used; varieties of ABSs that might be appropriate; and regulatory implementation strategies and schedules that might be employed if requirements were established.

Two years later, the agency issued a notice announcing that it had decided to defer indefinitely a decision whether to require equipping light vehicles with ABS. (61 FR 36698; July 12, 1996) In that notice, the agency stated that it was currently ''inappropriate'' to mandate ABS for the following reasons:

(1) Most studies that have analyzed the accident involvement experiences of ABS-equipped light vehicles have found mixed patterns, with a reduction in accidents in some crash modes but an increase in accidents in other crash modes, (2) even without a Federal requirement, a significant majority of light vehicles will be voluntarily equipped with ABS, (3) and requiring ABS on those light vehicles that will not be equipped with ABS would result in significant costs that, on balance, cannot be justified at this time.

In the 1996 notice, the agency lowered the prediction that it had made in its 1994 ANPRM that the rate of voluntary ABS installation in passenger cars would increase from 55 percent in 1994 to 85 percent in 1999. Given that there had been almost no increase in the rate between the 1994 model year and 1995 model year, the agency suggested in the 1996 notice that the rate in 1999 could be as low as 70 percent. Even that reduced figure has been shown by subsequent events to be overly optimistic. In 2000, the rate had reached only 63 percent for passenger cars.

The agency noted in the 1996 notice that the costs of bringing the percentages up to 100 percent for both passenger cars and light trucks could be very high, over $1.5 billion annually.

Since the 1996 notice, NHTSA has conducted additional studies. In one study, NHTSA measured the braking performance of a group of ABS-equipped production vehicles over a broad range of maneuvers on different road surfaces. Results of this study showed that for most maneuvers, ABS-assisted stops yielded shorter stopping distances in comparison to non-ABS vehicles.[38]

NHTSA has conducted several studies to examine possible reasons for the absence of overall safety benefits. One possible reason is that drivers are not adequately familiar or have inadequate or incorrect knowledge on the use of ABS. The agency has examined this possibility by conducting a national telephone survey to assess drivers' knowledge of ABS, its functionality and their expectations of its effects on vehicle performance. The results showed that, although most drivers had heard of ABS, many did not know what it did or how it affected vehicle performance.[39]

The agency also investigated whether the apparent increase in single vehicle crashes was due to driver ''oversteering'' in crash-imminent situations. The steering capability could have contributed to vehicles going off of the roadway during crash avoidance maneuvers. However, this steering activity was not found to result in a significant number of road departure crashes in NHTSA's research.[40]

The agency also evaluated possible ABS-related behavioral adaptation of drivers through the collection of more detailed data about the driving behavior of subjects in a naturalistic research setting. This study did not indicate any statistically significant trend towards behavioral adaptation by drivers of ABS equipped vehicles in comparison to others.[41]

It is clear from the above comprehensive agency research efforts during the past five years that the agency still cannot explain why ABS systems do not produce the benefits anticipated from test track performance. Similarly, research by others has not yet succeeded in providing an explanation. Efforts by NHTSA and others continue today to try to explain this phenomenon.

Second, OMB's apparent conclusion that increased installation of ABS in light vehicles could have a modest net safety benefit is based upon data that are not statistically significant. Those data are taken from a study by Charles M. Farmer for the Insurance Institute for Highway Safety (IIHS).[42]

In the April 15, 2000 edition of its Status Report, IIHS said the following about the study:

New evidence suggests that cars with antilock braking systems no longer are disproportionately involved in certain types of fatal crashes. However, antilocks still aren't producing reductions in overall fatal crash risk * * *

* * * As before, vehicles with antilock brakes were less likely than cars with standard brakes to be in crashes fatal to occupants of other vehicles. At the same time, the vehicles with antilocks no longer were found to be overinvolved in crashes fatal to their own occupants. Particularly important is the reduction in single-vehicle, run-off-the-road crashes.

The data from the Farmer study are set forth in the table below:

	All crashes	95 Percent confidence bounds	
	Fatalities in ABS cars Fatalities in Non-ABS cars	Lower	Upper
1. GM cars in 1993–95	1.03	0.94	1.12
2. GM cars in 1996–98	0.96	0.87	1.05
3. GM cars in 1993–98	0.99	0.93	1.05
4. Non-GM cars in 1986–95	1.16 (Significant)	1.06	1.27

[38] ''NHTSA Light Vehicle Antilock Brake System Research Program Task 4: A Test Track Study of Light Vehicle ABS Performance Over a Broad Range of Surfaces and Maneuvers,'' January 1999, DOT HS 808 875, available at *http://www-nrd.nhtsa.dot.gov/vrtc/ca/capubs/NHTSAabsT4FinalRpt.pdf.*

[39] ''NHTSA Light Vehicle Antilock Brake System Research Program Task 2: National Telephone Survey of Driver Experiences and Expectations Regarding Conventional Brakes versus ABS,'' November 2001, DOT HS 809 429, available at *http://www-nrd.nhtsa.dot.gov/vrtc/ca/capubs/abssurvey_rptfinal.pdf.*

[40] ''Driver Crash Avoidance Behavior with ABS in an Intersection Incursion Scenario on Dry Versus Wet Pavement,'' (SAE Paper No. 1999–01–1288), available at *http://www-nrd.nhtsa.dot.gov/vrtc/ca/lvabs.htm.*

[41] ''NHTSA Light Vehicle Antilock Brake System Research Program Task 7.1: Examination of ABS-Related Driver Behavioral Adaptation—License Plate Study,'' November 2001, DOT HS 809 430, available at *http://www-nrd.nhtsa.dot.gov/vrtc/ca/capubs/abs71.pdf.*

[42] ''New Evidence Concerning Fatal Crashes by Passenger Vehicles Before and After Adding Antilock Braking System,'' Charles M. Farmer, Insurance Institute for Highway Safety, February 2000. A copy of this study has been placed in the docket. (Docket No. NHTSA–2000–8572–206).

	All crashes	95 Percent confidence bounds	
	Fatalities in ABS cars / Fatalities in Non-ABS cars	Lower	Upper
5. Non-GM cars in 1996–98	0.91	0.77	1.06
6. Non-GM cars in 1986–98	1.09 (Significant)	1.01	1.18

A ratio of 1.0 in the second column means that ABS did not have any effect on fatalities. A ratio above 1.0 indicates a higher risk of fatalities in ABS-equipped vehicles, while a ratio below 1.0 indicates a lower risk of fatalities in ABS equipped vehicles.

In order for the ratio for any group of vehicles to be statistically significant, both the lower and upper confidence bounds for that group must be either below 1.0 or above 1.0. This is true for only two groups of vehicles in the table: those in row 4, non-GM cars in 1986–95, and those in row 6, non-GM cars in 1986–98. For both of these groups, fatalities increased in ABS-equipped vehicles. Thus, in no subset of vehicles in the Farmer study is there any statistically significant advantage for ABS-equipped vehicles in crash fatalities.

OMB interpreted the study to indicate a 4–9 percent reduction in fatalities in ABS-equipped vehicles.[43] However, NHTSA does not believe that these data are statistically significant because one confidence bound is below 1.0 and the other is above 1.0. Thus, these alleged benefits are more than 5 percent likely to be due purely to chance.[44]

Mr. Farmer, the study's author, has indicated to NHTSA that people might have learned how to better use ABS by calendar years 1996–98, so that they were no longer at as great a risk of run-off-the-road fatal crashes as in prior years.[45] Even so, Farmer never stated in his study that ABS reduced fatalities. Regarding the Non-GM cars in 1996–98, he stated, ''When all fatal crash involvements were considered, disregarding in which vehicle the fatalities occurred, the risk ratio was slightly lower than, but not significantly different from, 1.0.''

Third, the most recent NHTSA study showed an improved picture regarding benefits and disbenefits compared to earlier studies, but still no overall benefits in fatal crashes.[46] The study examined ABS effects separately for passenger cars and light trucks for five types of crashes: frontal impacts, side impacts, rollover, run-off-the-road, and pedestrian.

The study found that, when both non-fatal and fatal crashes were combined, there were reductions in crashes for vehicles equipped with ABS. ABS was found to result in statistically significant reductions in crashes for most types of crashes, except side impact crashes, especially those involving cars.

However, when only fatal crashes were considered, there were not any statistically significant overall reductions of those crashes for ABS-equipped vehicles. In fact, the only statistically significant finding was that fatal light truck rollover crashes increased in vehicles with ABS as compared to vehicles without ABS. (That did represent an improvement over a 1998 study[47] that found statistically significant increases for several types of crashes.) No statistically significant effects, positive or negative, were found for any type of fatal passenger car crashes or for other types of fatal light truck crashes.

It is unclear whether the evidence in recent studies represents a statistical aberration relative to earlier studies or whether it is indicative of a real and positive trend. NHTSA will continue to monitor the real world performance of ABS on light vehicles. As with all protective devices, NHTSA plans to update its estimates for ABS as more data become available. If NHTSA obtains data enabling it to show that ABS reduces net fatalities and is cost/beneficial in light vehicles, the agency will consider initiating a separate rulemaking to address the issue of whether to require their installation.

F. Technical Foundation for NHTSA's Safety Benefit Analyses

OMB recommended that NHTSA better explain the technical foundation for the agency's estimates of safety benefits and subject those estimates to sensitivity analyses.[48] Since conducting these desired sensitivity analyses is relevant primarily to making a decision about the TPMS requirements for the long-term, the agency believes that its decision to postpone the final decision on TPMS requirements to the second part of this final rule makes it unnecessary to conduct additional sensitivity analyses at this time.

The agency will complete its new study of TPMS by March 1, 2004. In this study, NHTSA will examine whether the tire pressure of vehicles without any TPMS are substantially closer to the vehicle manufacturer's recommended pressure than the tire pressure of vehicles with TPMSs, especially TPMSs that do not comply with the four-tire, 25 percent compliance option. If necessary, the agency will perform sensitivity analyses on these data.

OMB specifically questioned the estimates of safety benefits that NHTSA made based on reduced skidding and better control, since these estimates were based on the Indiana Tri-level study published in 1977. The agency does not have later data of this quality on the effects of under-inflation on crashes. The agency has started to collect tire pressure data as part of its NASS-CDS data collection. However, NASS-CDS is not a system designed to determine the cause of a crash. Thus, NHTSA does not anticipate receiving significant further data on this issue.[49] However, if this issue becomes a critical element for the decision for the second part of this final rule, the agency will

[43] The 4 percent figure is based on data for GM cars in 1996–98, while the 9 percent figure is based on data for non-GM cars in 1996–98.

[44] Most statisticians consider data that are more than 5 percent likely to be due purely to chance to be statistically insignificant.

[45] Mr. Farmer indicated this in an ex parte conversation with Jim Simons of NHTSA on February 14, 2002. (Docket No. NHTSA–2000–8572–210.)

[46] ''Analysis of the Crash Experience of Vehicles Equipped with All Wheel Antilock Braking Systems (ABS)—A Second Update Including Vehicles with Optional ABS,'' NHTSA, DOT HS 809 144, September 2000. A copy of this study has been placed in the docket. (Docket No. NHTSA–2000–8572–205.) It is also available at *http://www-nrd.nhtsa.dot.gov/vrtc/ca/capubs/lvabstask1—crashdatareport.pdf.*

[47] ''An Analysis of the Crash Experience of Passenger Vehicles with Antilock Braking Systems-An Update,'' NHTSA, DOT HS 808 758, August 1998.

[48] When performing a sensitivity analysis, the agency changes assumptions it has made and then calculates differences in its benefits estimates. For example, the agency assumed that 20 percent of blowouts are caused by low tire pressure. If the agency performed a sensitivity analysis, it could change that assumption to 10 percent or 30 percent and then calculate a potential range of benefits.

[49] Although these data probably will not indicate whether low tire pressure caused a crash, the agency is collecting these data to determine the extent of the correlation between tire pressure and skidding/loss of control crashes.

perform sensitivity analyses on the data from the 1977 study.

OMB also noted NHTSA's use of Goodyear data, rather than VRTC data, on the effects of under-inflation on stopping distance. As explained in greater detail in the FEA, the agency did not use the VRTC data because of its concerns with the way in which the tests were performed.[50] The agency believes that the Goodyear test methodology adequately addressed these concerns.[51]

In addition, OMB questioned the agency's use of the Goodyear data from a minivan to represent passenger cars. The critical element that is being measured is the difference in the tire's response when under-inflated. It is true that the absolute stopping distance will vary by vehicle weight and other vehicle performance characteristics. However, these same characteristics will influence both the properly inflated and the under-inflated tests in a similar fashion. Therefore, while Goodyear's test sample was confined to only two vehicles (a Dodge Caravan and a Ford Ranger), the differences measured under various inflation levels should still be indicative of the effect that could be expected.

Finally, OMB questioned NHTSA's assumption that under-inflation is involved in 20 percent of blowouts that cause crashes. The agency does not know precisely how many blowouts that cause crashes are influenced by under-inflation. As noted above in Section III.D.1., ''Reduced Vehicle Safety—Tire Failures and Increases in Stopping Distance,'' while the only tire-related data element in the agency's crash databases is ''flat tire or blowout,'' even in crashes for which a flat tire or blowout is reported, crash investigators cannot tell whether under-inflation contributed to the blowout. The agency's best estimate is that under-inflation plays a role in 20 percent of blowouts that cause crashes.

In making this estimate, the agency was mindful of the fact that many blowouts occur when one tire is punctured, begins to lose air at a rate somewhat faster than the normal rate due to natural causes, and then fails after being driven for some time while under-inflated. In these cases, a TPMS meeting either compliance option would be able to warn the driver of the under-inflated tire before the tire failed, possibly avoiding a crash.

NHTSA emphasizes that the choice of 20 percent as its estimate of the percentage of under-inflation's involvement in blowouts that cause crashes made little difference in the agency's benefits analyses. As noted below in Section VIII.A.3., ''Flat Tires and Blowouts,'' the agency estimates that the number of fatalities prevented per year due to reductions in crashes involving blowouts and flat tires will be 39 if all light vehicles meet the four-tire, 25 percent compliance option, and 32 if all light vehicles meet the one-tire, 30 percent compliance option. The choice of a somewhat higher or lower figure for the percentage of under-inflation's involvement would change only negligibly the relative benefits of the two compliance options.

VII. The Final Rule

A. Decision To Issue Two-Part Final Rule

As noted above, NHTSA was required to submit a draft final rule to OMB for review. The agency submitted a draft final rule to OMB on December 18, 2001. During the review process, OMB raised questions about the available data and the conclusions the agency preliminarily drew from them. OMB also raised questions about the effect of the final rule on the installation of ABS and the possibility of obtaining braking safety benefits as well as tire safety benefits.

To allow for the consideration of additional data regarding the requirements for vehicles manufactured after October 31, 2006, the agency has decided to divide the final rule into two parts. In this first part, the agency is establishing the requirements for vehicles manufactured from November 1, 2003 to October 31, 2006.

The agency will leave the rulemaking docket open for the submission of new data and analyses. During this period, the agency requests that commenters address how the performance characteristics of particular types of TPMSs satisfy the statutory requirement that systems provide a warning ''when a tire is significantly under-inflated.''

NHTSA is especially interested in data and information about TPMS, both the systems in the field as well as systems under development. Commenters are urged to substantiate their comments with data and information to the maximum extent possible. Unsubstantiated comments are less useful.

The agency also will conduct a study comparing the tire pressures of vehicles without any TPMS to the pressures of vehicles with TPMSs, especially TPMSs that do not comply with the four-tire, 25 percent compliance option. Based on the record compiled to this date, the results of that study, and any other new information submitted to the agency, NHTSA will issue the second part of this rule. The second part will be issued by March 1, 2005, and will apply to vehicles that are manufactured after October 31, 2006.

Based on the record now before the agency, NHTSA tentatively believes that the four-tire, 25 percent option would best meet the mandate in the TREAD Act. However, it is possible that the new information may be sufficient to justify a continuation of the requirements in the first part of this rule, or some other alternative.

B. Part One of the Final Rule—November 2003 through October 2006

1. Summary

The first part of this final rule establishes requirements for vehicles manufactured between November 1, 2003, and October 31, 2006, subject to a phase-in schedule.[52] The final rule requires passenger cars, multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kilograms (10,000 pounds) or less, except those vehicles with dual wheels on an axle, to be equipped with a TPMS to alert the driver that one or more of the vehicle's tires are significantly under-inflated.

For these vehicles, the first part of the final rule provides two compliance options.[53] Under the first compliance option, a vehicle's TPMS must warn the driver when the pressure in one or more of the vehicle's tires, up to a total of four tires, is 25 percent or more below the vehicle manufacturer's recommended cold inflation pressure for the tires, or a minimum level of pressure specified in the standard, whichever pressure is higher. Under the second compliance option, a vehicle's TPMS must warn the driver when the pressure in any one of the vehicle's tires is 30 percent or more below the vehicle manufacturer's recommended cold inflation pressure

[50] For example, the VRTC only tested new tires, not worn tires that are more typical of the tires on most vehicles. In addition, the NHTSA track surface is considered to be aggressive in that it allows for maximum friction with tire surfaces. It is more representative of a new road surface than the worn surfaces experienced by the vast majority of road traffic.

[51] For example, Goodyear tested tires with two tread depths: full tread, which is representative of new tires, and half tread, which is representative of worn tires.

[52] Under the phase-in, 10 percent of a manufacturer's affected vehicles will have to comply with one of the two compliance options the first year (vehicles manufactured between November 1, 2003 and October 31, 2004); 35 percent will have to comply the second year (between November 1, 2004 and October 31, 2005); and 65 percent will have to comply the third year (between November 1, 2005 and October 31, 2006).

[53] The agency is requiring manufacturers to irrevocably select the option to which they will certify each vehicle.

for the tires, or a minimum level of pressure specified in the standard, whichever pressure is higher.[54]

Vehicles certified to either compliance option will be required to provide written information in the owner's manual explaining the purpose of the low tire pressure warning telltale, the potential consequences of significantly under-inflated tires, the meaning of the telltale when it is illuminated, and what actions drivers should take when the telltale is illuminated. Vehicles certified to the one-tire, 30 percent option will be required to provide additional information on the inherent limitations of current indirect TPMSs.

Under both compliance options, the TPMS must include a low tire pressure-warning telltale (yellow). Under the four-tire, 25 percent option, the telltale must remain illuminated as long as any of the vehicle's tires remains significantly under-inflated, and the key locking system is in the ''On'' (''Run'') position. The telltale can be deactivated automatically only when all of the vehicle's tires cease to be significantly under-inflated, or manually in accordance with the vehicle manufacturer's instructions.

The one-tire, 30 percent option requires that the telltale remain illuminated as long as one of the vehicle's tires remains significantly under-inflated, and the key locking system is in the ''On'' (''Run'') position. The telltale can be deactivated automatically only when that tire ceases to be significantly under-inflated, or manually in accordance with the vehicle manufacturer's instructions.[55]

Both compliance options require that the low tire pressure-warning telltale perform a bulb-check at vehicle start-up.

Under both compliance options, each TPMS must be compatible with all replacement or optional tires (but not rims) of the size(s) recommended for use on the vehicle by the vehicle manufacturer. The TPMS is not required to monitor the spare tire, either when it is stowed or when it is installed on the vehicle. The TPMS also does not have to indicate a system malfunction.

In response to comments regarding the need to manually reset indirect TPMSs after adding pressure to the tires, the agency is permitting the warning telltale to be deactivated manually, in accordance with the vehicle manufacturer's instructions.

In response to comments regarding variations in rim designs, the agency is requiring TPMSs to be compatible with all replacement or optional tires, but not rims, of the size(s) recommended for use on the vehicle by the vehicle manufacturer.

In response to BTS survey data indicating that 65 percent of people would be less concerned to either a great extent or a very great extent with routinely maintaining their tire pressure if their vehicle were equipped with a TPMS, the agency is requiring the low tire pressure warning telltale to perform a bulb-check during vehicle start-up.

In response to comments, the agency is also making minor changes to the required written instructions, and requiring vehicles certified to the one-tire, 30 percent option to provide additional information on the inherent limitations of current indirect TPMSs.

2. Congressional Intent

Section 13 of the TREAD Act simply mandates ''a rulemaking for a regulation to require a warning system in new motor vehicles to indicate to the operator when a tire is significantly under inflated.'' None of the sources of legislative history commonly recognized as being legally authoritative, such as the House and Senate Reports or the Congressional Record, shed any light on the type of TPMS that Congress intended to mandate with this amendment.[56]

In the absence of any legally authoritative sources, the Alliance turned in its comments to statements made by Congressman Markey, the sponsor of the TPMS amendment, as quoted in an unofficial transcript of the House Committee on Energy and Commerce markup of the bill that became the TREAD Act.[57] In explaining and arguing for his amendment, Congressman Markey referred to a TPMS on an existing vehicle model. That TPMS was an indirect TPMS. Based on the Congressman's having mentioned an indirect TPMS in the course of his remarks, the Alliance argued that the Congressman must have intended that current indirect TPMSs be allowed under the rulemaking mandated by the TPMS amendment.

While the Alliance's interpretation of Congressman Markey's statements during markup is not inconsistent with those statements, it goes well beyond anything that the Congressman directly said in them. Further, that interpretation is contrary to Congressman Markey's statements at the February 28, 2002 House Committee on Energy and Commerce hearing. In those later statements, Congressman Markey said that the intent of his TPMS amendment was to require TPMSs that provide warnings in all instances of under-inflation, thus suggesting a preference for direct TPMSs, which can provide such warnings, over current indirect TPMSs, which cannot. While those statements at the hearing likewise do not constitute any legally authoritative legislative history of the TREAD Act, they do suggest that the Alliance's interpretation of Congressman Markey's earlier statements is not persuasive.

3. Vehicles Covered

The final rule requires TPMSs on passenger cars, multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kilograms (10,000 pounds) or less, except those vehicles with dual wheels on an axle. It does not require TPMSs on motorcycles, trailers, low-speed vehicles, medium vehicles, or heavy vehicles.

NHTSA is not requiring TPMSs on motorcycles because, unlike the types of vehicles that are subject to the final rule, some motorcycles still use tubed tires. In order for a direct TPMS to work with tubed tires, the pressure sensor would not only have to be inside the tire, but also inside the tube itself. The agency is not aware of any TPMSs that are made to work with tubed tires. The agency requested comments on this issue but received none.

Advocates recommended that the agency open rulemaking to set regulatory requirements for retreaded and recapped medium (10,001—26,000 pounds GVWR) and heavy (over 26,000 pounds) vehicle tires. Advocates stated that there is a ''serious, pervasive problem of tire underinflation among medium and heavy vehicles, especially given the high percentage of trucks and buses above 10,000 pounds gross vehicle weight which use re-treaded tires.'' However, Advocates did not provide any data to support this statement.

As discussed in the NPRM, NHTSA is not requiring TPMSs on medium (10,001—26,000 lbs. GVWR) and heavy (greater than 26,001 lbs. GVWR) vehicles at this time for two reasons. First, this rulemaking is required by the TREAD Act, which required a final rule to be issued in one year and was passed in response to problems with certain Firestone tires. Since those tires were

[54] As noted above, the minimum levels of pressure are the same for both compliance options.

[55] Since indirect TPMSs do not actually monitor tire pressure, they must be told when the vehicle's tires have been re-inflated. Thus, indirect TPMSs require the driver to push a reset button after re-inflating the vehicle's tires.

[56] The agency also notes that the issue of direct vs. indirect TPMSs was not before Congress when the bill that became the TREAD Act was being considered.

[57] This sort of legislative history is not entitled to much, if any, weight.

used on light vehicles, and the time frame was so tight, the agency has limited its study of under-inflation to light vehicles.

Second, the issues associated with under-inflated tires on medium and heavy vehicles are different from and more complex than the issues associated with under-inflated tires on light vehicles. For example, medium and heavy vehicles are equipped with tires that are much larger and have much higher pressure levels than the tires used on light vehicles. In addition, medium and heavy vehicles are generally equipped with more axles and tires than light vehicles. Since the TREAD Act imposed a one-year deadline on this rulemaking, the agency did not have the time to study and analyze those issues sufficiently.

The Alliance recommended that the agency limit the applicability of the standard to vehicles having a GVWR of 3,856 kilograms (8,500 pounds or less). The Alliance stated that the majority of vehicles above 8,500 pounds GVWR are used commercially. The Alliance argued that such vehicles are maintained on a regular basis and do not need a TPMS to assist in maintaining proper inflation pressure in the vehicles' tires.

NHTSA is aware of at least two non-commercial vehicle models—the Chevrolet Suburban and Ford Excursion, both SUVs—that have a GVWR between 8,500 and 10,000 pounds. In addition, 15-passenger vans are typically in this weight rating range. If the agency adopted the Alliance's recommendation, these vehicles would be excluded from the standard. These vehicles are as subject to under-inflated tires as other light SUVs and vans. Thus, the agency is not adopting the Alliance's suggestion.

However, to address the Alliance's concern about the standard's applicability to commercial vehicles, the agency is excluding from the standard trucks, buses, and multipurpose passenger vehicles that have a GVWR under 10,000 pounds and dual wheels on an axle. This includes vehicles such as step vans, tow trucks, and some large pick-up trucks. The agency notes that these vehicles are normally used in a commercial capacity, and, as the Alliance argued, commercial vehicles normally undergo maintenance on a regular basis. Thus, these vehicles are less likely to experience significantly under-inflated tires. Moreover, since these vehicles have more wheels on an axle, they are less likely to experience the adverse effects on vehicle handling and other safety problems associated with significantly under-inflated tires.

The Alliance also recommended that the agency explicitly exclude incomplete vehicles from the standard.[58] Normally, the first-stage vehicle manufacturer is responsible for certifying that all vehicle systems that are not directly modified by subsequent-stage manufacturers meet all Federal motor vehicle safety standards. The Alliance stated that, in the case of direct TPMSs, the first-stage manufacturer will be unable to guarantee that, even if physically undisturbed, a non-defective TPMS will function as required after vehicle modifications (such as adding metal hardware to the vehicle or lengthening its wheelbase) are made by subsequent-stage manufacturers.

The agency notes that many incomplete vehicles are manufactured into custom vans and recreational vehicles. The agency believes that these vehicles should be equipped with the same or similar safety systems as passenger cars, multipurpose passenger vehicles, trucks, and buses. In particular, the agency believes that these types of vehicles should be equipped with a TPMS, as they are just as likely to experience significantly under-inflated tires as other light vehicles. In addition, the agency notes that if subsequent-stage manufacturers modify the TPMS on a vehicle, they will be responsible for certifying that the vehicle meets the standard. Therefore, the agency is not adopting the Alliance's suggested exclusion of incomplete vehicles.

4. Phase-In Options and Requirements

a. Alternatives Considered

For purposes of this first part of the final rule, the agency considered four alternatives, three of which are discussed above in section V.A., ''Alternative Long-Term Requirements Analyzed in Making Preliminary Determination.'' The fourth alternative considered by the agency is the one-tire, 30 percent alternative suggested by OMB. This alternative would require a vehicle's TPMS to warn the driver when the pressure in any one of the vehicle's tires is 30 percent or more below the placard pressure, or a minimum level of pressure specified in the standard, whichever pressure is higher. The benefits and costs of the one-tire, 30 percent alternative are discussed above in section VI.C. ''Analysis of a Fourth Alternative Long-Term Requirement: One-Tire, 30 Percent Under-Inflation Detection.''

While the agency ultimately considered four alternatives, in the NPRM the agency proposed only two alternative versions of a standard for TPMSs and requested comments on them. The two alternatives were the four-tire, 20 percent alternative and the three-tire, 25 percent alternative.

To simplify the agency's analysis and discussion of the comments, NHTSA is separately addressing below the two most significant aspects of these two alternatives, *i.e.,* the definition of the term ''significantly under-inflated'' and the number of tires the TPMS should monitor.

In the NPRM, the agency provided two alternate definitions of the term ''significantly under-inflated,'' and then used that term in specifying performance requirements for the low tire pressure warning telltale, while not specifying any performance requirements for the TPMS itself. After reviewing this approach to drafting and organizing the regulatory text, the agency decided to adopt a simpler, more direct approach. Instead of defining the term ''significantly under-inflated'' in the final rule, the agency is specifying performance requirements, including the threshold level of under-inflation that must trigger a warning, for two compliance options: the four-tire, 25 percent option and the one-tire, 30 percent option.

i. Threshold Level of Under-Inflation

As explained above in section II.D, ''Summary of Public Comments on Notice,'' RMA recommended that the agency define ''significantly under-inflated'' as any inflation pressure that is less than the pressure needed to carry the actual vehicle load on the tire per tire industry standards (or any pressure required to carry the maximum vehicle load on the tire if the actual load is unknown), or the minimum activation pressure specified in the standard, whichever is higher. RMA also recommended that the agency change the minimum activation pressures for P-metric standard load tires from 20 to 22 psi and for P-metric extra load tires from 23 to 22 psi. RMA also recommended that the agency change the ''Maximum Pressure'' heading in Table 1 to ''Maximum or Rated Pressure'' because light truck tires are not subject to maximum permissible inflation pressure labeling requirements. RMA recommended that the agency change

[58] 49 CFR Part 568.3 defines ''incomplete vehicle'' as ''an assemblage consisting, as a minimum, of frame and chassis structure, power train, steering system, suspension system, and braking system, to the extent that those systems are to be part of the completed vehicle, that requires further manufacturing operations, other than the addition of readily attachable components, such as mirrors or tire and rim assemblies, or minor finishing operations such as painting, to become a completed vehicle.''

the rated pressure for Load Range E tires from 87 to 80 psi. Finally, RMA, supported by RIGAC, recommended that the agency adopt a requirement in the agency's separate rulemaking to upgrade Standard No. 109, ''New Pneumatic Tires,'' that ''a tire for a particular vehicle must have sufficient inflation and load reserve, such that an inflation pressure 20 or 25 percent less than the vehicle manufacturer's recommended inflation pressure is sufficient for the vehicle maximum load on the tire, as defined by FMVSS–110.'' [59]

The ITRA recommended that the agency consider only direct TPMSs. The ITRA stated that indirect TPMSs have too many limitations, including the inability to detect when all four of a vehicle's tires are significantly under-inflated. The ITRA claimed that although direct TPMSs are more expensive than indirect TPMSs, their benefits outweigh their costs.

The Alliance recommended that the agency define ''significantly under-inflated'' as any inflation pressure 20 percent below a tire's load carrying limit, as determined by a tire industry standardizing body (such as the Tire and Rim Association) or the minimum activation pressure specified in the standard, whichever is higher. The Alliance agreed with the agency's minimum activation pressure of 20 psi for P-metric standard load tires.

The Alliance also stated that a 25 percent differential from placard pressure would be inadequate to allow the use of indirect TPMSs. The Alliance claimed that a minimum of 30 percent differential is necessary to ensure accuracy with an indirect TPMS and avoid excessive nuisance warnings.

The AIAM recommended that the agency define ''significantly under-inflated'' as any pressure more than 30 percent below the placard pressure. Alternatively, the AIAM suggested that the agency use the load carrying limit of the tire as defined by a tire industry standardizing body as the baseline for determining the warning threshold.

TRW stated that indirect TPMSs that are currently on the market could be improved to detect a 25 percent differential in inflation pressure. TRW stated this could be accomplished by adding the equivalent of two direct pressure sensors and a receiver to an indirect TPMS.

Advocates supported the definition of ''significantly under-inflated'' contained in the first alternative, *i.e.,* any pressure 20 percent or more below the placard pressure, or the minimum activation pressure specified in the standard, whichever is higher.

The agency notes that both RMA and the Alliance recommend that the agency tie the definition of ''significantly under-inflated'' to the load carrying capacity of the tire rather than the placard pressure. NHTSA declines to adopt this recommendation for two reasons.

First, the placard pressure provided by the vehicle manufacturer assumes loading at GVWR and also takes into consideration ride, handling, and other factors for safe vehicle operation. Some manufacturers also include a certain amount of reserve load capacity in the event that the tire is overloaded. Therefore, when tire pressure is down to 25 percent below the placard pressure, it is not necessarily below the pressure that is needed to safely carry the weight of the vehicle. Moreover, the agency notes that the calculations in the Tire and Rim Association (T&RA) tables are based on the volume of air in the tire, and do not consider differing performance capabilities of different tire materials or manufacturing quality.[60]

Second, consumers are currently not familiar with using the T&RA tables to determine the correct tire inflation pressure for their vehicles. However, they do have some familiarity with using the vehicle's placard pressure to maintain proper inflation pressures. It would be counter-productive to introduce a new frame of reference for consumers to use at this time unless there are compelling reasons to do so.

The agency agrees with the Alliance's statement that most current indirect TPMSs are not able to detect a 25 percent differential from placard pressure. Of the indirect TPMSs evaluated by the VRTC, only one was capable of activating the warning telltale at pressures at least 25 percent below the placard pressure.[61]

The agency believes that, as the technology matures, manufacturers will be able to improve the performance of indirect TPMSs. TRW, which manufactures both direct and indirect TPMSs, stated that the indirect TPMSs currently on the market could be improved to detect a 25 percent differential from placard pressure. However, TRW was not certain that these improvements could be developed and implemented by the 2003 effective date of the final rule. Sumitomo's comments indicated that indirect TPMSs would be able to detect a 25 percent differential in inflation pressure. Toyota stated that its next generation of indirect TPMSs would be able to detect a 20 percent differential in tire pressure by monitoring the resonance frequency as well as the dynamic radius changes of the tires. Again, however, Toyota did not have a timetable for the introduction of this next generation of indirect TPMSs.

Nevertheless, the fact remains that current indirect TPMSs are not capable of meeting a four-tire, 25 percent requirement. Accordingly, the agency is providing two compliance options in the first part of the final rule.[62]

These options will permit manufacturers to continue to use current indirect TPMSs while they continue to improve those systems. The agency notes that, for vehicles already equipped with ABS, the installation of a current indirect TPMS is the least expensive way of complying with the TPMS standard. Consumers will benefit from the resulting cost savings. The choice of compliance options will also give manufacturers the flexibility needed to innovate and improve the performance of the indirect TPMSs.

NHTSA notes that in some cases, 30 percent below placard pressure will be less than 20 psi, the minimum activation pressure specified for P-metric tires in Table 1. For example, if a tire's placard pressure were 27 psi, 30 percent below that would be about 19 psi. This final rule requires the TPMS to activate the low tire pressure telltale at 20 psi, not 19 psi. The agency has established the minimum activation pressures for the reasons given below. This final rule requires the telltale to be activated at the higher of the pressure that is 30 (or 25) percent below the placard pressure or the minimum activation pressure in Table 1, *whichever pressure is higher.* Thus, if a vehicle's tires have a placard pressure below 28 psi, and the manufacturer chooses to comply with the one-tire, 30 percent option, the telltale must be activated at 20 psi.

[59] Standard No. 110 specifies requirements for tire selection to prevent tire overloading.

[60] These tables, contained in the T&RA yearbook, establish the load carrying capacity of a tire at a specific inflation pressure.

[61] The indirect TPMS is manufactured by Continental Teves for the BMW M3. In the testing, it was able to detect when one, two (only if diagonally opposite each other) or three tires were significantly under-inflated.

[62] As noted above, the first part of this final rule covers vehicles manufactured from November 1, 2003 to October 31, 2006. During this period, the rule's requirements will be phased in according to the following schedule: 10 percent of a manufacturer's affected vehicles the first year, 35 percent the second year, and 65 percent the third year. Beginning November 1, 2006, all affected vehicles will have to be equipped with a TPMS. These vehicles will have to comply with the requirements in the second part of this final rule. The agency will issue the second part of this final rule by March 1, 2005.

The agency is not adopting RMA's suggestion to change the minimum activation pressures for P-metric standard load tires from 20 to 22 psi and for P-metric extra load tires from 23 to 22 psi. As noted in the NPRM, the agency recently tested a variety of Standard Load P-metric tires at 20 psi with 100 percent load at 75 mph for 90 minutes on a dynamometer. None of the tires failed. This leads the agency to believe that warnings provided at or above that level will give drivers sufficient time to check and re-inflate their vehicles' tires before the tires fail. Moreover, in a different TREAD Act rulemaking, the agency proposed to upgrade its tire standard.[63] Part of this upgrade would require tires to be tested at 20 psi under load and speed conditions. All tires would be required to pass this test after completing the proposed endurance test. The agency believes these proposed tests would ensure that tires are capable of operating safely for at least 90 minutes at the minimum activation pressures specified in Table 1 of this final rule. Finally, RMA provided no reason for this change. The agency notes that until 2001, the T&RA tables listed 20 psi as the minimum acceptable pressure for Standard Load P-metric tires. The agency does not know why this minimum pressure was changed to 22 psi in the 2001 T&RA tables.

The agency is adopting RMA's suggestion to change the ''Maximum Pressure'' heading in Table 1 to ''Maximum or Rated Pressure'' because light truck tires do not have maximum permissible inflation pressure labeling requirements. The agency is also adopting RMA's suggestion to change the rated pressure for Load Range E tires from 87 to 80 psi. The agency is also changing the corresponding kPa value from 600 to 550, and the corresponding minimum activation pressure from 350 to 320 kPa (51 to 46 psi).

The minimum activation pressures are set forth in the following table:[64]

TABLE 1—LOW TIRE PRESSURE WARNING TELLTALE—MINIMUM ACTIVATION PRESSURE

Tire type	Maximum or rated inflation pressure		Minimum activation pressure	
	(kPa)	(psi)	(kPa)	(psi)
P-metric-Standard Load	240, 300, or 350	35, 44, or 51	140	20
P-metric-Extra Load	280 or 340	41 or 49	160	23
Load Range C	350	51	200	29
Load Range D	450	65	260	38
Load Range E	550	80	320	46

Moreover, as noted above, part of the Standard No. 109 upgrade would require tires to be tested at 20 psi under load and speed conditions. All tires would be required to pass this test after completing the proposed endurance test. The agency believes these proposed tests, in effect, would require tires to have a reserve load.

ii. Number of Tires Monitored

As noted above, in the NPRM the agency proposed two alternatives: the four-tire, 20 percent alternative and the three-tire, 25 percent alternative. The agency specified only three tires in the three-tire, 25 percent alternative because currently available indirect TPMSs are not able to detect when all four of a vehicle's tires became significantly under-inflated.

Advocates, ITRA, and RMA recommended that the agency require TPMSs to detect when all four of a vehicle's tires become significantly under-inflated. RMA argued that it is very likely that all four tires will lose air pressure at a similar rate and become significantly under-inflated within a six-month period.[65] RMA stated that drivers would rely heavily on TPMSs for tire pressure maintenance, which will make this scenario even more likely.

The Alliance and AIAM recommended that the agency require TPMSs to detect significant under-inflation in only one of a vehicle's tires. The Alliance argued that TPMSs are not meant to replace the normal tire maintenance that would detect pressure losses due to natural leakage and permeation. Rather, TPMSs are designed to detect a relatively slow leak due to a serviceable condition, such as a nail through the tread or a leaky valve stem. Since such leaks rarely affect more than one tire simultaneously, the Alliance argued, it is sufficient to require TPMSs to detect only one significantly under-inflated tire.

The Alliance also claimed that if the agency required that more than one significantly under-inflated tire be detected simultaneously, manufacturers would not be able to use an indirect TPMS. The Alliance stated that indirect TPMSs look at wheel speed to calculate relative differences in the size of the rolling radii of the four wheels. However, due to load variances, steering effects, and variations in tire characteristics, differences in wheel speed must be compared between tires on opposite sides of the vehicle for the algorithm to reliably identify a relative pressure difference.

TRW stated that current indirect TPMSs could be improved to be able to detect more than one significantly under-inflated tire. TRW stated that this could be accomplished by adding a direct sensor to two wheels, one on each side of the vehicle.

NHTSA agrees with the Alliance's comment that TPMSs should not replace normal tire maintenance. The agency also accepts the Alliance's comment that most current indirect TPMSs would have difficulty detecting when more than one of a vehicle's tires is significantly under-inflated. As noted above, while the VRTC found that indirect TPMSs did warn the driver when one tire, two tires located diagonally from each other, and three tires were significantly under-inflated, the indirect TPMSs did not warn the driver when all four of a vehicle's tires, or two tires on the same axle or the same side of the vehicle, were significantly under-inflated.

However, the agency also believes that TPMSs should do more than detect a relatively slow leak due to a serviceable condition. There are other

[63] Docket No. NHTSA–2000–8011. The NPRM was published at 67 FR 10049, March 5, 2002.

[64] NHTSA notes that 1 psi equals 6.9 kPa. The agency has rounded the English conversions to the nearest psi.

[65] RMA states that normal air pressure loss is approximately 1 to 2 psi per month.

reasonably foreseeable circumstances in which significant under-inflation may occur. Further, the agency believes that many drivers will rely on the TPMS to prompt them to do inflation pressure maintenance. As noted above, data from the July 2001 BTS omnibus survey indicated that 65 percent of drivers would be less concerned with routinely maintaining their tire pressure if their vehicle were equipped with a TPMS.

The agency has data indicating that tires typically lose about 1 psi per month due to natural leakage and permeation. Although all four of a vehicle's tires probably will not lose pressure at exactly the same rate, they will lose some pressure. Thus, it is likely that all four of a vehicle's tires will be somewhat under-inflated at any time.

According to data from the February 2001 NCSA survey detailed above, 12 percent of passenger cars and 15.3 percent of light trucks with P-metric tires had at least two tires under-inflated by at least 25 percent; 5 percent of passenger cars and 7.2 percent of light trucks had at least three tires under-inflated by at least 25 percent; and 2.8 percent of passenger cars and 3.9 percent of light trucks had at least four tires under-inflated by at least 25 percent. If the agency adopted the Alliance's one-tire, 30 percent recommendation permanently, drivers of some vehicles, e.g., those equipped with current indirect TPMSs, would not be alerted to some of these potentially dangerous conditions. While these percentages are small, when applied to the entire light vehicle fleet (over 200,000,000 vehicles), these percentages translate into about 7,000,000 vehicles having all four tires significantly under-inflated at any time.

If the agency adopted the Alliance's recommendation permanently, TPMSs would only be required to detect when one of a vehicle's tires became under-inflated by 30 percent or more below placard pressure. As a result, TPMSs would not be required to detect many situations involving significant under-inflation in the real world. Consequently, the agency tentatively believes that, in the long-term, the four-tire, 25 percent option would best meet the mandate in the TREAD Act and best serve the American public.

However, as noted above in section VII.B.4.a.i., ''Threshold Level of Under-Inflation,'' the agency wants to allow vehicle manufacturers to use current indirect TPMS in the short run, *i.e.*, during the first part of this final rule, and to give them additional time to improve indirect TPMSs or develop hybrid TPMSs. The comments from TRW, Sumitomo, and Toyota indicate that current indirect TPMSs can be improved (whether by monitoring the resonance frequency of tires or by creating hybrid systems) to detect more than one significantly under-inflated tire.

To reconcile the limitations of current indirect TPMSs with the agency's belief that such systems can and should be improved to enhance safety, NHTSA has decided to give manufacturers two compliance options during the first part of this final rule period, *i.e.*, from November 1, 2003 through October 31, 2006.[66]

b. Option One: Four Tires, 25 Percent Under-Inflation

Under the first compliance option, a vehicle's TPMS must warn the driver when the pressure in one or more of the vehicle's tires, up to a total of four tires, is 25 percent or more below the vehicle manufacturer's recommended cold inflation pressure for the tires, or a minimum level of pressure specified in the standard, whichever pressure is higher. Vehicles certified to this compliance option also will have to comply with the remainder of the performance requirements, discussed below in section VII.B.5., ''Other Requirements,'' with the exception of the special written instructions for vehicles certified to the one-tire, 30 percent compliance option.

This compliance option is limited to light vehicles manufactured between November 1, 2003, and October 31, 2006. Light vehicles manufactured after October 31, 2006 will be subject to the requirements of the second part of this final rule, which the agency will publish by March 1, 2005. The remainder of the performance requirements, except for the special written instructions required for vehicles certified to the one-tire, 30 percent compliance option, will apply to light vehicles manufactured on or after November 1, 2003. c. Option Two: One Tire, 30 Percent Under-Inflation

Under the second compliance option, a vehicle's TPMS must warn the driver when the pressure in any one of the vehicle's tires is 30 percent or more below the vehicle manufacturer's recommended cold inflation pressure for the tires, or a minimum level of pressure specified in the standard, whichever pressure is higher.[67] Vehicles certified to this compliance option also will have to comply with the remainder of the performance requirements, discussed below in section VII.B.5. ''Other Requirements,'' including the special written instructions for vehicles certified to the one-tire, 30 percent compliance option.

This compliance option also is limited to light vehicles manufactured between November 1, 2003, and October 31, 2006. Light vehicles manufactured after October 31, 2006 will be subject to the requirements of the second part of this final rule, which the agency will publish by March 1, 2005. The remainder of the performance requirements, except for the special written instructions requirement, will apply to light vehicles manufactured on or after November 1, 2003.

d. Special Written Instructions for Option Two TPMSs

In the NPRM, the agency proposed that the vehicle owner's manual provide an image of the TPMS warning telltale and the following information, in English:

> When the TPMS warning light is lit, one of your tires is significantly under-inflated. You should stop and check your tires as soon as possible, and inflate them to the proper pressure as indicated on the vehicle's tire inflation placard. Driving on an under-inflated tire causes the tire to overheat and can eventually lead to tire failure. Under-inflation also reduces fuel efficiency and tire tread life, and may affect the vehicle's handling and stopping ability.

The agency also proposed to allow each vehicle manufacturer, at its discretion, to provide additional information about the significance of the low tire pressure warning telltale and description of corrective action that should be undertaken.

The Alliance stated that it was not opposed to the language the agency proposed. However, the Alliance recommended that the agency include additional language addressing inherent system limitations, owner/driver responsibility, and replacement tires and rims. The Alliance did not recommend any specific language.

NHTSA is accepting this Alliance comment. The agency notes that indirect TPMSs have several limitations, including the inability to detect when all four tires, and other combinations of tires, are significantly under-inflated. In addition, the agency notes that data from the July 2001 BTS omnibus survey indicate that 65 percent of drivers would be less concerned to a great extent or a very great extent with routinely maintaining their tire pressure if their vehicle were equipped with a TPMS. This substantial shift in reliance from routine maintenance to TPMS

[66] The agency is requiring manufacturers to irrevocably select the option to which they will certify their vehicles.

[67] As noted above, the minimum levels of pressure are the same for both compliance options.

concerns the agency, given the performance limitations of indirect TPMSs. To avoid the creation of a false sense of security, therefore, the agency is requiring vehicle manufacturers to provide additional information on the inherent limitations of TPMSs, if the vehicle is certified to the one-tire, 30 percent option. The additional information must immediately follow the general written instructions for all TPMSs, specified below, and read, in English, as follows:

Note: The TPMS on your vehicle will warn you when one of your tires is significantly under-inflated and when some combinations of your tires are significantly under-inflated. However, there are other combinations of significantly under-inflated tires for which your TPMS may *not* warn you. These other combinations are relatively common, accounting for approximately half the instances in which vehicles have significantly under-inflated tires. For example, your system may not warn you when both tires on the same side or on the same axle of your vehicle are significantly under-inflated. It is particularly important, therefore, for you to check the tire pressure in all of your tires regularly and maintain proper pressure.

5. Other Requirements

a. Time Frame for Telltale Illumination

NHTSA notes that in the NPRM the agency included this performance requirement in the requirements for the low tire pressure warning telltale. After reviewing this arrangement, however, the agency has decided that it was confusing. Thus, in the regulatory text of this final rule, the agency has shifted this performance requirement to the section of the regulatory text that specifies requirements for TPMSs.

In the NPRM, the agency proposed that the warning telltale illuminate not more than ten minutes after a tire becomes significantly under-inflated.

Advocates supported a much briefer time period, but did not specify a time period. Advocates stated that the agency had given no reason for a ten-minute time period. RMA stated that the earlier the driver is warned the better, but also did not specify a time period.

The Alliance stated that a detection window of ten minutes likely would be problematical for indirect TPMSs, which require different detection times at different speeds. The Alliance recommended that the detection requirement be changed to a driving interval of ten miles (16 kilometers) instead of ten minutes to accommodate indirect TPMSs.

According to data from the tire industry, 85 percent of tire pressure losses are slow pressure losses, in which it takes anywhere from several minutes to several weeks for a tire to become significantly under-inflated. The other 15 percent of tire pressure losses are rapid pressure losses, which typically result from a tire being punctured (without the puncturing object becoming embedded in the tire) or ruptured. TPMSs are designed to alert the driver to slow pressure losses, not rapid pressure losses. In addition, as noted above, all of the tires that the agency tested for endurance at 20 psi for 90 minutes passed. Thus, the agency believes that ten minutes between the time that a tire becomes significantly under-inflated and the time that the TPMS illuminates the low tire pressure warning telltale will provide the driver ample time to take corrective action and avoid the possibility of serious tire degradation. Accordingly, the agency is not adopting Advocates' suggestion that the agency shorten the time frame for telltale activation.

The agency notes that the test procedures proposed in the NPRM specified a test speed of 50 to 100 km/h. That means it would take a vehicle about 10 to 20 minutes to travel the 16 kilometers proposed by the Alliance. The agency also notes that in its survey of TPMSs, NHTSA's VRTC found that direct TPMSs could illuminate the warning telltale in less than one minute after a tire became significantly under-inflated (by 50 percent under placard pressure). The VRTC also found that indirect TPMSs took from less than a minute to over eight minutes. This leads the agency to believe that ten minutes is ample time for both direct and indirect TPMSs.

Thus, the agency is not adopting the Alliance's suggestion that the agency change the detection requirement to a driving interval of ten miles instead of ten minutes.

Accordingly, for the four-tire, 25 percent option, this final rule requires that the TPMS illuminate the low tire pressure warning telltale not more than ten minutes after the inflation pressure in one or more tires, up to total of four tires, is 25 percent or more below the placard pressure, or a minimum level of pressure specified in the standard, whichever pressure is higher. For the one-tire, 30 percent option, this final rule requires that the TPMS illuminate the low tire pressure warning telltale not more than ten minutes after the pressure in one tire is 30 percent or more below the placard pressure, or a minimum level of pressure specified in the standard, whichever pressure is higher.[68]

b. Duration of Warning

NHTSA notes that in the NPRM the agency included this performance requirement in the requirements for the low tire pressure warning telltale. After reviewing this arrangement, however, the agency has decided that it was confusing. Thus, in the regulatory text of this final rule, the agency has shifted this performance requirement to the requirements for TPMSs.

In the NPRM, the agency proposed to require that the warning telltale be illuminated as long as any of the vehicle's tires remains significantly under-inflated, and the ignition switch is in the ''On'' (''Run'') position, whether or not the engine is running. The agency also proposed that the telltale be deactivatable, manually or automatically, only when all of the vehicle's tires cease to be significantly under-inflated.

Advocates and RMA supported this proposal. Advocates stated that if manual disengagement of the illuminated telltale were permitted, a driver could indefinitely defer inspecting and correcting a significantly under-inflated tire simply by manually disengaging the telltale.

Johnson Controls, Inc. (JCI), a manufacturer of both direct and indirect TPMSs, was concerned that a strict reading of NHTSA's proposals may preclude a driver's ability to access other information when the significant under-inflation telltale is activated within a multi-functional console display. JCI argued that the agency should allow sufficient flexibility to permit the vehicle occupant to check other information on a multi-functional display even in a significant under-inflation situation. According to JCI, with current center displays in vehicles that incorporate a TPMS feature, the owner is allowed to toggle between features on the display. For example, on certain current tire and non-tire specific displays located in center consoles, the low pressure display will persist until the vehicle occupant chooses to view another display (e.g., a miles to empty display). In that circumstance, the new display will remain active for a period of 60 seconds and then the pressure warning will be redisplayed. In some instances, the redisplay will be accompanied by an audible warning. JCI argued that as long as alternative displays are selected by the vehicle occupant as a matter of conscious

[68] As noted above, the minimum levels of pressure are the same for both options.

choice and are of sufficiently short duration, the cautionary function of the display will be preserved. Accordingly, JCI recommended amending Section 4.2.1(e) to read as follows:

S4.2.1(e) Can be deactivated, manually or automatically, only when all of the vehicle's tires cease to be significantly under-inflated, or when the vehicle occupant chooses to view another feature on the same display provided that the pressure cautionary message is automatically redisplayed not more than 60 seconds after the display is toggled to another feature.

The Alliance stated that the requirement that the warning telltale be deactivated, manually or automatically, only when all of the vehicle's tires cease to be significantly under-inflated requires the vehicle to ''know'' that all the tires have ceased to be significantly under-inflated. This would prohibit the use of indirect TPMSs, which do not measure actual inflation pressure, and are therefore incapable of ''knowing'' when the tires are no longer significantly under-inflated. This is the reason indirect TPMSs come with a manual re-calibration capability—because all indirect TPMSs must be ''told'' that repair, rotation, replacement, or re-inflation has occurred.

The Alliance also noted that some vehicles have different placard pressures for the front and rear tires. For these vehicles, the TPMS warning cannot be fully automated. The driver or service agent must manually recalibrate the TPMS after rotating or correctly inflating the tires. For these reasons, the Alliance recommended amending Section 4.2.1(d) to read as follows:

S4.2.1(d) Remains activated (continuously or periodically) until automatically deactivated when all of the vehicle's tires cease to be significantly under-inflated or until manually deactivated in accordance with manufacturer's instructions.

NHTSA is not adopting JCI's suggestion because the agency does not believe the driver should be able to temporarily deactivate the warning telltale, even if the deactivation can only last for 60 seconds. The agency does not normally allow warning telltales to be temporarily deactivated by the driver. The agency also believes that the warning telltale should be separate from a reconfigurable display.

However, NHTSA is adopting the Alliance's suggestion that the agency allow the warning telltale to be manually extinguished in accordance with the vehicle manufacturer's instructions. The agency agrees with the Alliance's arguments. An indirect TPMS cannot ''know'' when a tire is no longer significantly under-inflated because it does not actually measure inflation pressure. An indirect TPMS must be told that the significantly under-inflated tire has been re-inflated. This is done with a manual reset button.

The agency noted in the NPRM that a reset button may invite human error. For example, a driver may accidentally press the reset button when one or more of the vehicle's tires are under-inflated, but not significantly under-inflated. This would re-calibrate the system so that the under-inflated condition would be accepted as a normal variable. The indirect TPMS then would not be able to detect a significantly under-inflated tire until one or more tires were 25 percent lower than it already was. This could also occur as a result of misuse, i.e., if the driver simply pressed the reset button when the warning telltale illuminated. The telltale would be extinguished without the driver having taken any corrective action.

While NHTSA is concerned by these potential problems, the agency notes that indirect TPMSs must have a reset button. Moreover, direct TPMSs need a reset button under certain circumstances. For example, some vehicle manufacturers specify more than one placard pressure for a vehicle's tires—one applicable when the vehicle is lightly loaded and another when the vehicle is at maximum load. If a manual reset were not allowed, then the direct system would not know that the applicable recommended inflation pressure had changed.

In addition, these human error problems are no different from the driver simply ignoring the warning telltale if it is illuminated. The agency can attempt to prevent these problems only through driver education. Thus, the agency will allow the warning telltale to be deactivated manually in accordance with the vehicle manufacturer's instructions.

Accordingly, the agency is adding paragraph S4.2.1(b) to the requirements for the four-tire, 25 percent option, to read as follows:

(b) Continue to illuminate the low tire pressure warning telltale as long as the pressure in any of the vehicle's tires is equal to or less than the pressure specified in (a), and the key locking system is in the ''On'' (''Run'') position, whether or not the engine is running, or until manually reset in accordance with the vehicle manufacturer's instructions.

The requirement for the one-tire, 30 percent option is slightly different because under that option the TPMS only has to be able to detect when one tire is 30 percent or more below the placard pressure. Accordingly, the agency is adding paragraph S4.2.2(b) to the requirements for the one-tire, 30 percent option, to read as follows:

(b) Continue to illuminate the low tire pressure warning telltale as long as the pressure in that tire is equal to or less than the pressure specified in (a), and the key locking system is in the ''On'' (''Run'') position, whether or not the engine is running, or until manually reset in accordance with the vehicle manufacturer's instructions.

c. Temporary Disablement

The Alliance noted that TPMSs might be disabled, deliberately or by default, under certain conditions. For example, TPMSs could be disabled on four-wheel-drive applications whenever the vehicle is operated in ''4WD Lo'' mode, typically during off-road use, or under very poor road conditions. The Alliance noted that most manufacturers of four-wheel-drive vehicles recommend that the tires be deflated to a lower pressure during certain conditions of off-road use. A TPMS calibrated to a threshold appropriate for on-road use would otherwise provide an unnecessary warning under this special condition. The Alliance also stated that certain types of all-wheel-drive vehicles that selectively lock the differential under specific operating conditions typically disable the TPMS under these conditions. The Alliance concluded that such selective disablement is inconsequential to safety, as vehicles operating under such conditions are generally moving at relatively slow speeds where low tire pressure is not a significant safety concern.

The Alliance also stated that TPMSs may be temporarily disabled or reduced in detection sensitivity by default due to technical limits on system capability. For example, indirect TPMSs are not capable of operating normally on rough roads, or at very high speeds (i.e., above 75 mph) where the high centrifugal force prevents accurate detection of differences in rolling radius. Direct TPMSs are not capable of operating when radio frequency interference disrupts the transmission of sensor signals between the wheel sensors and the receiver, or when a tire without a sensor (such as a temporary spare) is installed on the vehicle.

NHTSA has decided to prohibit any control that automatically disables the TPMS under any condition. The agency normally does not allow safety systems to be disabled, and the Alliance has provided no good reason for allowing the TPMS to be disabled. If drivers lower their tire pressure before off-road driving, and the low tire pressure warning telltale illuminates, it will serve as a reminder to the drivers to re-

inflate their tires before returning to the road. The agency does not believe that drivers will be inconvenienced if the telltale illuminates while they are driving off-road. Moreover, the Alliance indicated that drivers may also shift into ''4WD-Lo'' while driving on very poor road conditions. Since tire under-inflation plays a role in vehicle handling and stability, the agency believes that it is especially important that the TPMS be functioning when the vehicle is being driven on poor road conditions.

Finally, the agency notes that all technology has limitations, and there may be situations in which the TPMS may not function properly. The agency considered those situations in specifying the test conditions and procedures in this standard. The agency will not perform compliance tests under any conditions or procedures that would prevent TPMSs from functioning properly.

d. System Calibration

In the NPRM, the agency noted that most indirect TPMSs need time to calibrate the system, i.e., to ''learn'' the variables associated with distinct tire types under varying driving conditions. In its survey of current TPMSs, the VRTC found that the four indirect TPMSs it evaluated took anywhere from several minutes to several hours to calibrate. This calibration is necessary when a vehicle is driven for the first time (i.e., when it is new), when the pressure in a tire is changed, and when the tires are rotated or replaced. During the calibration mode, an indirect TPMS's ability to monitor tire pressure is severely limited. Thus, if one or more tires became significantly under-inflated while the system was calibrating, the driver might not be alerted.

The agency did not propose in the NPRM that the TPMS indicate to the driver that the system is in calibration mode. However, in the proposed test procedures, the agency specified that the vehicle be driven for 20 minutes to allow for system calibration. Thus, in effect, the agency required that TPMSs be able to calibrate within 20 minutes of driving.

The Alliance recommended that the agency allow manufacturers to provide, but not require, a calibration notification feature. The Alliance stated that recalibration generally takes place after the driver inflates the tires to the correct pressure. The driver then would be aware that calibration was taking place. The Alliance also argued that the likelihood of another significantly under-inflated tire occurring during the recalibration time frame is extremely low.

TRW recommended that the agency not require indirect TPMSs to indicate that they are in calibration mode. TRW stated that this feature would not be necessary with direct TPMSs because they do not require calibration.

The agency has decided not to require that the TPMS indicate when it is in calibration mode. The agency notes that calibration is necessary only for indirect TPMSs, and then it is necessary only when a vehicle is driven for the first time, when the pressure in a tire is changed, and when the tires are rotated or replaced. These are all times when significant under-inflation due to a slow leak should not be a problem. At these times, the tires either will be new or will have been checked. In addition, the agency notes that the driver is not able to take any action when given an indication of system calibration. For these reasons, the agency does not believe that a calibration indication feature would provide any safety benefits. However, if manufacturers wish to provide a calibration notification feature, they are free to do so. The agency is not prohibiting such a feature.

e. Replacement Tires

In the NPRM, the agency proposed to require that each TPMS be able to function properly when any of the vehicle's original tires or rims are replaced with any optional or replacement tire or rim of the size(s) recommended for use on the vehicle by the vehicle manufacturer.

RMA supported the agency's proposal. Advocates recommended that the agency require TPMSs to function properly with all replacement tires and rims, regardless of size.

The Alliance recommended that the agency require TPMSs to function properly only with those tires and rims offered as original or optional equipment by the vehicle manufacturer. The Alliance stated that there are a large number of replacement brands and types of tires and rims with different dynamic rolling radii, size variations, load variations, and temperature characteristics. The Alliance argued that since vehicle manufacturers do not control tire compliance for aftermarket tires and rims, they cannot guarantee that the TPMS will work, or will work with the same level of precision, in all cases.

JCI requested that the agency clarify that it was not requiring TPMSs to function when custom tires and rims not recommended by the vehicle manufacturer are installed on the vehicle. JCI stated that both indirect TPMSs (because of tire diameter changes and different tire pressure thresholds) and direct TPMSs (because of the potential inability to install and operate the transmitter) are compromised by such installations.

The Specialty Equipment Market Association (SEMA) claimed that the proposed rule would have a major effect on business that sell aftermarket tires and rims. SEMA was concerned that the rule could: (1) Disallow aftermarket equipment that does not match the vehicle manufacturer's recommendations; (2) fail to require manufacturers to implement the TPMS in a manner that allows reprogramming by aftermarket installers; (3) fail to require that vehicle manufacturers design tire pressure sensors to be compatible with aftermarket tire and wheel combinations and standardized communication protocols to ensure that aftermarket sensors are compatible with OEM systems; (4) fail to direct consumers to inflate the tire to the pressure for the specific wheel and tire combination in use; and (5) render servicing by independent repair facilities more difficult.

In this final rule, the agency is requiring that each TPMS meet the requirements of the standard when any of the vehicle's original tires are replaced with any optional or replacement tire of the size(s) recommended for use on the vehicle by the vehicle manufacturer and installed on the original rims. This requirement is the same for TPMSs complying with the four-tire, 25 percent option or the one-tire, 30 percent option.

The agency is not requiring that TPMSs meet the requirements of the standard when any of the vehicle's original rims are replaced with any optional or replacement rim of the size recommended for use on the vehicle by the vehicle manufacturer. The agency notes that since most direct TPMS sensors are mounted on the rim, the rim must be of a design that will accommodate the sensor. Some aftermarket rims may be the same size as the original rim, but have a design that will not accommodate a TPMS sensor. Thus, the agency does not believe that requiring TPMSs to work with all replacement rims of the same size recommended for use by the vehicle manufacturer is feasible.

However, the agency does believe that requiring TPMSs to work with all replacement tires of the same size recommended by the vehicle manufacturer is feasible. The agency notes that while tires may have different designs, they are basically designed to

meet tire industry standards. The agency also notes that aftermarket direct TPMSs currently are available on the market. These TPMSs necessarily must be able to function regardless of the brand of tire. Moreover, RMA supported the agency's proposal to require TPMSs to work with all replacement tires of the same size or size recommended by the vehicle manufacturer. RMA did not state that this would be impossible due to differences in tire brands.

The agency emphasizes that this requirement only applies to replacement tires that are of a size recommended for use on the vehicle by the vehicle manufacturer. It does not apply to any tires of a size not recommended for use on the vehicle by the vehicle manufacturer. If a tire retailer or repair business installs these tires on a vehicle, neither this final rule nor the statute under which it is issued requires the vehicle's TPMS to continue to meet the requirements of the final rule.

NHTSA notes that 49 U.S.C. 30122 prohibits manufacturers, distributors, dealers, and motor vehicle repair businesses from knowingly making inoperative any part of a device or element of design installed on or in a motor vehicle or motor vehicle equipment in compliance with an applicable Federal motor vehicle safety standard. The agency has determined that if such a business installed on a vehicle aftermarket rims that are not identical to the original rims, or tires that are not of the same size recommended for use on the vehicle by the vehicle manufacturer, the business would not violate the make inoperative provision. However, if such a business knowingly renders a vehicle's TPMS inoperative while rotating the vehicle's tires or installing tires that are of the same size recommended for use on the vehicle by the vehicle manufacturer, and does not repair the TPMS, the business has violated the make inoperative provision.

f. Monitoring of Spare Tire

In the NPRM, the agency did not propose that the TPMS be required to monitor the pressure in the spare tire because NHTSA does not require vehicles to be equipped with a spare tire.

Advocates and RMA recommended that the agency require TPMSs to monitor a vehicle's spare tire. RMA argued that the spare tire should be monitored to ensure its functionality, if and when it is needed. Advocates stated, ''Vehicle owners chronically neglect to maintain minimal air pressure in spare tires.'' However, Advocates did not provide any evidence to support its position.

The Alliance recommended that the agency require TPMSs to monitor only matching, full-size spare tires, and only when they are installed on the vehicle (*i.e.,* not while they are stowed). The Alliance stated that temporary-use spare tires, including full-size, non-matching and compact spare tires, are not intended to be part of the normal tire rotation cycle for the vehicle. Because these temporary-use spare tires degrade the esthetic appearance or have speed and distance limitations, vehicle owners normally replace them quickly. Thus, the Alliance recommended that the agency not require TPMSs to monitor temporary-use tires, whether stowed or installed on the vehicle. However, the Alliance recommended that the agency require the TPMS to monitor a matching, full-size spare tire when it is installed on the vehicle.

The agency has decided not to require TPMS to monitor the spare tire, either when the tire is stowed or when it is installed on the vehicle, for several reasons.

First, temporary-use tires are not intended to be used on the road for long periods of time. The agency also notes that compact spare tires pose problems for both direct and indirect TPMSs. A compact spare requires much a higher inflation pressure and a different warning threshold. A compact spare is also much smaller, and thus has a smaller rolling radius, than original tires. This could cause an indirect TPMS to give a false warning.

Second, drivers know when a temporary-use spare tire has been installed on the vehicle, and they know that the tire is intended for temporary-use only. The agency believes that most, if not all, drivers will have such spare tires replaced as quickly as possible. For these reasons, the agency is not requiring the TPMS to monitor temporary-use spare tires, including compact spares and non-matching, full-size temporary tires.

Notwithstanding the Alliance's comment, the agency does not believe that matching, full-size spare tires need be monitored, even though such tires may be used in the tire rotation. The agency has no data indicating how many vehicles are provided with a matching, full-size spare tire. In addition, the agency is concerned that requiring the TPMS to monitor the spare tire would add to the cost of the rule significantly because vehicle manufacturers would have to provide an additional pressure sensor (in the case of a direct TPMS) and a matching rim, with little, if any, safety benefit. Finally, the agency is concerned that requiring this would provide a disincentive to vehicle manufacturers to provide vehicles with matching, full-size spare tires.

g. Temperature Compensation

In the NPRM, the agency noted that when a vehicle is being driven, the temperature in its tires increases. The increased temperature causes increases in the inflation pressure of the tires.[69] This phenomenon could impact the ability of a TPMS to measure or calculate the cold inflation pressure in a tire accurately. A temperature compensation feature in a TPMS compensates for the increased inflation due to temperature increases.

It is possible that, without temperature compensation, the low tire pressure warning telltale could be extinguished due to the increase in tire pressure experienced during normal driving. For instance, if a vehicle's tires became significantly under-inflated overnight, while the vehicle's tires were cold, the low tire pressure warning telltale would be illuminated. However, if the driver did not re-inflate the vehicle's tires, the temperature of the tires, and thus the inflation pressure, would increase during normal driving. This could cause the telltale to be extinguished.

In addition, large fluctuations in the ambient temperature could result in the low tire pressure warning telltale's being activated on vehicles during ignition, and then automatically de-activated, if the vehicle has that capability, after the vehicle has been driven for a while and the temperature (and thus the pressure) in a tire increases.

NHTSA did not propose that TPMSs have a temperature compensation feature. The agency believed that such a feature would add to the cost of the proposed standard and that indirect TPMSs would not be able to meet such a requirement. NHTSA did, however, request comments on whether such a feature should be required.

The Alliance commented that indirect TPMSs do not require temperature compensation because temperature variances are accounted for naturally in the rolling radii of the tires. Moreover, increases in temperature, and thus in pressure, affect all of a vehicle's tires equally. Thus, the pressure in all four

[69] The actual tire pressure increase due to heat appears to depend on several factors, including whether the tire is under-inflated to start with, the load on the tire, and how much braking has occurred recently. The agency believes that the maximum increase in tire pressure due to increased temperature is 4 psi.

tires increases similarly and does not affect an indirect TPMS's calculation of tire pressure.

The Alliance also stated that direct TPMSs may employ temperature compensation to prevent nuisance warnings. The Alliance recommended that the agency not require temperature compensation because good engineering practices and concern for customer satisfaction (*i.e.,* by preventing nuisance warnings) will compel this feature where needed, regardless of regulation.

Advocates and the EC recommended that the agency require temperature compensation. Advocates stated that temperature compensation is crucial not only to reliable operation of TPMSs in providing accurate detection and notification of low pressure conditions in tires, but also to ensure that TPMSs provide positive feedback and confidence among vehicle operators as meaningful indicators of incipient safety problems which require rapid attention. Advocates expressed concerned that without temperature compensation, the low tire pressure warning telltale would activate and de-activate with temperature, and corresponding pressure, increases. Advocates believed this would encourage drivers to ignore the warning telltale. The EC suggested that temperature compensation might be necessary to ensure the reliability and accuracy of TPMSs.

NHTSA has decided not to address this in this new standard. As noted in the Alliance comments, indirect TPMSs do not need temperature compensation. For direct TPMSs, the agency believes that it is appropriate to allow flexibility to address issues like these, particularly in the early stages of a technology like TPMS. If real-world experience shows that the public is getting nuisance warnings, the agency will revisit this issue.

h. Low Tire Pressure Warning Telltale

The performance requirements for the low tire pressure warning telltale discussed below are the same for both the four-tire, 25 percent option and the one-tire, 30 percent option.

i. Color

In the NPRM, the agency proposed to require that the color of the warning telltale be yellow. The agency received several comments on this issue.

Advocates recommended that the agency require the color to be red. Advocates stated that a number of current lighted warning telltales providing status information to driver of vehicle operating systems (*e.g.,* brake systems and engine oil) use red lamps. Advocates argued that, in most cases, an imminent safety hazard is not present when these warning lamps are illuminated, yet their color is red. Advocates also argued that the low tire pressure warning telltale would alert drivers about the existence of a potentially dangerous situation that needs rapid correction. Advocates stated that a red lamp would convey this urgency to drivers better than a yellow lamp.

The Alliance agreed that yellow is the appropriate color for the warning telltale. However, the Alliance recommended that if a manufacturer chooses to imbed the warning telltale in a reconfigurable display, the telltale be excluded from the yellow color requirement. The Alliance argued that the changing appearance of the display would serve the purpose of drawing the driver's attention to the warning, which is otherwise accomplished by lighting a lamp.

The agency is not adopting Advocates' suggestion. The use of the color red for telltales is usually reserved for telltales warning of an imminent safety hazard. The brake systems warning telltale is required to be red because a failure in a vehicle's brake system results in an imminent safety hazard that requires immediate attention. The agency does not believe that a significantly under-inflated tire represents an imminent safety hazard. As noted above, the agency has tested a variety of tires at 20 psi, the minimum activation pressure for the warning telltale, for 90 minutes. None of the tires failed. In addition, as noted above, the agency will propose to test all Standard Load P-metric tires at 20 psi under load and speed conditions for 90 minutes after they undergo a stringent endurance test. This proposal was included in the agency's NPRM to upgrade its tire standard.[70] The agency believes that these tests will ensure that tires will be able to operate safely for at least 90 minutes at the minimum activation pressures specified in this standard. Moreover, the agency notes that since most Standard Load P-metric tires have a placard pressure of at least 30 psi, the warning telltale will have to illuminate at a pressure above the minimum activation pressure. Accordingly, the agency concludes that yellow is the appropriate color because it conveys the message that the driver can continue driving, but should check and adjust the tire pressure at the earliest opportunity.

NHTSA is also not adopting the Alliance's suggestion. The agency notes that reconfigurable displays can be reconfigured by the driver. The driver might reconfigure the display to not show the tire pressure for hours, days, or weeks at a time. Thus, if the low tire pressure warning telltale were imbedded in the reconfigurable display, the driver might not be alerted to the existence of a significantly under-inflated tire. The agency has no objection if manufacturers wish to use a reconfigurable display to display individual tire pressure. However, the agency does not believe the telltale itself should be imbedded in a reconfigurable display.[71] Thus, the agency is not adopting the Alliance's suggestion that the agency exclude reconfigurable displays from the color requirement.

ii. Symbol

In the NPRM, the agency proposed three symbols for the low tire pressure warning telltale. The first was an image of the vehicle with lamps located at the image's tires to indicate which tire is significantly under-inflated. The agency noted that such an image, with lamps around the image that illuminate when there is a problem (*e.g.,* an incompletely closed door) in that area, is already built into the dashboard of some vehicles. Thus, the agency proposed that this image, with lamps at the image's tires to indicate which tire is significantly under-inflated, be required if a vehicle manufacturer provides a display that identifies which tire is significantly under-inflated.

The agency received no comments opposing the use of this image. Thus, the final rule requires the use of this image, with lamps at the image's tires to indicate which tire is significantly under-inflated, if a vehicle manufacturer provides a display that identifies which tire is significantly under-inflated.

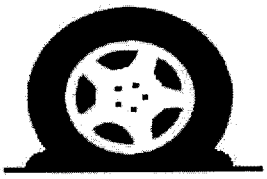
In addition to the vehicle image, the agency proposed a choice between two symbols for TPMSs that do not inform the driver which tire is significantly under-inflated. The first was developed by the International Organization for Standardization (ISO). It is used to identify tire malfunctioning and is currently used in some vehicles with TPMSs. The second was a symbol of a low tire developed by the agency. All three symbols are set out below:

BILLING CODE 4910–59–P

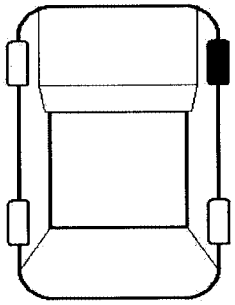
[70] Docket No. NHTSA–2000–8011. The NPRM was published at 67 FR 10049, March 5, 2002.

[71] To prevent the telltale from being installed in a reconfigurable display, the agency is requiring that the telltale, once illuminated, remain illuminated until automatically extinguished when all of the vehicle's tires cease to be significantly under-inflated or until manually extinguished in accordance with the vehicle manufacturer's instructions.

ISO Symbol



NHTSA Low Tire Symbol



Vehicle Symbol Indicating Which Tire Is Significantly Under-Inflated

BILLING CODE 4910–59–C

Prior to issuing the NPRM, the agency conducted symbol comprehension tests to aid the agency in determining which symbol best conveyed a tire pressure problem to drivers. The agency asked 120 people to look at 15 symbols, including the ISO symbol and the low tire symbol developed by the agency, and fill in the blank in the following statement: ''This image has just appeared on your vehicle's dashboard. It is a warning for ___.''

Results of this test indicated that the ISO symbol was the least understood among the 15 symbols, with a comprehension rate of only 38 percent. The low tire symbol developed by the agency had a comprehension rate of 100 percent.

The agency received several comments on this issue. Advocates and ITRA recommended that NHTSA require the low tire symbol developed by the agency because it had high recognition value, while the ISO symbol had low recognition value.

The Alliance recommended that the agency require the ISO symbol for several reasons. First, the Alliance argued that while the agency-developed low tire symbol is easier to recognize than the ISO symbol on paper, it is not easier to recognize when reduced to the size, and placed in the medium, that would be used for a dashboard display.[72] The Alliance claimed that on a dashboard display, the resolution of the low tire symbol would not allow for the flat portion of the tire to be seen. The ISO symbol, according to the Alliance, remains visible and recognizable, even when reduced and placed in a dashboard.

Second, the Alliance argued that the low tire symbol falsely indicates that a tire is flat, rather than that pressure is low. The ISO symbol does not provide this misleading information.

Third, the Alliance argued that while the ISO symbol initially may not be recognized as a low tire warning, the near-universal requirement for TPMSs will rapidly lead to widespread recognition of whatever symbol NHTSA ultimately decides to require.

Finally, the Alliance argued that the ISO symbol has already been adopted as a voluntary standard and is in widespread use among those manufacturers currently offering TPMSs. Were NHTSA to require a unique symbol for the U.S. market, manufacturers who already use the ISO symbol would be required to re-tool their instrument clusters to accommodate the unique symbol. According to the Alliance, this would be expensive and time-consuming.

ITRA recommended that the agency require an audible warning as well as a warning lamp. ITRA stated that many drivers ignore a warning lamp, especially on bright days.

The agency agrees with the Alliance's arguments. Although the NHTSA-developed low tire symbol had a high recognition rate on paper, its level of detail, and thus its recognition rate, might not be retained when reduced in size and translated from paper to a dashboard display. Moreover, the agency believes that when TPMSs are first introduced, no matter what symbol the agency requires, drivers will consult their owner's manual to determine exactly what the symbol means and what they should do when the telltale illuminates. Drivers then will associate that telltale with a significantly under-inflated tire. Finally, the agency is interested in harmonizing its standards when it can do so consistent with the interests of safety. Since the ISO symbol is currently being used by manufacturers in Europe and the U.S., and since it will likely be readily learned, the agency can easily harmonize this requirement. For these reasons, the agency is requiring the ISO symbol. The agency also has decided to allow the use of the words ''Low Tire'' with the ISO symbol so that drivers will become familiar with the low tire pressure warning telltale more rapidly.

The agency is not requiring an audible warning in addition to the telltale lamp. The agency notes that although ITRA stated that many drivers ignore a warning lamp, it provided no such evidence. The agency believes that requiring an audible warning would increase the cost of TPMSs without providing any additional benefits.

iii. Self-Check

In the NPRM, the agency did not propose that the TPMS conduct a self-check or a bulb-check at vehicle start-up. However, it did request comments on the desirability of requiring such a check.

Advocates strongly supported both a system-check and a bulb-check. Advocates stated that vehicle systems regularly provide a system readiness check or a bulb-check to provide an initial indication to the driver that the system is operational. Advocates recommended a system- and bulb-check which provides several seconds of separate notification to the driver after the vehicle is started instead of the fleeting notification which is usually supplied only when the ignition is first engaged.

RMA also supported both a system-check and a bulb-check. RMA argued that, with the broad installation of TPMSs, much of the motoring public will rely heavily on the systems for tire inflation maintenance. The frequency of routinely checking tire pressure is expected to drop significantly. Accordingly, RMA recommended that TPMSs go through a self-diagnostic check, including a bulb-check, with each vehicle start-up to indicate to the driver that the system is operational.

TRW stated that both direct and indirect TPMSs could perform a bulb-check and a self-check. TRW stated that with direct TPMSs, each tire pressure sensor can be set to periodically transmit an indication that it is functioning. If a sensor is not transmitting, or a sensor's battery is low, the receiver can send a system-malfunction message to the vehicle's body control module and illuminate the TPMS telltale. If the telltale is not illuminated, the driver is being told that the TPMS is functioning properly and no tire is significantly under-inflated. TRW stated that, for indirect TPMSs, the ABS system already performs a system malfunction monitoring process. This includes both static and dynamic checks that are handled in a continuous monitoring process.

The Alliance recommended that the agency not require either a bulb-check or a self-check. The Alliance stated that vehicle manufacturers include serviceability provisions as a matter of normal design practice and do not need regulatory requirements in this regard.

After considering all the comments on this issue, the agency has decided to require a bulb-check, but not a self-check, at vehicle start-up. The agency believes that a bulb-check will add little, if any, cost to the TPMS and provide drivers with useful information, i.e., that the warning telltale bulb is functional.[73] Accordingly, the agency is adding a new section S4.3.3 as follows:

S4.3.3 (a) Except as provided in paragraph (b) of this section, each low tire pressure warning telltale must be activated as a check of lamp function either when the key locking system is turned to the ''On'' (''Run'') position when the engine is not running, or when the key locking system is in a position between ''On'' (''Run'') and ''Start'' that is designated by the manufacturer as a check position.

[72] In the symbol comprehension tests, the symbols were presented on paper as 18×18 mm images. The telltales in vehicle dashboards average about 8×8 mm.

[73] The agency did not quantify the cost of a bulb-check, but the agency notes that most of the TPMSs tested by the VRTC performed a bulb-check. Since the agency used these systems in estimating the costs of this rulemaking, the cost of a bulb-check likely was already included, *e.g.,* in the cost of the control module.

(b) The low tire pressure warning telltale need not be activated when a starter interlock is in operation.

The agency has decided not to require that the TPMS perform a self-check. The agency agrees with RMA's comment that drivers will rely on the TPMS for tire inflation maintenance and check their tire pressure less often. However, NHTSA only requires a self-check for air bag and brake systems, i.e., major safety systems. Moreover, the agency is uncertain of the costs and benefits of requiring a self-check.[74] According to TPMS manufacturer comments, the TPMSs in service to date have shown outstanding reliability, so there appears to be little need for a requirement in this area.

i. General Written Instructions for All TPMSs

In the NPRM, the agency proposed that the vehicle owner's manual provide an image of the TPMS warning telltale and the following information, in English:

When the TPMS warning light is lit, one of your tires is significantly under-inflated. You should stop and check your tires as soon as possible, and inflate them to the proper pressure as indicated on the vehicle's tire inflation placard. Driving on an under-inflated tire causes the tire to overheat and can eventually lead to tire failure. Under-inflation also reduces fuel efficiency and tire tread life, and may affect the vehicle's handling and stopping ability.

The agency also proposed to allow each vehicle manufacturer, at its discretion, to provide additional information about the significance of the low tire pressure warning telltale and description of corrective action that should be undertaken.

The Alliance stated that it was not opposed to the language the agency proposed. However, the Alliance recommended that the agency include additional language addressing inherent system limitations, owner/driver responsibility, and replacement tires and rims. The Alliance did not recommend any specific language.

Advocates recommended that the agency change the first sentence to read: ''When the TPMS warning light is lit, one *or more* of your tires *are seriously* under-inflated.'' Advocates also recommended that the agency remove the word ''eventually'' from the third sentence to encourage drivers to take immediate action.

RMA recommended that the written instructions be revised to read as follows:

When the TPMS warning light is lit, one of your tires is significantly under-inflated. You should stop and check your tires as soon as possible, and inflate them to the proper pressure as indicated on the vehicle's tire inflation placard. If checking air pressure when the tire is hot from driving, never ''bleed'' or reduce air pressure, as it is normal for pressures to increase above recommended cold pressures. Driving on a significantly under-inflated tire causes the tire to overheat and can eventually lead to tire failure. Under-inflation also reduces fuel efficiency and tire tread life, and may affect the vehicle's handling and stopping ability. Each tire, including the spare, should be checked monthly when cold and set to the recommended inflation pressure as specified on the vehicle placard and owner's manual.

The agency is accepting Advocates' recommendation to add the words ''or more'' to the first sentence and remove the word ''eventually'' from the third sentence. The agency notes that activation of the low tire pressure warning telltale could signify that more than one tire is significantly under-inflated. The agency also notes that the word ''eventually'' could lead drivers to believe that a significantly under-inflated tire is not a potentially dangerous condition.

The agency also is accepting the last sentence of RMA's recommended instructions. The agency has no objection to this information being added and believes it may be useful in encouraging drivers to check their tire pressure more often.

The agency is not adopting Advocates' recommendation to change the word ''significantly'' in the first sentence to ''seriously.'' The standard does not define either term. However, Section 13 of the TREAD Act refers to ''significant'' rather than ''serious'' under-inflation. Moreover, in the NPRM the agency discussed ''significant'' rather than ''serious'' under-inflation. For the sake of consistency, the agency believes the phrase ''significantly under-inflated'' should be used in the written instructions. The agency also is not adopting the third sentence of RMA's recommended language. The agency notes that if the low tire pressure warning telltale is lit, then one or more of the vehicle's tires is significantly under-inflated. The agency does not believe that drivers will respond to the warning telltale by reducing air pressure. Thus, that sentence is unnecessary.

As noted above, the agency is accepting the Alliance's recommendation to add language concerning the inherent limitations of TPMSs. The agency specified the additional information vehicles certified to the one-tire, 30 percent compliance option must include in the owner's manual. That information must follow the general written instructions specified below.

As for the Alliance's recommendation for additional language on driver responsibility and replacement tires, the agency is allowing manufacturers, at their discretion, to add additional information regarding the particular TPMS installed in the vehicle. This should allow manufacturers to add information concerning the limitations of the particular TPMS, driver responsibility, replacement tires, whether the TPMS works with the vehicle's spare tire, and how to use the reset button, if one is provided. However, any additional language should be placed after the written instructions the agency is requiring. The written instructions specified by the agency should be placed in the owner's manual, in English, as specified below:

When the TPMS warning light is lit, one or more of your tires is significantly under-inflated. You should stop and check your tires as soon as possible, and inflate them to the proper pressure as indicated on the vehicle's tire information placard. Driving on a significantly under-inflated tire causes the tire to overheat and can lead to tire failure. Under-inflation also reduces fuel efficiency and tire tread life, and may affect the vehicle's handling and stopping ability. Each tire, including the spare, should be checked monthly when cold and set to the recommended inflation pressure as specified in the vehicle placard and owner's manual.

j. Test Conditions

In the NPRM, the agency proposed that each vehicle be tested at its GVWR and its lightly loaded vehicle weight (LLVW), defined as unloaded vehicle weight plus up to 400 pounds (including test driver and instrumentation). The ambient temperature would be between 0 degrees C (32 degrees F) and 40 degrees C (104 degrees F). The test road surface would be dry and smooth. The vehicle would be tested at speeds between 50 km/h (31.1 mph) and 100 km/h (62.2 mph).

Advocates supported these proposed test conditions. RMA recommended that vehicles be tested at speeds up to 120 km/h (75 mph) to reflect real-world driving conditions. RMA argued that drivers typically travel on interstate highways at speeds of 75 mph and higher for extended periods of time. Thus, TPMSs should be tested to ensure

[74] The cost of a self-check for air bag and brake systems was included in the cost of the electronic control units for those systems. The agency was unable to separately estimate the cost of a self-check for those systems. Similarly, in its tear-down study of TPMSs to estimate their costs, the agency was unable to separately estimate the cost of a self-check for TPMSs.

that they function properly at highway speeds.

The Alliance recommended several changes to the proposed test conditions. The Alliance recommended separate test conditions for direct and indirect TPMSs as follows:

Test Conditions for Indirect TPMS:

S5.1 Ambient temperature. The ambient temperature is between 0°C (32°F) and 40°C (104°F). The ambient temperature during the test procedure must not change more than +/−1.5°C (+/−2.5°F).

S5.2 Road test surface.

S5.2.1 Test Surface Description. Tests are conducted on a dry, smooth level roadway.

S5.2.2 Radius of Curvature. Minimum radius of curvature of 1600 mm.

S5.2.3 Longitudinal Acceleration. Maximum longitudinal acceleration generated +/−0.05 g at the test speeds indicated.

S5.2.4 Gradient. The test surface has no more than a 1% gradient in the direction of testing and no more than a 2% gradient perpendicular to the direction of testing.

S5.2.5 Pavement Friction. The road test surface produces a peak friction of coefficient of 0.9 when measured using an American Society of Testing Materials (ASTM) E1136 standard reference test tire, in accordance with ASTM Method E 1337–90, at a speed of 64.4 km/h (40 mph), without water delivery.

S5.3 Altitude. Tests are conducted at an altitude between 0 to 500 m (0 to 1640 ft) above sea level.

S5.4 Vehicle conditions.

S5.4.1 Test weight. The vehicle is tested at its lightly loaded vehicle weight and at its gross vehicle weight rating without exceeding any of its gross axle weight ratings. The weights should also be evenly distributed between the left and right sides. The difference between the left and right side static corner weights should be less than 3% of the total vehicle weight.

S5.4.2 Vehicle speed. The vehicle is tested at a speed between 50 km/h (31.1 mph) and 100 km/h (62.2 mph).

Test Conditions for Direct TPMSs:

The Alliance's recommended test conditions for direct TPMSs are the same as those for indirect TPMSs, with the following additions:

S5.4 Barometric Pressure. Barometric Pressure will be recorded and the measured significantly under-inflated tire pressure threshold will be corrected using the following equation: P (adjusted threshold) = P (significantly under-inflated) = 1 Atmosphere − Barometric Pressure. Note: 1 atmosphere = 101.3kpa (14.7 psi).

NHTSA is not adopting the additional conditions recommended by the Alliance. The agency notes that specifications regarding radius of curvature, longitudinal acceleration, gradient, and pavement friction are useful in braking tests, but have little relevance to the testing of TPMSs. The agency also notes that changes in altitude and barometric pressure should make little difference, if any, in the outcome of these tests. The agency also does not see the need to specify that the vehicle weights should be evenly distributed and that the difference between the left and right side static corner should be less than 3 percent of the total vehicle weight. NHTSA does not specify this for braking or any other tests that need a high degree of precision and specificity.

NHTSA also is not adopting RMA's recommended test speed. While passenger vehicles are regularly driven on interstate highways at speeds of 75 mph, those vehicles are also regularly driven at even higher speeds. The point of the test speeds is not to test the speed capability of the vehicle. Instead, the test speeds must cover a sufficient variety of driving speeds to reflect real-world usage. The agency believes that the proposed test speeds do that.

NHTSA has decided to revise the definition of ''lightly loaded vehicle weight'' to make it consistent with Standard No. 135, ''Passenger car brake systems.'' The definition now reads as follows:

> *Lightly loaded vehicle weight* means unloaded vehicle weight plus the weight of a mass of 180 kg (396 pounds), including test driver and instrumentation.

These test conditions are the same for both the four-tire, 25 percent and one-tire, 30 percent compliance options.

k. Test Procedures

In the NPRM, the agency proposed that the vehicle's tires be inflated to the placard pressure. Then the vehicle would be driven between 50 km/h (31.1 mph) and 100 km/h (62.2 mph) for up to 20 minutes. While driving at that speed, any combination of tires (from one to four for the first alternative and from one to three for the second) would be deflated until it was significantly under-inflated. Then the elapsed time between the time that the vehicle's tire or combination of tires became significantly under-inflated and the time the low tire pressure warning telltale was illuminated would be recorded. After the telltale illuminates, pressure would be added to the tire or combination of tires that was deflated such that the tire or each of the tires was one psi below the level of significant under-inflation. Then the warning telltale would be checked to see if it remained illuminated. If the telltale remained illuminated, a manual reset would be attempted. These test procedures were to be repeated for each tire and rim combination recommended for the vehicle by the vehicle manufacturer.

The Alliance claimed that the proposed test procedures would not allow for fair and adequate assessments of both direct and indirect TPMS performance. The Alliance recommended separate test procedures for indirect and direct TPMSs as follows:

Test Procedures for Indirect TPMSs:

(a) Inflate the vehicle's tires to the vehicle manufacturer's recommended cold inflation pressure.

(b) If applicable, initiate a TPMS reset and calibration using the specified vehicle manufacturer's instructions. Record all the tire pressure values.

(c) While driving within the speed range specified in paragraph S5.4.2 of this standard, deflate any single tire at a rate of 10 kPa/min +/−5 kPa/min (1.5 psi/min +/−0.7 psi/min) until that tire is significantly under-inflated.

(d) Continue to drive within the speed range specified in paragraph S5.4.2 of this standard. Monitor the tire pressures and adjust pressures (if necessary) to remain significantly under-inflated. Record the elapsed time and cumulative driving distance at a constant speed (maximum longitudinal acceleration < +/−0.05 g) and straight (lateral acceleration < +/−0.05 g) until the low tire pressure warning telltale is illuminated or 10 miles of straight, constant speed driving has accumulated, whichever happens first.

(e) Turn the ignition off and let the vehicle sit for 5 minutes. Turn the key back on to confirm that the warning telltale re-illuminates. If the warning telltale does not re-illuminate, repeat step 6(d) to verify that the warning telltale does re-illuminate. This completes the test.

(f) To test a single tire deflation at other tire locations on the vehicle using the same tire and rim combination:

(1) Record all the tire pressure values and re-inflate the low tire to the matching tire on the opposite side of the same axle.

(2) Initiate a system reset of the warning telltale per the manufacturer's instructions.

(3) Repeat steps S6(b) through (e).

(g) To test a single tire deflation using another tire and rim combination, which is recommended by the vehicle

manufacturer, repeat steps 6(a) through (e).

Test Procedures for Direct TPMSs:

(a) Inflate the vehicle's tires to the vehicle manufacturer's recommended cold inflation pressure.

(b) If applicable, initiate a TPMS reset. Drive the vehicle to precondition the tires using the specified vehicle manufacturer's instructions. Record all the tire pressure values.

(c) While driving within the speed range specified in paragraph S5.4.2 of this standard, deflate any tire or combination of tires at a rate of 10 kPa/min +/−5 kPa/min (1.5 psi/min +/−0.7 psi/min) until the tire(s) is (are) significantly under-inflated to threshold P (adjusted threshold).

(d) Continue to drive within the speed range specified in paragraph S5.4.2 of this standard. Monitor the tire pressures and adjust pressures (if necessary) to remain significantly under-inflated. Record the elapsed time and cumulative driving distance at a constant speed (maximum longitudinal acceleration < +/−0.05 g) and straight (lateral acceleration < +/−0.05 g) until the low tire pressure warning telltale is illuminated or 10 miles of straight, constant speed driving has accumulated, whichever happens first.

(e) Turn the ignition off and let the vehicle sit for 5 minutes. Turn the key back on to confirm that the warning telltale re-illuminates. If the warning telltale does not re-illuminate, repeat step 6(d) to verify that the warning telltale does re-illuminate. This completes the test.

(f) To test other combinations of tire deflations for this tire and rim combination:

(1) Re-inflate the tires to the tire pressure value recorded in step S6(b).

(2) Initiate a system reset of the warning telltale per the manufacturer's instructions.

(3) Repeat steps S6(b) through (e).

(g) To test a single tire deflation using another tire and rim combination, which is recommended by the vehicle manufacturer, reset the warning telltale per the manufacturer's instructions and repeat steps 6(a) through (e).

NHTSA is not adopting the Alliance's recommended test procedures. The agency believes that the test procedures contained in this final rule adequately test both direct and indirect TPMSs under conditions similar to real-world conditions. The test procedures are as follows:

S6. *Test procedures.*

(a) Inflate the vehicle's tires to the vehicle manufacturer's recommended cold inflation pressure for the applicable vehicle load conditions specified in paragraph S5.3.1 of this standard. If the vehicle manufacturer has not recommended an inflation pressure for the lightly loaded condition, the inflation pressure specified by the vehicle manufacturer for the gross vehicle weight rating is used.

(b) With the vehicle stationary and the key locking system in the ''Lock'' or ''Off'' position, turn the key locking system to the ''On'' or ''Run'' position. The tire pressure monitoring system must perform a check of telltale lamp function as specified in paragraph S4.3.3 of this standard.

(c) If applicable, reset the tire pressure monitoring system in accordance with the instructions specified in the vehicle owner's manual.

(d) Drive the vehicle at any speed specified in paragraph S5.3.2 of this standard for 20 minutes.

(e)(1) For vehicles complying with S4.2.1, stop the vehicle and deflate any combination of one to four tires until the deflated tire(s) is (are) at 7 kPa (1 psi) below the inflation pressure at which the low tire pressure monitoring system is required to activate the low tire pressure warning telltale for that vehicle.

(2) For vehicles complying with S4.2.2, stop the vehicle [75] and deflate any one tire until the deflated tire is at 7 kPa (1 psi) below the inflation pressure at which the low tire pressure monitoring system is required to activate the low tire pressure warning telltale for that vehicle.

(f) Drive the vehicle at any speed specified in paragraph S5.3.2 of this standard. Record the time from when the vehicle speed reaches 50 km/h until the time the low tire pressure warning telltale illuminates. The telltale must illuminate within 10 minutes as required in paragraph S4.2.1(a) or S4.2.2(a) of this standard.

(g) Stop the vehicle and turn the key locking system to the ''Off'' or ''Lock'' position. After a 5-minute period, turn the vehicle's key locking system to the ''On'' or ''Run'' position. The telltale must remain illuminated.

(h) Keep the vehicle stationary for a period of one hour.

(i) Inflate all of the vehicle's tires to the vehicle manufacturer's recommended cold inflation pressure. If the vehicle's tire pressure monitoring system has a manual reset feature, reset the system in accordance with the instructions specified in the vehicle owner's manual.

(j) Drive the vehicle at any speed specified in paragraph S5.3.2 of this standard. The telltale must extinguish as specified in paragraph S4.2.1(b) or S4.2.2(b).

(k)(1) For vehicles complying with S4.2.1, if additional combinations of tires are tested, repeat the test procedures in paragraphs S6(a) through (j).

(2) For vehicles complying with S4.2.2, if the other individual tires are tested, repeat the test procedures in paragraphs S6(a) through (j).

(l) Utilizing the existing vehicle rims, repeat the test procedures in paragraphs S6(a) through (k) for each tire size recommended for the vehicle by the vehicle manufacturer. Note: If a different rim size is required, OEM rim and tire assemblies appropriate for the tire pressure monitoring system are used for testing.

The test procedures recommended by the Alliance are similar to the procedures the agency is specifying in this final rule. The agency notes that separate test procedures for the two compliance options are necessary because the performance requirements are different for each option. For example, the agency must be able to test multiple combinations of under-inflated tires, including all four tires, when testing vehicles that are certified to the four-tire, 25 percent option.

6. Lead Time

In the NPRM, the agency noted that the TREAD Act requires that the agency publish this final rule by November 1, 2001, and that the final rule take effect not more than two years after the final rule. The agency was concerned that TPMS manufacturers would not have the production capacity to supply TPMSs to equip 16 million vehicles annually, and that vehicle manufacturers would not have adequate time to develop TPMSs for all their vehicle applications. Thus, the agency indicated that it would consider a phase-in with a compliance schedule of 35 percent for the first year (2003), 65 percent the second year, and 100 percent in the third year.

No commenter opposed a phase-in of the TPMS requirements for light vehicles.

The Alliance stated that the phase-in proposed by the agency is too aggressive to allow for orderly and cost-effective implementation of the requirements. The Alliance stated that the agency

[75] Upon stopping the vehicle, the agency may deflate the tire(s) immediately or wait until the tire(s) cool to the ambient temperature, or any time in between, *e.g.,* when the tire(s) reach their original cold inflation pressure. The agency recognizes that deflating the tires while they are still hot would be a less stringent test than if the tires were allowed to cool down before being deflated. All vehicles must comply when the tires are warm or cold.

phase-in would jeopardize vehicle development programs, which allow for sufficient ''prove-out'' and implementation of new technology. The Alliance argued that TPMS technology is still relatively new and needs to be properly proved-out to avoid customer complaints and/or recalls.

For these reasons, the Alliance recommended a four-year phase-in as follows: 15 percent of a manufacturer's affected products to be equipped with a semi- or fully-compliant TPMS in the first year; 35 percent in the second year; and 70 percent in the third year; and, in the final year, 100 percent of a manufacturer's affected products to be equipped with a fully-compliant TPMS.The Alliance noted that a semi-compliant TPMS is one that meets all but specified interface requirements, and would only be allowed during the phase-in period but not in the final year of the phase-in. The Alliance claimed that allowing semi-compliant TPMSs during the phase-in would reduce the cost of compliance considerably, as cluster and display alterations are very expensive and require a long lead time to implement. Delaying these interface requirements would allow manufacturers who have already designed and/or implemented TPMSs to receive credit for those systems before and during the phase-in.

The agency agrees with the Alliance's comments about the pace of the phase-in. TPMS technology is still relatively new. While it has been used on a few high-end models for several years, it has not been widely implemented. Moreover, the agency remains concerned that TPMS manufacturers will not be able to produce enough systems and parts to supply 16 million vehicles annually.

Accordingly, the agency is implementing a four-year phase-in period as follows: 10 percent of a vehicle manufacturer's affected vehicles must be equipped with a TPMS that complies with either the four-tire, 25 percent or the one-tire, 30 percent option in the first year (i.e., November 1, 2003 to October 31, 2004); 35 percent in the second year (i.e., November 1, 2004 to October 31, 2005); 65 percent in the third year (i.e., November 1, 2005 to October 31, 2006). After October 31, 2006, 100 percent of a vehicle manufacturer's affected vehicles must be equipped with a TPMS that complies with the requirements set forth in the second part of this final rule. As noted above, the agency will publish the second part of this final rule by March 1, 2005, in order to give manufacturers sufficient lead time.

The agency believes this phase-in period allows for a sufficient prove-out of TPMS technology before widespread implementation in the first two years, followed by the last two years of aggressive implementation. The agency notes that the final rule requires fewer vehicles to comply in the first year of the phase-in (10 percent) than the Alliance recommended (15 percent). NHTSA is lowering the number of vehicles that will have to comply because the agency was unable to meet the statutory deadline of November 1, 2001.

NHTSA also notes that since the agency is permitting manufacturers to comply with the one-tire, 30 percent option until at least October 31, 2006, manufacturers will be able to comply with current indirect TPMSs while working to improve the performance of indirect TPMSs.

The agency is allowing carry-forward credits, but only for vehicles that are manufactured during the phase-in and comply with the four-tire, 25 percent option of the first part of this final rule. Vehicles that comply with the one-tire, 30 percent option cannot be counted for purposes of carry-forward credits.

While the agency is not adopting the Alliance's particular recommendation to allow semi-compliant TPMSs during the phase-in, it has decided to allow compliance with an alternative set of requirements during that period. The agency believes the addition of the one-tire, 30 percent option to the first part of this final rule will provide ample time for manufacturers to complete any development needed to enable them to install either direct, improved indirect, or hybrid TPMSs in their vehicles by the time the second part of this final rule takes effect on November 1, 2006.

The agency is adopting VSC's suggestion that the agency give small volume manufacturers until the end of the phase-in period to comply with the TPMS requirements. The agency has done this in the past when implementing a major rule.

As with previous phase-ins, NHTSA is adopting reporting requirements to monitor the implementation of the phase-in. The agency is including the reporting requirements in 49 CFR Part 590, which currently specifies back door latch, hinge, and lock phase-in reporting requirements. Since the phase-in currently addressed by Part 590 was completed December 31, 1999, the agency is replacing the existing language with regulatory text addressing the phase-in of Standard No. 138's requirements for TPMS.

C. Study of Effects of TPMSs That Do Not Meet a Four-Tire, 25 Percent Under-Inflation Requirement

To help provide additional data on the performance and effectiveness of TPMSs, NHTSA plans to conduct a study comparing the tire pressures of vehicles without a TPMS to the tire pressures of vehicles equipped with a TPMS that does not meet a four-tire, 25 percent compliance option. The agency will arrange for a peer review of the study methodology and of the study results, including the safety significance of any differences in tire pressure between the two groups of vehicles. If sufficient data are available, the agency also will assess the performance and effectiveness of TPMSs that do meet a four-tire, 25 percent option. The study, which will be completed by March 1, 2004, has the following two purposes.

1. Effect on Tire Pressure

The study will give the agency additional information regarding the extent to which vehicles equipped with a TPMS that does not meet a four-tire, 25 percent option have tire pressures closer to the vehicle's manufacturer's recommended inflation pressure than vehicles without a TPMS.

2. Effect on Number of Significantly Under-Inflated Tires

The study also will give the agency additional information regarding the extent to which vehicles equipped with a TPMS that does not meet a four-tire, 25 percent option have fewer significantly under-inflated tires than vehicles without a TPMS.

D. Part Two of the Final Rule—November 2006 and Thereafter

Based on the record compiled to this date, the results of the study, and any other new information (including, for example, information on the overall safety benefits of ABS) submitted to the agency, NHTSA will issue the second part of this final rule. The second part will be issued by March 1, 2005, to ensure vehicle manufacturers have sufficient lead time before November 1, 2006, when all new light vehicles must be equipped with a TPMS.

Based on the record now before the agency, NHTSA tentatively believes that a four-tire, 25 percent requirement would best meet the TPMS mandate in the TREAD Act. Nevertheless, it is possible that the new information may be sufficient to justify a continuation of the requirements in the first part of this final rule, or even some other alternative.

VIII. Benefits

Following is a summary of the benefits associated with this final rule. For a more detailed analysis, see the agency's Final Economic Assessment (FEA). A copy of the FEA has been placed in the docket. In the following discussion, the agency analyzes the benefits and costs of both the four-tire, 25 percent and one-tire, 30 percent options.

For purposes of this analysis, the agency assumes that 95 percent of drivers will respond to a low tire pressure warning by re-inflating their tires to the placard pressure. OMB questioned this assumption in its return letter. NHTSA has little hard evidence supporting this assumption. As discussed in the FEA, a recent study indicated that 97 percent of respondents stated they would respond to a dashboard warning light informing them that their tire pressure was low.[76] However, the agency has some concerns, such as the sample of respondents and the question format, with this study. The agency has attempted to find other studies with data on response rates to similar warning lights, but has been unable to do so.

However, as part of the new study to be completed by March 1, 2004, the agency plans to ask owners of vehicles equipped with a TPMS whether their low tire pressure telltale has ever illuminated, and, if so, how they reacted to it. This should provide useful data for the agency's decision on the requirements for the second part of this final rule.

Under-inflation affects many different types of crashes. These include crashes which result from:

(1) Skidding and/or losing control of the vehicle in a curve, such as a highway off-ramp, or in a lane-change maneuver;

(2) hydroplaning on a wet surface, which can cause increases in stopping distance and skidding or loss of control;

(3) increases in stopping distance; and

(4) flat tires and blowouts; and

(5) overloading the vehicle.

The agency was able to identify target populations for skidding and loss of control crashes, stopping distance (which involves any vehicle that brakes during a crash sequence), flat tires, and blowouts. The agency was not able to identify, from crash files and other reports, a target population for crashes caused by hydroplaning and overloading the vehicle.

A. Tire Safety Benefits

1. Skidding/Loss of Control

Under-inflation reduces tire stiffness, which causes the tire to generate lower cornering force. When a tire is under-inflated, the vehicle requires a greater steering angle to generate the same cornering force in a curve or in a lane-change maneuver. This can result in skidding or loss of control of the vehicle in a tight curve or a quick lane-change maneuver.

The agency estimates that if all light vehicles meet the four-tire, 25 percent compliance option, 46 fatalities will be prevented and 4,345 injuries will be prevented or reduced in severity per year due to reductions in these types of crashes. If all light vehicles meet the one-tire, 30 percent compliance option, 30 fatalities will be prevented and 2,817 injuries will be prevented or reduced in severity per year due to reductions in these types of crashes.

2. Stopping Distance

As explained in greater detail above in section III.D.1., ''Reduced Vehicle Safety—Tire Failures and Increases in Stopping Distance,'' tires are designed to maximize their performance capabilities at a specific inflation pressure. When a tire is under-inflated, the shape of its footprint and the pressure it exerts on the road surface are both altered. This degrades the tire's ability to transmit braking force to the road surface, and increases a vehicle's stopping distance, especially on wet surfaces.

Decreasing stopping distance is beneficial in several ways. Some crashes can be completely avoided. Other crashes will still occur, but at a lower impact speed because the vehicle is able to decelerate more quickly.[77]

The agency estimates that if all light vehicles meet the four-tire, 25 percent compliance option, 39 fatalities will be prevented and 3,410 injuries will be prevented or reduced in severity per year due to reductions in vehicles' stopping distances. If all light vehicles meet the one-tire, 30 percent compliance option, 17 fatalities will be prevented and 1,562 injuries will be prevented or reduced in severity per year due to reductions in vehicles' stopping distances.

3. Flat Tires and Blowouts

Under-inflation, along with high speed and overloading, can cause tire blowouts. A blowout in one of the front tires can cause the vehicle to veer off the road or into oncoming traffic. A blowout in one of the rear tires can cause spinning and loss of control of the vehicle.

The agency estimates that if all light vehicles meet the four-tire, 25 percent compliance option, 39 fatalities will be prevented and 967 injuries will be prevented or reduced in severity per year due to reductions in crashes involving blowouts and flat tires. If all light vehicles meet the one-tire, 30 percent compliance option, 32 fatalities will be prevented and 797 injuries will be prevented or reduced in severity per year due to reductions in crashes involving blowouts and flat tires.

4. Unquantified Benefits

The agency cannot quantify the benefits from a reduction in crashes associated with hydroplaning and overloading vehicles. The primary reason that the agency has been unable to quantify these benefits is the lack of crash data indicating tire pressure and how often these conditions are the cause or contributing factors in a crash. The agency does not collect tire pressure in its crash investigations. NHTSA also has not been able to quantify the benefits associated with reductions in property damage and travel delays that will result from fewer crashes or reductions in the severity of crashes.

B. Non-Tire Safety Benefits

In its return letter, OMB stated that issuing a final rule that allowed current indirect TPMSs to comply would encourage vehicle manufacturers to install ABS on additional vehicles. OMB recommended that NHTSA consider the potential safety benefits of additional vehicles being equipped with ABS.

However, as noted above in section VI., ''Response to Issues Raised in OMB Return Letter About Preliminary Determination,'' there is no reliable basis for concluding that permitting current indirect TPMSs to comply would lead to a significant increase in installation of ABS in light vehicles. Moreover, there is no statistically reliable basis for concluding that ABS reduces fatalities in light vehicles. Thus, the agency does not believe that, even if vehicle manufacturers install ABS on

[76] ''Examining the Need for Cycloid's Pump: An Analysis of Attitudes and a Study of Tire Pressure and Temperature Relationships,'' University of Pittsburgh, Departments of Mechanical and Industrial Engineering, December 7, 2001. A copy of this study has been placed in the docket. (Docket No. NHTSA–2000–8572–209.

[77] The FEA divides the benefits from reductions in stopping distance into fatalities and injuries reduced as a result of reductions in crashes on dry surfaces and on wet surfaces. As noted above, under-inflated tires have a greater impact on stopping distance when a vehicle is on a wet surface than when a vehicle is on a dry surface. However, most crashes occur on dry surfaces. Thus, the agency estimates that more fatalities and injuries will be reduced as a result of reductions in crashes that occur on dry surfaces than crashes that occur on wet surfaces.

additional vehicles, additional safety benefits would be experienced.

C. Total Quantified Safety Benefits

The agency estimates that the total quantified safety benefits from reductions in crashes due to skidding/loss of control, stopping distance, and flat tires and blowouts, therefore, will be 124 fatalities prevented and 8,722 injuries prevented or reduced in severity each year, if all light vehicles meet the four-tire, 25 percent compliance option; and 79 fatalities prevented and 5,176 injuries prevented or reduced in severity each year, if all light vehicles meet the one-tire, 30 percent compliance option.

D. Economic Benefits

1. Fuel Economy

Correct tire pressure improves a vehicle's fuel economy. Recent data provided by Goodyear indicate that a vehicle's fuel efficiency is reduced by one percent for every 2.96 psi that its tires are below the placard pressure. The agency estimates that if all light vehicles meet the four-tire, 25 percent compliance option, vehicles' higher fuel economy will translate into an average discounted value of $16.43 per vehicle over the lifetime of the vehicle. If all light vehicles meet the one-tire, 30 percent compliance option, vehicles' higher fuel economy will translate into an average discounted value of $2.06 per vehicle over the lifetime of the vehicle.

2. Tread Life

Correct tire pressure also increases a tire's tread life. Data from Goodyear indicate that for every 1 psi drop in tire pressure, tread life decreases by 1.78 percent. NHTSA estimates that if all light vehicles meet the four-tire, 25 percent compliance option, average tread life will increase by 1,143 miles. If all light vehicles meet the one-tire, 30 percent compliance option, average tread life will increase by 15 miles. This will delay new tire purchases. The agency estimates that the average discounted value of these delays in tire purchases will be $5.09, if all light vehicles meet the four-tire, 25 percent compliance option; and $0.65 if all light vehicles meet the one-tire, 30 percent compliance option.

IX. Costs

A. Indirect TPMSs

NHTSA estimates that the cost of an indirect TPMS that will meet the one-tire, 30 percent compliance option will be $13.29 per vehicle, if the vehicle already has a four-wheel, four-channel (four wheel-speed sensors) ABS. In the 2000 model year, about 67 percent of all new light vehicles were equipped with a four-wheel ABS. However, about 31 percent of these vehicles only had a three-channel system. A three-channel system has one wheel speed sensor for each front wheel and one for the rear axle. Thus, in order to meet the requirement that the TPMS be able to detect when any tire is significantly under-inflated, a vehicle with a three-channel ABS must be redesigned from having one wheel speed sensor for the rear axle to a wheel speed sensor for each rear wheel. The agency estimates that this will cost $25 per vehicle. Accordingly, the agency estimates that the average cost of providing an indirect TPMS to a vehicle already equipped with ABS will be $21.13 ($13.29 + $25 * .3135) per vehicle.

For vehicles not currently equipped with ABS, manufacturers would have to install either four wheel speed sensors at a cost of $130 per vehicle, or ABS at a cost of $240 per vehicle, in addition to an indirect TPMS. Thus, the average cost of providing an indirect TPMS to a vehicle not already equipped with ABS will be $143.29 ($130 + $13.29) if the manufacturer installs four-wheel speed sensors, or $253.29 ($240 + $13.29) per vehicle if the manufacturer installs ABS.

B. Direct TPMSs

NHTSA estimates that the cost of a direct TPMS that will meet the four-tire, 25 percent compliance option will be $70.35 per vehicle, if the manufacturer chooses to install an individual tire pressure display. This includes $7.50 for each tire pressure sensor ($30 per vehicle), $19 for the control module, $3.85 for an individual tire pressure display, $6 for four valves, and $11.50 for the combination of an instrument panel telltale, assembly, and miscellaneous wiring. The agency assumes that about one percent of vehicles currently comply. Thus, the agency estimates that the incremental cost will be $69.65 per vehicle ($70.35 * 99 percent) if manufacturers install an individual tire pressure display.[78] If manufacturers install only a warning telltale, the agency estimates that the incremental cost will be $65.84 ($70.35 − $3.85 (the cost of a individual tire pressure display) * 99 percent).

C. Hybrid TPMSs

A hybrid TPMS consists of an indirect TPMS for vehicles equipped with an ABS and two direct pressure sensors and a radio frequency receiver. As noted above, insofar as NHTSA is aware, no manufacturer is currently planning to produce a hybrid TPMS. If a manufacturer were to produce a hybrid TPMS, the agency believes that such a system would be able to detect when one to four tires are 25 percent or more below placard. TRW estimated that the cost of such a system would be about 60 percent of the cost of a direct TPMS. Since the hybrid TPMS would not be able to tell drivers the inflation pressure in all four tires, the agency assumes that this type of TPMS would not be accompanied by a display system that would allow the driver to see the pressure for each tire.

Consequently, the agency estimates that the cost of a hybrid TPMS that would meet the four-tire, 25 percent compliance option would be $39.90 ($70.35 − $3.85 (the cost of an individual tire pressure display) * .60).

D. Vehicle Cost

If all light vehicles meet the four-tire, 25 percent compliance option, the agency assumes that manufacturers will install hybrid TPMSs on the 67 percent of vehicles that are currently equipped with an ABS and direct TPMSs on the 33 percent of vehicles that are not so equipped. Thus, the agency estimates that the average incremental cost if all vehicles meet the four-tire, 25 percent compliance option will be $48.19 per vehicle [$39.90 x .67 + $66.50 x .33] x .99 (to account for one percent current compliance)). Since approximately 16 million vehicles are produced for sale in the U.S. each year, the total annual vehicle cost will be about $771 million per year.

If all light vehicles meet the one-tire, 30 percent compliance option, the agency assumes that manufacturers will install an indirect TPMS on vehicles currently equipped with ABS (about 67 percent of new light vehicles), and a direct TPMS on vehicles not equipped with ABS (about 33 percent of new light vehicles). The agency also assumes that about five percent of vehicles currently meet the one-tire, 30 percent compliance option. Thus, the average incremental cost if all vehicles meet the one-tire, 30 percent compliance option will be $33.34 [($21.13 * .67) + ($66.50[79]* .33) * .95]. Since approximately 16 million vehicles are produced for sale in the U.S. each year, the total annual vehicle cost will be about $533 million per year.

[78] The agency estimates that one percent of vehicles are currently equipped with a TPMS that complies with the requirements of the standard.

[79] $66.50 is the cost of a direct TPMS with only a warning telltale.

E. Maintenance Costs

Each pressure sensor in direct TPMSs needs a battery. Currently, these batteries last five to ten years. Thus, they will have to be replaced to keep the system functioning over the full life of a vehicle. At this time, all tire pressure sensors are enclosed packages that do not open so that the battery can be replaced. Thus, when the battery is depleted, the entire sensor must be replaced.

To estimate the present discounted value of this cost, the agency is making the following assumptions. First, the agency assumes that the pressure sensors will be replaced the second time the vehicle's tires are changed, in the 90,000 to 100,000 mile range. The agency multiplied the cost of the sensor ($7.50 each, or $30 for the vehicle) by three to account for typical aftermarket markups. After applying discount factors, the agency estimates that the maintenance costs for direct TPMSs will be $40.91 per vehicle. For hybrid TPMSs, with direct pressure sensors in two wheels, the agency estimates the average maintenance costs will be half the maintenance costs of direct TPMSs, or $20.45.

Thus, the agency estimates that if all light vehicles meet the four-tire, 25 percent compliance option, the present discounted value of the maintenance costs will be $27.20 ($20.45 × .67 + $40.91 × .33) per vehicle. Since approximately 16 million vehicles are produced for sale in the Unites States each year, the total annual maintenance costs will be about $435 million.

NHTSA notes that the maintenance costs associated with direct and hybrid TPMSs may decrease significantly in the future if manufacturers are able to mass produce a pressure sensor that does not require a battery. One TPMS manufacturer, IQ-mobil Electronics of Germany, commented that it has developed a ''batteryless transponder chip'' that ''costs half as much as the battery transmitter it replaces.''

Indirect TPMSs do not need a battery, and are assumed to have no maintenance costs for purposes of this analysis. If all light vehicles meet the one-tire, 30 percent compliance option, the agency assumes that manufacturers will install an indirect TPMS on vehicles currently equipped with ABS (about 67 percent of new light vehicles), and a direct TPMS on vehicles not equipped with ABS (about 33 percent of new light vehicles). Thus, the agency estimates that if all light vehicles meet the one-tire, 30 percent compliance option, the present discounted value of the maintenance costs will be $13.50 ($40.91 × .33) per vehicle.

F. Testing Costs

The agency estimates that the man-hours required to complete the necessary compliance testing will be 6 hours for a manager, 30 hours for a test engineer, and 30 hours for a technician/driver. The agency estimates that the labor costs will be $75 per hour for a manager, $53 per hour for a test engineer, and $31 per hour for a technician/driver. Thus, the agency estimates that the total costs will be $2,970 per vehicle model under both compliance options.

G. Unquantified Costs

The agency anticipates that there may be other maintenance costs for both direct and indirect TPMS. For example, with indirect TPMSs, there may be problems with wheel speed sensors and component failures. With direct TPMSs, the pressure sensors may be broken off when tires are changed. The agency requested comments on this issue in the NPRM, but received none. Without estimates of these maintenance problems and costs, the agency is unable to quantify their impact.

The agency also notes that in order to benefit from the TPMS, drivers must respond to a warning by re-inflating their tires. To accomplish this, most drivers will either make a separate trip to a service station or take additional time to inflate their tires when they are at a service station for fuel. The process of checking and re-inflating tires is relatively simple, and probably would take from three to five minutes. The time it would take to make a separate trip to a service station would vary depending on the driver's proximity to a station at the time he or she was notified.

It is likely that drivers who take the time to re-inflate their tires would consider this extra time to be fairly trivial. Since the action is voluntary, by definition, they would consider it to be worth the potential benefits they will derive from properly inflated tires. However, when tallied across the entire driving population, the total effort involved in terms of man-hours may be significant. NHTSA has no data to indicate what portion of drivers would make a separate trip or wait to re-inflate their tires when they next visited a service station. Thus, the agency has not been able to quantify this cost.

H. ABS Costs

As noted above, the agency estimates that the average cost of equipping a vehicle with ABS is $240.

I. Net Costs and Costs per Equivalent Life Saved

The agency estimates that if all light vehicles meet the four-tire, 25 percent compliance option, the net cost [vehicle cost + maintenance costs − (fuel savings + tread life savings)] will be $53.87 [$48.19 + $27.20 − ($16.43 + $5.09)]. As noted above, the agency estimates the total annual cost will be about $771 million. The agency estimates the total annual net cost will be about $862 million [$771 million + $435 million − ($263 million + $81 million)]. NHTSA estimates that the net cost per equivalent life saved will be about $4.3 million.

The agency estimates that if all light vehicles meet the one-tire, 30 percent compliance option, the net cost will be $44.13 [$33.34 + $13.50 − ($2.06 + $0.65)]. The agency estimates that the total annual cost will be about $533 million per year, and the total annual net cost will be about $706 million [$533 million + $216 million − ($33 million + $10 million)]. NHTSA estimates that the net cost per equivalent life saved will be about $5.8 million.

X. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to OMB review and to the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This final rule is economically significant. Accordingly, it was reviewed under Executive Order 12866. The rule is also significant within the meaning of the Department of

Transportation's Regulatory Policies and Procedures. The agency has estimated that, under the first compliance option, compliance with this rule will cost $771 million per year, and under the second compliance option, compliance with this rule will cost $533 million, since approximately 16 million vehicles are produced for the United States market each year. Thus, this rule will have greater than a $100 million effect.

Because this rule is significant, the agency has prepared a Final Economic Assessment (FEA). The Assessment is summarized above in section VIII., ''Benefits,'' and section IX., ''Costs.'' The FEA is available in the docket and has been placed on the agency's website along with the final rule itself.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this final rule under the Regulatory Flexibility Act. I certify that this final rule will not have a significant economic impact on a substantial number of small entities. The rationale for this certification is that currently there are only four small motor vehicle manufacturers (*i.e.,* only four with fewer than 1,000 employees) in the United States that will have to comply with this final rule. These manufacturers will have to rely on suppliers to provide the TPMS hardware, and then they will have to integrate the TPMS into their vehicles.

There are a few small manufacturers that manufacture recreational vehicles that will have to comply with this final rule. However, most of these manufacturers use van chassis supplied by the larger manufacturers, *e.g.,* GM, Ford, or DaimlerChrysler, and could use the TPMSs supplied with the chassis. These manufacturers should not have to test the TPMS for compliance with this final rule since they should be able to rely upon the chassis manufacturer's incomplete vehicle documentation.

The agency has eliminated the most significant potential impact on small businesses by deciding not to require TPMSs to function when the vehicle's original rims are replaced with aftermarket wheels and rims that are not identical to the original wheels and rims.

C. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this rule will not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

Executive Order 13132 requires NHTSA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, the agency may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the regulation. NHTSA also may not issue a regulation with Federalism implications and that preempts State law unless the agency consults with State and local officials early in the process of developing the regulation.

The agency has analyzed this final rule in accordance with the principles and criteria set forth in Executive Order 13132 and has determined that it will not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The final rule will not have any substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. While the agency is providing compliance options, it is not seeking to give each of those options pre-emptive effect.

E. Civil Justice Reform

This final rule will not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. The Department of Transportation is submitting the following information collection request to OMB for review and clearance under the PRA.

Agency: National Highway Traffic Safety Administration (NHTSA).

Title: Phase-In Production Reporting Requirements for Tire Pressure Monitoring Systems.

Type of Request: Routine.

OMB Clearance Number: 2127–New.

Form Number: This collection of information will not use any standard forms.

Affected Public: The respondents are manufacturers of passenger cars, multipurpose passenger vehicles, trucks, and buses having a gross vehicle weight rating of 10,000 pounds or less. The agency estimates that there are about 21 such manufacturers.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information: NHTSA estimates that the total annual hour burden is 42 hours.

Estimated Costs: NHTSA estimates that the total annual cost burden, in U.S. dollars, will be $0. No additional resources will be expended by vehicle manufacturers to gather annual production information because they already compile this data for their own uses.

Summary of Collection of Information: This collection will require manufacturers of passenger cars, multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating of 10,000 pounds or less, except those vehicles with dual wheels on an axle, to provide motor vehicle production data for the following three years: November 1, 2003 to October 31, 2004; November 1, 2004 to October 31, 2005; and November 1, 2005 to October 31, 2006.

Description of the Need for the Information and the Proposed Use of the Information: The purpose of the reporting requirements will be to aid NHTSA in determining whether a manufacturer has complied with the requirements of Federal Motor Vehicle Safety Standard No. 138, Tire pressure monitoring systems, during the phase-in of those requirements. NHTSA requests comments on the agency's estimates of the total annual hour and cost burdens resulting from this collection of information. These comments must be received on or before August 5, 2002.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs NHTSA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs NHTSA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards. The NTTAA does not apply to symbols.

There are no voluntary consensus standards available at this time. However, NHTSA will consider any such standards when they become available.

H. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows NHTSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted.

This final rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, of more than $100 million annually, but it will result in the expenditure of that magnitude by vehicle manufacturers and/or their suppliers. In the NPRM, the agency requested comments on two alternatives for achieving the purposes of the TREAD Act mandate. In the final rule, the agency has chosen two compliance options that will provide the manufacturers with broad flexibility to minimize their costs of compliance with the Standard during the phase-in period.

I. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

List of Subjects in 49 CFR Parts 571 and 590

Imports, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, NHTSA is amending 49 CFR parts 571 and 590 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. In § 571.101, paragraph S5.2.3 and Table 2 are revised to read as follows:

§ 571.101 Standard No. 101; Controls and displays.

* * * * *

S5.2.3 Except for the Low Tire Pressure Telltale (that does not identify which tire has low pressure), any display located within the passenger compartment and listed in column 1 of Table 2 that has a symbol designated in column 4 of that table shall be identified by either the symbol designated in column 4 (or symbol substantially similar in form to that shown in column 4) or the word or abbreviation shown in column 3. The Low Tire Pressure Telltale (that does not identify which tire has low tire pressure) shall be identified by either the symbol designated in column 4, or the symbol and the words designated in column 4 and column 3, respectively. Additional words or symbols may be used at the manufacturer's discretion for the purpose of clarity. Any telltales used in conjunction with a gauge need not be identified. The identification required or permitted by this section shall be placed on or adjacent to the display that it identifies. The identification of any display shall, under the conditions of S6, be visible to the driver and appear to the driver perceptually upright.

* * * * *

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Table 2
Identification and Illustration of Displays

Column 1	**Column 2**	**Column 3**	**Column 4**	**Column 5**
Display	*Telltale Color*	*Identifying Words or Abbreviation*	*Identifying Symbol*	*Illumination*
Turn Signal Telltale	Green	Also see FMVSS 108	1,5	_____
Hazard Warning Telltale		Also see FMVSS 108	2, 5	_____
Seat Belt Telltale	_____4	Fasten Belts or Fasten Seat Belts Also see FMVSS 208	or	_____
Fuel Level Telltale		Fuel	or	_____
Gauge	_____			Yes
Oil Pressure Telltale		Oil		_____
Gauge	_____			Yes
Coolant Temperature Telltale		Temp		_____
Gauge	_____			Yes
Electrical Charge Telltale		Volts, Charge or Amp		_____
Gauge	_____			Yes
Highbeam Telltale	Blue or Green 3	Also see FMVSS 108	5	_____

1. The pair of arrows is a single symbol. When the indicator for left and right turn operate independently, however, the two arrows will be considered separate symbols and may be spaced accordingly.
2. Not required when arrows of turn signal tell-tales that otherwise operate independently flash simultaneously as hazard warning tell-tale.
3. Red can be red-orange. Blue can be blue-green.
4. The color of the telltale required by S4.5.3.3 of Standard No. 208 is red; the color of the telltale required by S7.3 of Standard No. 208 is not specified.
5. Framed areas may be filled.

Table 2 (continued)

Column 1 *Display*	Column 2 *Telltale Color*	Column 3 *Identifying Words or Abbreviation*	Column 4 *Identifying Symbol*	Column 5 *Illumination*
Brake System 8	Red 3	Brake, Also see FMVSS 105 and 135	_____	_____
Malfunction in Anti-lock or	Yellow	Antilock, Anti-lock or ABS. Also see FMVSS 105 and 135	_____	_____
Variable Brake Proportioning System 8	Yellow	Brake Proportioning, Also see FMVSS 135	_____	_____
Parking Brake Applied 8	Red 3	Park or Parking Brake, Also see FMVSS 105 and 135	_____	_____
Malfunction in Anti-lock	Yellow	ABS, or Antilock; Trailer ABS, or Trailer Antilock, Also see FMVSS 121	_____	_____
Brake Air Pressure Position Telltale	_____	Brake Air, Also see FMVSS 121	_____	_____
Speedometer	_____	MPH, or MPH and km/h 7	_____	Yes
Odometer	_____	_____ 6	_____	_____
Automatic Gear Position	_____	Also see FMVSS 102	_____	Yes
Low Tire Pressure Telltale (that does not identify which tire has low pressure)	Yellow	Low Tire. Also see FMVSS 138		_____
Low Tire Pressure Telltale (that identifies which tire has low pressure)	Yellow	Low Tire. Also see FMVSS 138		_____

3. Red can be red-orange. Blue can be blue-green.
6. If the odometer indicates kilometers, then "KILOMETERS" or "km" shall appear, otherwise, no identification is required.
7. If the speedometer is graduated in miles per hour and in kilometers per hour, the identifying words or abbreviations shall be "MPH and km/h" in any combination of upper or lower case letters.
8. In the case where a single telltale indicates more than one brake system condition, the word for Brake System shall be used.

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3. Section 571.138 is added to read as follows:

§ 571.138 Standard No. 138; Tire pressure monitoring systems.

S1. *Purpose and scope.* This standard specifies performance requirements for tire pressure monitoring systems to prevent significant under-inflation of tires and the resulting safety problems.

S2. *Application.* This standard applies to passenger cars, multipurpose passenger vehicles, trucks, and buses that have a gross vehicle weight rating of 4,536 kilograms (10,000 pounds) or less, except those vehicles with dual wheels on an axle, according to the phase-in schedule specified in S7 of this standard.

S3. *Definitions.* The following definitions apply to this standard:

Lightly loaded vehicle weight means unloaded vehicle weight plus the weight of a mass of 180 kg (396 pounds), including test driver and instrumentation.

Tire pressure monitoring system means a system that detects when one or more of a vehicle's tires are under-inflated and illuminates a low tire pressure warning telltale.

S4. *Requirements.*

S4.1 *General.* To the extent provided in S7.1 through S7.3, each vehicle must be equipped with a tire pressure monitoring system that meets the requirements specified in S4 under the test procedures specified in S6 of this standard. Prior to November 1, 2006, each tire pressure monitoring system must conform, at the manufacturer's option, to either S4.2.1 or S4.2.2 of this standard. The manufacturer must select the option by the time it certifies the vehicle and may not thereafter select a different option for the vehicle.

S4.2 *Tire pressure monitoring systems: vehicles manufactured after October 31, 2003 and before November 1, 2006.*

S4.2.1 *Option 1: Four tires; 25 percent under-inflation.* The tire pressure monitoring system must:

(a) Illuminate a low tire pressure warning telltale not more than 10 minutes after the inflation pressure in one or more of the vehicle's tires, up to a total of four tires, is equal to or less than either the pressure 25 percent below the vehicle manufacturer's recommended cold inflation pressure, or the pressure specified in the 3rd column of Table 1 of this standard for the corresponding type of tire, whichever is higher; and

(b) Continue to illuminate the low tire pressure warning telltale as long as the pressure in any of the vehicle's tires is equal to or less than the pressure specified in (a), and the key locking system is in the ''On'' (''Run'') position, whether or not the engine is running, or until manually reset in accordance with the vehicle manufacturer's instructions.

S4.2.2 *Option 2: One tire; 30 percent under-inflation.* The tire pressure monitoring system must:

(a) Illuminate a low tire pressure warning telltale not more than 10 minutes after the inflation pressure in one of the vehicle's tires is equal to or less than either the pressure 30 percent below the vehicle manufacturer's recommended cold inflation pressure, or the pressure specified in the 3rd column of Table 1 of this standard for the corresponding type of tire, whichever is higher; and

(b) Continue to illuminate the low tire pressure warning telltale as long as the pressure in that tire is equal to or less than the pressure specified in (a), and the key locking system is in the ''On'' (''Run'') position, whether or not the engine is running, or until manually reset in accordance with the vehicle manufacturer's instructions.

S4.3 *Low tire pressure warning telltale.*

S4.3.1 Each tire pressure monitoring system must include a low tire pressure warning telltale that:

(a) Is mounted inside the occupant compartment in front of and in clear view of the driver;

(b) Is identified by one of the symbols shown for the ''Low Tire Pressure Telltale'' in Table 2 of Standard No. 101 (§ 571.101); and

(c) Is illuminated under the conditions specified in S4.2.1 or S4.2.2.

S4.3.2 In the case of a telltale that identifies which tire(s) is (are) under-inflated, each tire in the symbol for that telltale must illuminate when the tire it represents is under-inflated to the extent specified in either S4.2.1 or S4.2.2.

S4.3.3 (a) Except as provided in paragraph (b) of this section, each low tire pressure warning telltale must be activated as a check of lamp function either when the key locking system is turned to the ''On'' (''Run'') position when the engine is not running, or when the key locking system is in a position between ''On'' (''Run'') and ''Start'' that is designated by the manufacturer as a check position.

(b) The low tire pressure warning telltale need not be activated when a starter interlock is in operation.

S4.4 *Replacement tires.* Each tire pressure monitoring system must continue to meet the requirements of this standard when the vehicle's original tires are replaced with tires of any optional or replacement size(s) recommended for the vehicle by the vehicle manufacturer.

S4.5 *Written instructions.*

S4.5.1 *Vehicles certified to Option 1: Four tires; 25 percent under-inflation.* The owner's manual in each vehicle certified as complying with S4.2.1 must provide an image of the Low Tire Pressure Telltale symbol with the following statement, in English: ''When the tire pressure monitoring system warning light is lit, one or more of your tires is significantly under-inflated. You should stop and check your tires as soon as possible, and inflate them to the proper pressure as indicated on the vehicle's tire information placard. Driving on a significantly under-inflated tire causes the tire to overheat and can lead to tire failure. Under-inflation also reduces fuel efficiency and tire tread life, and may affect the vehicle's handling and stopping ability. Each tire, including the spare, should be checked monthly when cold and set to the recommended inflation pressure as specified in the vehicle placard and owner's manual.'' Each vehicle manufacturer may, at its discretion, provide additional information about the significance of the low tire pressure warning telltale illuminating, description of corrective action to be undertaken, whether the tire pressure monitoring system functions with the vehicle's spare tire, and how to use the reset button, if one is provided.

S4.5.2 *Vehicles manufactured after October 31, 2003 and before November 1, 2006, and certified to Option 2: One tire; 30 percent under-inflation.* The owner's manual in each vehicle certified as complying with S4.2.2 must comply with S4.5.1 and provide the following statement, in English:

''**Note:** The tire pressure monitoring system on your vehicle will warn you when one of your tires is significantly under-inflated and when some combinations of your tires are significantly under-inflated. However, there are other combinations of significantly under-inflated tires for which your tire pressure monitoring system may *not* warn you. These other combinations are relatively common, accounting for approximately half the instances in which vehicles have significantly under-inflated tires. For example, your system may not warn you when both tires on the same side or on the same axle of your vehicle are significantly under-inflated. It is particularly important, therefore, for you to check the tire pressure in all of your tires regularly and maintain proper pressure.''

S5. *Test conditions.*

S5.1 *Ambient temperature.* The ambient temperature is between 0°C (32°F) and 40°C (104°F).

S5.2 *Road test surface.* Road tests are conducted on a dry, smooth roadway.

S5.3 *Vehicle conditions.*

S5.3.1 *Test weight.* The vehicle is tested at its lightly loaded vehicle weight and at its gross vehicle weight rating without exceeding any of its gross axle weight ratings.

S5.3.2 *Vehicle speed.* The vehicle is tested at a speed between 50 km/h (31.1 mph) and 100 km/h (62.2 mph).

S6. *Test procedures.*

(a) Inflate the vehicle's tires to the vehicle manufacturer's recommended cold inflation pressure for the applicable vehicle load conditions specified in paragraph S5.3.1 of this standard. If the vehicle manufacturer has not recommended an inflation pressure for the lightly loaded condition, the inflation pressure specified by the vehicle manufacturer for the gross vehicle weight rating is used.

(b) With the vehicle stationary and the key locking system in the ''Lock'' or ''Off'' position, turn the key locking system to the ''On'' or ''Run'' position. The tire pressure monitoring system must perform a check of telltale lamp function as specified in paragraph S4.3.3 of this standard.

(c) If applicable, reset the tire pressure monitoring system in accordance with the instructions specified in the vehicle owner's manual.

(d) Drive the vehicle at any speed specified in paragraph S5.3.2 of this standard for 20 minutes.

(e)(1) For vehicles complying with S4.2.1, stop the vehicle and deflate any combination of one to four tires until the deflated tire(s) is (are) at 7 kPa (1 psi) below the inflation pressure at which the low tire pressure monitoring system is required to activate the low tire pressure warning telltale for that vehicle.

(2) For vehicles complying with S4.2.2, stop the vehicle and deflate any one tire until the deflated tire is at 7 kPa (1 psi) below the inflation pressure at which the low tire pressure monitoring system is required to activate the low tire pressure warning telltale for that vehicle.

(f) Drive the vehicle at any speed specified in paragraph S5.3.2 of this standard. Record the time from when the vehicle speed reaches 50 km/h until the time the low tire pressure warning telltale illuminates. The telltale must illuminate within 10 minutes as required in paragraph S4.2.1(a) or S4.2.2(a) of this standard.

(g) Stop the vehicle and turn the key locking system to the ''Off'' or ''Lock'' position. After a 5 minute period, turn the vehicle's key locking system to the ''On'' or ''Run'' position. The telltale must remain illuminated.

(h) Keep the vehicle stationary for a period of one hour.

(i) Inflate all of the vehicle's tires to the vehicle manufacturer's recommended cold inflation pressure. If the vehicle's tire pressure monitoring system has a manual reset feature, reset the system in accordance with the instructions specified in the vehicle owner's manual.

(j) Drive the vehicle at any speed specified in paragraph S5.3.2 of this standard. The telltale must extinguish as specified in paragraph S4.2.1(b) or S4.2.2(b).

(k)(1) For vehicles complying with S4.2.1, if additional combinations of tires are tested, repeat the test procedures in paragraphs S6(a) through (j).

(2) For vehicles complying with S4.2.2, if the other individual tires are tested, repeat the test procedures in paragraphs S6(a) through (j).

(l) Utilizing the existing vehicle rims, repeat the test procedures in paragraphs S6(a) through (k) for each tire size recommended for the vehicle by the vehicle manufacturer. Note: If a different rim size is required, OEM rim and tire assemblies appropriate for the tire pressure monitoring system are used for testing.

S7. *Phase-In Schedule.*

S7.1 *Vehicles manufactured on or after November 1, 2003, and before November 1, 2004.* For vehicles manufactured on or after November 1, 2003, and before November 1, 2004, the number of vehicles complying with this standard must not be less than 10 percent of:

(a) The manufacturer's average annual production of vehicles manufactured on or after November 1, 2000, and before November 1, 2003; or

(b) The manufacturer's production on or after November 1, 2003, and before November 1, 2004.

S7.2 *Vehicles manufactured on or after November 1, 2004, and before November 1, 2005.* For vehicles manufactured on or after November 1, 2004, and before November 1, 2005, the number of vehicles complying with this standard must not be less than 35 percent of:

(a) The manufacturer's average annual production of vehicles manufactured on or after November 1, 2001, and before November 1, 2004; or

(b) The manufacturer's production on or after November 1, 2004, and before November 1, 2005.

S7.3 *Vehicles manufactured on or after November 1, 2005, and before November 1, 2006.* For vehicles manufactured on or after November 1, 2005, and before November 1, 2006, the number of vehicles complying with this standard must not be less than 65 percent of:

(a) The manufacturer's average annual production of vehicles manufactured on or after November 1, 2002, and before November 1, 2005; or

(b) The manufacturer's production on or after November 1, 2005, and before November 1, 2006.

S7.4 *Calculation of complying vehicles.*

(a) For purposes of complying with S7.1, a manufacturer may count a vehicle if it:

(1) Is manufactured on or after November 1, 2003, but before November 1, 2004; or

(2) Complies with S4.2.1 or S4.2.2 of this standard.

(b) For purposes of complying with S7.2, a manufacturer may count a vehicle if it:

(1)

(i) Is manufactured on or after November 1, 2003, but before November 1, 2005;

(ii) Is not counted toward compliance with S7.1; and

(iii) Complies with S4.2.1 of this standard, or

(2)

(i) Is manufactured on or after November 1, 2004, but before November 1, 2005; and

(ii) Complies with S4.2.2 of this standard.

(c) For purposes of complying with S7.3, a manufacturer may count a vehicle if it:

(i) Is manufactured on or after November 1, 2003, but before November 1, 2006;

(ii) Is not counted toward compliance with S7.1 or S7.2; and

(iii) Complies with S4.2.1 of this standard, or

(2)

(i) Is manufactured on or after November 1, 2005, but before November 1, 2006; and

(ii) Complies with S4.2.2 of this standard.

S7.5 *Vehicles produced by more than one manufacturer.*

S7.5.1 For the purpose of calculating average annual production of vehicles for each manufacturer and the number of vehicles manufactured by each manufacturer under S7.1 through S7.3, a vehicle produced by more than one manufacturer must be attributed to a single manufacturer as follows, subject to 7.5.2:

(a) A vehicle that is imported must be attributed to the importer.

(b) A vehicle manufactured in the United States by more than one manufacturer, one of which also

markets the vehicle, must be attributed to the manufacturer that markets the vehicle.

S7.5.2 A vehicle produced by more than one manufacturer must be attributed to any one of the vehicle's manufacturers specified by an express written contract, reported to the National Highway Traffic Safety Administration under 49 CFR Part 590, between the manufacturer so specified and the manufacturer to which the vehicle would otherwise be attributed under S7.5.1.

S7.6 *Small volume manufacturers.* Vehicles manufactured during any of the three years of the November 1, 2003 to October 31, 2006 phase-in by a manufacturer that produces fewer than 5,000 vehicles worldwide during that year are not required to comply with the standard.

Tables to § 571.138

TABLE 1.—LOW TIRE PRESSURE WARNING TELLTALE—MINIMUM ACTIVATION PRESSURE

Tire type	Maximum or rated inflation pressure		Minimum activation pressure	
	(kPa)	(psi)	(kPa)	(psi)
P-metric—Standard Load	240, 300, or 350	35, 44, or 51	140	20
P-metric—Extra Load	280 or 340	41 or 49	160	23
Load Range C	350	51	200	29
Load Range D	450	65	260	38
Load Range E	550	80	320	46

4. Part 590 is revised to read as follows:

PART 590—TIRE PRESSURE MONITORING SYSTEM PHASE-IN REPORTING REQUIREMENTS

Sec.
590.1 Scope.
590.2 Purpose.
590.3 Applicability.
590.4 Definitions.
590.5 Response to inquiries.
590.6 Reporting requirements.
590.7 Records.
590.8 Petition to extend period to file report.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

§ 590.1 Scope.

This part establishes requirements for manufacturers of passenger cars, multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating of 4,536 kilograms (10,000 pounds) or less, except those vehicles with dual wheels on an axle, to submit a report, and maintain records related to the report, concerning the number of such vehicles that meet the requirements of Standard No. 138, *Tire pressure monitoring systems* (49 CFR 571.138).

§ 590.2 Purpose.

The purpose of these reporting requirements is to assist the National Highway Traffic Safety Administration in determining whether a manufacturer has complied with Standard No. 138 (49 CFR 571.138).

§ 590.3 Applicability.

This part applies to manufacturers of passenger cars, multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating of 4,536 kilograms (10,000 pounds) or less, except those vehicles with dual wheels on an axle.

§ 590.4 Definitions.

(a) All terms defined in 49 U.S.C. 30102 are used in their statutory meaning.

(b) *Bus, gross vehicle weight rating, multipurpose passenger vehicle, passenger car, and trucks* are used as defined in 49 CFR 571.3.

(c) *Production year* means the 12-month period between November 1 of one year and October 31 of the following year, inclusive.

§ 590.5 Response to inquiries.

At any time during the production years ending October 31, 2004, October 31, 2005, and October 31, 2006, each manufacturer must, upon request from the Office of Vehicle Safety Compliance, provide information identifying the vehicles (by make, model, and vehicle identification number) that have been certified as complying with Standard No. 138. The manufacturer's designation of a vehicle as a certified vehicle is irrevocable.

§ 590.6 Reporting requirements.

(a) *General reporting requirements.* Within 60 days after the end of the production years ending October 31, 2004, October 31, 2005, and October 31, 2006, each manufacturer must submit a report to the National Highway Traffic Safety Administration concerning its compliance with Standard No. 138 (49 CFR 571.138) for its passenger cars, multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating of less than 4,536 kilograms (10,000 pounds) produced in that year. Each report must—

(1) Identify the manufacturer;

(2) State the full name, title, and address of the official responsible for preparing the report;

(3) Identify the production year being reported on;

(4) Contain a statement regarding whether or not the manufacturer complied with the requirements of Standard No. 138 (49 CFR 571.138) for the period covered by the report and the basis for that statement;

(5) Provide the information specified in paragraph (b) of this section;

(6) Be written in the English language; and

(7) Be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

(b) *Report content.*

(1) *Basis for statement of compliance.* Each manufacturer must provide the number of passenger cars, multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating of 4,536 kilograms (10,000 pounds) or less, except those vehicles with dual wheels on an axle, manufactured for sale in the United States for each of the three previous production years, or, at the manufacturer's option, for the current production year. A new manufacturer that has not previously manufactured these vehicles for sale in the United States must report the number of such vehicles manufactured during the current production year.

(2) *Production.* Each manufacturer must report for the production year for which the report is filed: the number of passenger cars, multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating of 4,536 kilograms (10,000 pounds) or less that meet Standard No. 138 (49 CFR 571.138).

(3) *Vehicles produced by more than one manufacturer.* Each manufacturer whose reporting of information is affected by one or more of the express written contracts permitted by S7.5(c)(3) of Standard No. 138 (49 CFR 571.138) must:

(i) Report the existence of each contract, including the names of all parties to the contract, and explain how the contract affects the report being submitted.

(ii) Report the actual number of vehicles covered by each contract.

§ 590.7 Records.

Each manufacturer must maintain records of the Vehicle Identification Number for each vehicle for which information is reported under § 590.6(b)(2) until December 31, 2008.

§ 590.8 Petition to extend period to file report.

A manufacturer may petition for extension of time to submit a report under this Part. A petition will be granted only if the petitioner shows good cause for the extension and if the extension is consistent with the public interest. The petition must be received not later than 15 days before expiration of the time stated in § 590.6(a). The filing of a petition does not automatically extend the time for filing a report. The petition must be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

Issued: May 30, 2002.

Jeffrey W. Runge,

Administrator.

[FR Doc. 02–13915 Filed 5–30–02; 2:30 pm]

BILLING CODE 4910–59–P

Federal Register

Wednesday,
June 5, 2002

Part III

Environmental Protection Agency

40 CFR Parts 413, et al.

Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Metal Products and Machinery Point Source Category; Notice of Data Availability; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 413, 433, 438, 463, 464, 467, and 471

[FRL–7221–4]

RIN 2040–AB79

Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Metal Products and Machinery Point Source Category; Notice of Data Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability.

SUMMARY: On January 3, 2001 (66 FR 424), EPA published a proposal to establish technology-based effluent limitations guidelines and pretreatment standards for the metal products and machinery (MP&M) point source category. The proposal would apply to approximately 10,000 facilities that manufacture, rebuild, or maintain metal products, parts, or machines in eight regulatory subcategories. EPA developed the proposal to address changes in the metal finishing and electroplating sectors over the last 20 years, including measures that reduce pollution. The proposal would establish national regulations for some industry sectors for the first time as well as increasing the degree of environmental protection from that achieved under the previous rules.

In the proposal, EPA specifically solicited comment on 43 issues in addition to the general comment solicitation. EPA received comments from various stakeholders, including State and local regulatory authorities, environmental groups, individual industrial facilities and industry groups, and private citizens.

This document presents a summary of data received in comments since the proposal and additional data collected by EPA and describes how these data may be used by EPA in developing final MP&M regulations.

EPA is evaluating how the comments and new data may change certain aspects of the proposal and how this information might affect the regulatory options considered for the proposal. EPA is also evaluating the underlying data and methodology that EPA uses to estimate the costs, pollutant load reductions, and financial impacts associated with the regulation in light of the comments and new information. The document describes EPA's current thinking on these subjects and presents information on how the new data and information received since proposal would affect the proposed limitations and standards. Today, EPA is making these data and new information available for public review and comment. EPA solicits public comment on the issues and information presented in this notice of data availability and in the administrative record supporting this document.

DATES: You must submit comments by July 22, 2002.

ADDRESSES: Public comments regarding this document should be submitted electronically to *mpm.comments@epa.gov.* You also may submit comments by mail to: Metal Products & Machinery Rule, Office of Water, Engineering and Analysis Division (4303T), USEPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. You should submit hand-deliveries (including overnight mail) to the Metal Products & Machinery Rule, USEPA, 1201 Constitution Ave, NW, Room 6231G EPA WEST, Washington, DC 20004. Please submit an original and three copies of your written comments and enclosures as well as any references cited in your comments. Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. EPA will not accept facsimiles (faxes). For additional information on how to submit electronic comments see **SUPPLEMENTARY INFORMATION,** How to Submit Comments.

The public record for this action and the proposed rulemaking has been established under docket number W–99–23 and is located in the Water Docket East Tower Basement, Room EB57, 401 M Street SW, Washington, DC 20460. The record is available for inspection from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. For access to the docket materials, call (202) 260–3027 to schedule an appointment. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Mr. Carey A. Johnston at (202) 566–1014 or at the following e-mail address: *johnston.carey@epa.gov.*

SUPPLEMENTARY INFORMATION:

How To Submit Comments

Electronic comments must specify docket number W–99–23 and must be submitted as an ASCII, Microsoft Word 97 file, or Word Perfect 5/6/7/8/9 file avoiding the use of special characters and any form of encryption. EPA will also accept comments and data on disks in any of the above listed file format. You may file electronic comments on this action at many Federal Depository Libraries. No confidential business information (CBI) should be sent via e-mail.

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X. Solicitation of Comment

I. Purpose of This Document

Today's document has several purposes. First, EPA is presenting a summary of new data and information submitted during the public comment period on the proposed MP&M regulations as well as data collected by EPA since proposal. Second, EPA discusses major issues raised in comments on the proposal and revisions in the data analyses resulting from these comments and the additional data. Third, the document summarizes EPA's current thinking on how this new information and suggestions made by commenters affect the analyses of the proposed rule. The document also summarizes the changes EPA is considering for the final rule in light of the new material. Finally, the document includes modified potential effluent limitations and pretreatment standards as revised to take account of the new data as well as revised information on the cost and removals associated with various treatment options.

EPA has incorporated into the data base used for developing the proposed MP&M effluent limitations and pretreatment standards a significant amount of new data and corrections to the proposal data. For a number of the subcategories proposed for regulation, these modifications have resulted in substantial changes in the estimated cost and pollutant removals associated with the treatment options considered at proposal. As a consequence, in several instances, the economic impact and cost effectiveness of the treatment options are now much higher than projected at proposal (Note that a ''high'' cost-effectiveness figure means an option is not very cost effective). In some cases, the proposed effluent limitations and pretreatment standards would have impacts greater than EPA has traditionally determined to be economically achievable. Furthermore, limiting the effluent limitations and standards to facilities with higher treatment flows—so-called flow cutoffs—would not appear to mitigate economic effects in any meaningful way for certain subcategories proposed for regulation. In light of these new results, EPA is seeking further comment on the regulatory options considered for the proposal as well as several other options for reducing the economic impact of the final rule.

The document includes seven main components:

(1) Discussion of new analytical data and information;

(2) Revisions to EPA's costs and pollutant loading model and methodologies that incorporate new data;

(3) Possible changes to the applicability of the rule, definitions, and selection of regulated pollutants for the final rule as a result of the new information;

(4) New information and revisions that EPA may use for its economic and benefit methodologies;

(5) New information and revisions that EPA may use for its statistical methodologies;

(6) Revised estimates of costs, loadings, economic impacts, benefits, and numerical limitations and standards; and

(7) Discussion of possible alternative options based on new data and information.

This document addresses these issues related to the proposed MP&M regulation. To the extent possible, today's document describes new analyses that may be performed by EPA and describes revisions EPA is considering to EPA's financial and engineering models, as well as possible new data or methodologies. By providing this information, it is EPA's intention to present the clearest picture of its current thinking about how the proposal may change as a result of the additional information it has obtained. It is EPA's hope that this information will encourage effective comment.

This document also contains a discussion of ways that EPA may reduce impacts and/or enhance flexibility of the regulation, including options to encourage implementation of environmental management systems (EMS) or ''no further regulation'' options for certain subcategories. EPA received comments concerning these matters and in this document requests further information. The document also outlines potential changes to the regulatory thresholds (e.g., ''low wastewater flow cutoff'') that were proposed to reduce impacts.

New data that EPA may use in its cost and economic models include estimates from EPA and industry wastewater sampling of MP&M unit operations of pollutant loading in raw wastewater and new information related to various EPA modeling assumptions. EPA also received more than 136 new data sets with proposal comments. EPA used 75 of these new data sets for developing numerical limitations.

Through this notice of data availability, EPA seeks further public comment on any and all aspects of the specific data and issues it has identified here. However, EPA is seeking public comment *only* on these specific data and issues. Nothing in today's document is intended to invite further discussion of other issues discussed in the MP&M proposal or to reopen the proposal in general for additional public comments. EPA continues to review the comments already submitted on the proposed rule and will address those comments, along with comments submitted on the data and issues identified in today's document, in the final rulemaking.

II. New Analytical Data and Information

There are three general areas of new analytical data: (1) EPA post-proposal sampling, (2) industry self-sampling, and (3) EPA's analytical method validation study. First, in response to public comments, EPA has performed a number of analytical wastewater sampling episodes since the publication of the proposed rule to collect additional data on raw wastewater loadings, treatment efficiencies, and treatment variability. In addition, facilities and industry trade associations submitted a large quantity of analytical water sampling data (''self-monitoring data'') along with their written comments on the MP&M proposal to EPA. Finally, as discussed in the proposed rule (66 FR 529), EPA has performed a study to validate EPA Analytical Methods 1624B/624 and 1625/625 for several organic pollutants that are part of the proposed ''Total Organics Parameter'' (TOP).

A. EPA Site Visits & Sampling Episodes

During the comment period and at the public meetings on the proposal, commenters raised concerns over the representativeness of EPA's database concerning metal finishing ''zinc'' platers, printed wiring board facilities, and the steel forming and finishing facilities. Based on these concerns EPA worked with industry trade associations to identify facilities in these groups that would be good candidates for EPA's post-proposal wastewater sampling program. EPA visited 6 metal finishing zinc platers (4 job shops, 2 captive), 8 printed wiring board facilities, 4 steel forming and finishing facilities, and 2 other MP&M facilities (i.e., metal finishing job shops that do not specialize in zinc plating). Based on the

information collected during the site visits, which included information on a variety of MP&M unit operations being performed, whether the site was employing technology considered to be ''Best Available Technology,'' sampling logistics, and production schedule, EPA selected facilities for analytical wastewater sampling. EPA performed wastewater sampling at 2 metal finishing zinc platers that operate as job shops, 3 printed wiring board facilities, and 2 steel forming and finishing facilities. EPA collected characterization samples of wastewater from typical MP&M operations and paired influent and effluent samples from each of these facilities' treatment systems. In addition, EPA obtained long-term monitoring data from all sampled sites for use in calculating new variability factors and long-term averages for revising numerical limits. EPA also obtained long-term monitoring data from several facilities that EPA visited but did not sample: two zinc platers that operate as captive facilities, one printed wiring board facility, and one steel forming and finishing facility. EPA is using these additional data sets and data used at proposal for revising numerical limits. Non-confidential versions of these Site Visit Reports (SVRs) and Sampling Episode Reports (SERs) can be found in sections 15.2 and 15.3 of the public record for this document (Docket Number W–99–23).

Although EPA does have survey questionnaires for the facilities in the Steel Forming & Finishing (SFF) Subcategory, EPA did not sample any SFF facilities prior to proposal. EPA did solicit data from such facilities. As explained in the proposal (66 FR 530), EPA is planning to revise the list of regulated pollutants and the numerical limitations for the SFF Subcategory based on post-proposal sampling data. For proposal, EPA based the selection of regulated pollutants and numerical limits on data from the General Metals subcategory. See section IV of today's document for a list of pollutants currently under consideration for regulation (*see* a memorandum entitled, ''Selection of Regulated Pollutants for the Steel Forming & Finishing Subcategory,'' section 16.2 of the public record, DCN 16876 for a discussion of the selection of regulated pollutants.)

As described in the proposed rule (66 FR 534), EPA solicited comment on the appropriate analytical method for analyzing total sulfide in wastewater from MP&M facilities. When EPA performed analytical testing on the wastewater samples collected post-proposal, EPA used three different analytical methods to detect total sulfide:

- Method 376.1, a titrimetric method that was used by EPA for the majority of its sulfide analyses for proposal;
- Method 376.2, a colorimetric method suggested by industry as an alternate choice and used by EPA for one sampling episode for proposal; and
- Method 4500–S^{-2} (E) from the 18th edition of Standard Methods for the Examination of Water and Wastewater, a titrimetric method similar to Method 376.1. Method 4500–S^{-2} (C), a pretreatment procedure, is recommended for reducing interferences (e.g., thiosulfate, sulfite, and various organic compounds) and/or concentrating the sample to achieve greater sensitivity. Method 4500–S^{-2} (E) was run using this pretreatment procedure in the post-proposal sampling program.

All three of these methods are currently approved at 40 CFR part 136 for compliance monitoring.

EPA collected sulfide data for 236 samples in seven post-proposal sampling episodes using all three of these sulfide methods (EPA Episode numbers 6455, 6456, 6457, 6458, 6461, 6462, and 6463). These samples were collected from both process wastewaters prior to treatment and effluent wastewater after treatment. Of those 236 samples, 156 samples (66%) had no sulfide detected by any of the three methods. The reported detection limits for the three methods differ as a function of the analytical techniques, and thus, EPA does not intend to investigate these results further.

One of the 236 samples had results for all three methods that were invalidated during the data review process because of extreme difficulties during the analysis. An additional 79 samples (33%) had sulfide detected by one or more of the three methods. These 79 samples will tell us the most about the performance of the methods in the MP&M wastewaters. Of those, only 12 samples had sulfide detected by all three methods, while the remaining 67 samples were a mixture of detected sulfide and non-detect results.

EPA provides a detailed review of these 67 samples with ''mixed results'' and the 12 samples with detects by all three methods in a document titled, ''Evaluation of Sulfide Results for Metal Products and Machinery Samples Analyzed by MCAWW Method 376.1, MCAWW Method 376.2, and Standard Method 4500–S^{-2} (E)'' (*see* section 16.2, DCN 16941).

Because the true concentrations of sulfide in these 236 samples are not known, it is not possible to state with certainty which of the three methods used in this study (DCN 16941) performs best overall. The results for the 236 samples in this study suggest that there are potential interferences with Method 376.1 that may be better addressed by either Method 376.2 or SM 4500–S^{-2} (E) and its associated sample pretreatment step. The fact that sulfide was not detected by any of the methods in approximately 66% of all the samples, suggests that the differences between the methods need to be viewed in the context of specific samples and sample types.

Of the 26 effluent samples where EPA detected sulfide by one or more of the three methods, eight samples were detected by all three methods. These results indicate that the performance of the three methods can be comparable in the sample type to which these methods are most often applied (*i.e.,* treated effluents), and in samples whose sulfide concentrations fall within the range of all three methods. The data from the other effluent samples and from the influents and unit process samples suggest that: (1) Method 376.2 may perform better than SM 4500–S^{-2} (E); and (2) when the sample pretreatment procedure in SM 4500–S^{-2} [C] is employed, SM 4500–S^{-2} (E), in turn, may perform better than Method 376.1.

B. Industry Submitted Data

In addition to their written comments, many MP&M facilities and a few POTWs submitted data to be used in developing the numerical limits for the final rule. EPA is using over 46 data sets of long-term self-monitoring compliance data from ''BAT'' facilities that met our criteria. In addition, EPA is using paired influent/effluent data received from an additional 37 ''BAT'' facilities and characterization data for MP&M unit operations (*i.e.,* in-plant raw wastewater) from three facilities.

EPA extensively reviewed the data submitted as comment to the proposed rule. EPA reviewed the data for completeness when compared to the ''Guidelines for Submission of Analytical Data'' in the proposed rule (66 FR 537). EPA contacted facilities to follow up on missing information when only a few items were not included (*e.g.,* a treatment flow diagram or identification of sampling points). For the 75 data sets of the 136 submitted with proposal comments, EPA has been able to include the data and use them for calculating the revised limits presented in today's document. Although EPA has used these data, it has also flagged certain data points to note any discrepancies, such as the analytical method not being an EPA

approved method or if there are questions pertaining to the QA/QC data. These flags may be used in the future to exclude certain data points. There are additional data submissions that EPA did not use in calculating today's revised limitations and standards because the Agency has not completed verifying that such data meets EPA's criteria for inclusion. Although not used, these data are included in the record for this document for purposes of public comment. EPA has fully explained how it will calculate long-term averages and variability factors for the final limitations and standards so commenters may determine the effect these data would have if included in the data base for the final rule. EPA will continue to contact facilities where major components were missing from the data submittal and will consider including these additional data sets now available in the record in the development of the limitations and standards for the final rule to the extent they meet EPA standards for inclusion.

EPA is using long-term monitoring data (*i.e.,* data used for compliance monitoring) from 31 General Metals facilities, 1 Metal Finishing Job Shop, 4 Zinc Platers, 2 Printed Wiring Boards, 3 SFF facilities, 3 Oily Wastes facilities, and 2 Shipbuilding Dry Docks. EPA is also using industry-submitted paired influent/effluent data from 26 General Metals facilities, 8 Metal Finishing Job Shops, 2 Zinc Platers, and one Oily Wastes facility. Data submitted with comments can be found in section 12.2.2 of the public record.

EPA requested data to aid in characterizing the concentrations of pollutants in wastewaters from MP&M processes (*i.e.,* unit operations). In addition to EPA's post-proposal sampling program, described above, EPA received unit operations sampling data for the following unit operations:

- UP 4: Acid Treatment without Chromium
- UP 4R: Acid Treatment without Chromium Rinse
- UP 5: Alkaline Cleaning for Oil Removal
- UP 5R: Alkaline Cleaning for Oil Removal Rinse
- UP 14: Chemical Conversion Coating without Chromium
- UP 16: Chromate Conversion Coating
- UP 16R: Chromate Conversion Coating Rinse
- UP 17: Corrosion Preventative Coating
- UP 17R: Corrosion Preventative Coating Rinse
- UP 24: Electroplating without Chromium or Cyanide
- UP 24R: Electroplating without Chromium or Cyanide Rinse
- UP 27: Grinding
- UP 33: Painting—Immersion (E-Coat)
- UP 83: Acid Pickling Neutralization
- UP 93: Iron Phosphate Conversion Coating
- UP 93R: Iron Phosphate Conversion Coating Rinse

EPA is using this data for two main purposes. First, EPA is using this data to supplement unit operations data used to estimate the pollutant loadings, by subcategory, contained in MP&M wastewaters prior to treatment. As discussed in section III.A of today's document, EPA is making every effort to use subcategory-specific unit operations data instead of estimating loadings by averaging the data by unit operations across subcategories.

Second, EPA is using this data to better define those operations which should be included in EPA's definition of ''oily operations'' used to differentiate the Oily Wastes Subcategory from the General Metals Subcategory. EPA received many comments on certain unit operations that, as proposed, would cause a facility to fall under the General Metals Subcategory instead of the Oily Wastes Subcategory. Commenters concluded that these unit operations are truly ''oily operations'' generating wastewater that contains little or no metals and would not be effectively treated using the recommended treatment for the General Metals Subcategory (*i.e.,* Option 2, which includes metal removal via chemical precipitation). Using the data that EPA received and a review of all unit operations data, EPA is considering incorporating into the definition of ''oily operations'' the following unit operations and any associated rinses (*see* section IV.A for a potential revision to the definition of ''oily operations''):

- UP 1: abrasive blasting
- UP 7: alkaline treatment without cyanide;
- UP 11: assembly/disassembly;
- UP 12: tumbling/barrel finishing/mass finishing/vibratory finishing;
- UP 13: burnishing;
- UP 18: electrical discharge machining;
- UP 35: polishing;
- UP 43: thermal cutting;
- UP 44: washing of final products;
- UP 45: welding;
- UP 46OR: wet air pollution control for organic constituents;
- UP 51: bilge water;
- UP 71: adhesive bonding;
- UP 72: calibration; and
- UP–93: iron phosphate conversion coating.

EPA is considering this revision based on the low levels of metals and similarity of wastewater characteristics to other ''oily operations,'' (*see* section IV of today's document for the potential revised definition of oily operations).

EPA also received data from the American Association of Railroads (AAR) which summarized the current permit limits, treatment-in-place (TIP), and the facilities' measured monthly average and average of daily maximum values for the last year for all known direct discharge railroad line maintenance facilities. More recently, this trade association provided the individual responses to their survey questionnaire. Each railroad line maintenance facility provided one year of long-term monitoring data (*see* section 15.1 of the public record for the AAR surveys). EPA is reviewing alternative options for the Railroad Line Maintenance Subcategory based on this data. See section IX.F of today's document for this discussion.

C. Analytical Method Validation Study and the Total Organics Parameter

In an effort to provide flexibility, EPA proposed three options for meeting limits related to organic chemicals. One option focused on the use of a surrogate parameter, Total Organics Parameter or TOP, to be used for monitoring organic pollutants in MP&M wastewater. In the proposal, the ''TOP'' consisted of 48 individual organic pollutants. To comply with the TOP limit, as proposed, a facility would monitor for all 48 pollutants (or a lesser number if a waiver was obtained for pollutants not present) and sum the measured values, using the nominal quantitation value for non-detects. As discussed in the proposed rule (66 FR 529), the following TOP analytes do not have approved EPA methods: Benzoic acid, carbon disulfide, 3,6-Dimethylphenanthrene, 2-Isopropylnaphthalene, 1-Methylfluorene, and 2-Methylnaphthalene. In addition, aniline and 1-Methylphenanthrene do not have procedures approved in 40 CFR part 136, but do have procedures that have been validated as attachments to EPA Methods 1625/625. With the exception of Benzoic Acid, EPA has performed a study to validate EPA Analytical Methods 1624B/624 and 1625/625 for these organic pollutants. EPA eliminated benzoic acid because of its low and highly variable recovery using EPA Methods 625 and 1625. Benzoic acid will be deleted from the list of organic pollutants that constitute the Total Organics Parameter.

In order to provide test methods for six additional semivolatile organic

pollutants (aniline, 3,6-dimethylphenanthrene, 2-isopropylnaphthalene, 1-methylfluorene, 2-methylnaphthalene, and 1-methylphenanthrene) and one additional volatile organic pollutant (carbon disulfide) in the MP&M industry final rule, EPA has developed and validated attachments to EPA Methods 624 and 1624B and validated revisions to the existing attachments to EPA Methods 625 and 1625. The attachments and revisions to the attachments are:

- Method 624, Attachment 1: Determination of Additional Volatile Pollutants, January 2001
- Method 625, Attachment 1, Revision A: Determination of Additional Semivolatile Pollutants, January 2001 (Method 625, Attachment 1A)
- Method 1624B, Attachment 1: Determination of Additional Volatile Pollutants, January 2001
- Method 1625B, Attachment 1, Revision A: Determination of Additional Semivolatile Pollutants, January 2001 (Method 1625B, Attachment 1A)

The validation study for each of the above methods attachments involve analyses of MP&M industry wastewater samples collected by EPA and sent to three separate laboratories for analyses by Methods 1624B and 1625B. Apart from the fact that Methods 1624B and 1625B contain analytes that are not found in Methods 624 and 625, the principal differences between these 1600 Series methods and their 600 Series counterparts is that the 1600 Series methods employ isotope dilution quantitation to determine the concentration of many of the target analytes. The concentration of the target analytes are determined using an internal standard quantitation procedure in the corresponding 600 Series methods. As a result, for the purposes of this study, instead of analyzing a sample once by Method 1624B and again by Method 624, it is both possible and practical to perform the analysis of a given sample once for Method 1624B using isotope dilution quantitation and then reprocess the resulting mass spectrometric data using the internal standard procedures employed in Method 624. The same situation applies to Methods 1625B and 625—one analytical run can provide data for both quantitation approaches.

The results of this validation effort have been used to develop method performance criteria for the seven new analytes in the attachments to Methods 1624B, 624, 1625, and 625. These criteria are specific to the use of these methods to demonstrate compliance with the MP&M final rule only. The final report for the study provides criteria for: method sensitivity, calibration linearity, labeled compound recovery (Methods 1624B and 1625), and matrix spike recovery (Methods 624 and 625). The interlaboratory study results and the revised attachments are included in the MP&M rulemaking record. See section VI.B. of today's document for a discussion on alternative approaches to calculating the TOP limit.

III. Revisions & Corrections to the Cost & Loadings Model

Based on proposal comments, EPA has revised several aspects of the Cost & Loadings Model used to develop estimates of compliance costs and pollutant loads. This section discusses the changes in methodology and corrections to the model and database for this document including: (1) Subcategorization of unit operations data; (2) pollutant specific revisions to the loadings and removals; (3) corrections to the coding in the model; (4) re-imputation of missing wastewater flows; and (5) several other issues on which EPA is soliciting comment. Section VI of today's document provides a more detailed discussion of the results of the re-analysis using the revised Cost & Loadings Model (and the revised associated input databases).

A. Subcategorization of Facilities and Unit Operations Data

This section discusses changes being considered to EPA's subcategorization scheme as well as changes to the way in which EPA is using the data that characterizes MP&M operations (*i.e.,* unit operations).

1. Changes in EPA's Subcategorization Scheme

In the proposal, EPA solicited comment on the proposed subcategorization scheme. Based on the comments received, EPA is considering placing Printed Wiring Board (PWB) facilities and Printed Wiring Board job shops in the same subcategory: Printed Wiring Board. At proposal, EPA placed the PWB job shops in the Metal Finishing Job Shops Subcategory based on the special economic conditions of job shops. However, information submitted by commenters indicates that PWB job shops are much more similar to PWB facilities than to metal finishing job shops when considering their wastewater characteristics and operations. For all analyses supporting today's document, EPA has placed the Printed Wiring Board job shops in the Printed Wiring Board Subcategory.

In addition, based on comments, EPA has reviewed the unit operations of Printed Wiring Assembly facilities and has determined that they are most similar to the facilities in the General Metals Subcategory. Printed wiring assembly facilities do not manufacture printed circuit boards, but do attach circuit boards to other structures. Therefore, they do not perform the operations typical of a printed wiring board facility (*e.g.,* applying photoresist, etching of the board, or stripping). EPA concluded that most printed wiring assembly facilities in the MP&M database were placed in the General Metals Subcategory for proposal. For this document, EPA has confirmed that all printed wiring assembly facilities are identified as General Metals facilities. Unless new information leads EPA to reconsider this determination, EPA will address the codified language for the applicability of the General Metals Subcategory of the final rule to reflect the inclusion of the printed wiring assembly facilities in the subcategory.

EPA received comments concerning the definition for ''oily operations'' used in the applicability statement of the Oily Wastes Subcategory. Commenters provided data on several MP&M unit operations which were not part of the ''oily operations'' definition in the proposed rule. The data show that there are low levels of metals in these unit operations. Based on the data received and a review of other unit operations containing only low concentrations of metals, EPA is considering whether to revise the proposed definition of ''oily operations'' used to define the Oily Wastes Subcategory (*see* sections II.B and IV.A). This change would result in the reclassification of several facilities to the Oily Waste Subcategory that were originally classified in the General Metals Subcategory at proposal (*see* section VII of today's document for the number of facilities now estimated in each subcategory).

Finally, EPA is considering whether to subcategorize or segment metal finishing zinc platers. EPA uses the term ''zinc platers'' to describe facilities where over 95% of their wastewaters are generated from zinc electroplating operations. These facilities typically do not perform copper, nickel, or chrome electroplating. However, most of these facilities follow their plating lines with chromium conversion coating lines. Currently, zinc platers can be found in the Metal Finishing Job Shops Subcategory (*i.e.,* job shop zinc platers) and the General Metals Subcategory (*i.e.,* captive shop zinc platers). The wastewater characteristics of zinc platers are different from other facilities

in these two subcategories, particularly with respect to their concentrations of zinc. Where non-zinc platers may have concentrations of 10–90 mg/l zinc in their wastewater prior to treatment, zinc platers have concentrations from 100–800 mg/l zinc in their wastewater prior to treatment. However, zinc platers have very low concentrations of other pollutants as compared to non-zinc platers. Therefore, EPA is considering subcategorizing zinc platers by either creating a separate subcategory for all zinc platers, or creating a segment within each of the two affected subcategories. EPA is also considering retaining the current structure. The use of a segment would allow for a separate numerical limitation for zinc for zinc platers while providing ease of implementation as it would allow them to remain in their appropriate current subcategory (*i.e.,* Metal Finishing Job Shops or General Metals). EPA is also considering no change to the current subcategorization scheme but adopting a new zinc limit that represents zinc levels achievable by zinc platers operating BAT treatment systems. In this case, EPA would use data from the sampling of zinc platers to set the zinc limit in the Metal Finishing Job Shops and General Metals subcateogries. EPA concluded that this approach would cause the least confusion for permit writers and be the easiest to implement; however, this approach would allow discharge of additional pounds of zinc to the environment from non-zinc platers in the current subcategories (*see* Table III.A–1). These additional pounds of zinc would have corresponding low pound-equivalents due to the low toxicity weighting factor (0.047) for zinc.

TABLE III.A–1.—INCREMENTAL POUNDS OF ZINC DISCHARGED TO THE ENVIRONMENT WHEN USING ONLY ZINC PLATER DATA FOR SETTING THE ZINC LIMITS FOR THE METAL FINISHING JOB SHOPS AND GENERAL METALS SUBCATEGORIES

Discharger status	Facility type	Number of facilities	Pounds	Pound-equivalents
Indirect	General Metals	10,787	8,200	385
	General Metals (> 1 MGY) [1]	2,055	7,491	352
	Metal Finishing Job Shops	1,165	1,895	89
Direct	General Metals	1,500	9,754	458
	Metal Finishing Job Shops	24	101	5

[1] Note: MGY: Million Gallons per Year

EPA solicits comment on whether: (1) Zinc platers should be in their own subcategory; (2) a segment within existing subcategories; or (3) no change in subcategorization with a zinc limitation that is achievable by zinc platers. EPA also solicits comment on the burden to permit writers and control authorities associated with each approach.

2. Subcategorization of Unit Operation Data

In the Cost & Loadings Model used for the proposed rule, EPA averaged all data for a specific unit operation (*e.g.,* UP23—electroplating with cyanide) regardless of the subcategory of the facility from which the data was collected. Therefore, cyanide concentrations from a metal finishing job shop's UP23 were averaged with cyanide concentrations from a printed wiring board's UP23, and with cyanide concentrations from a general metals facility's UP23. EPA received many comments demonstrating that the concentrations of cyanide in electroplating varied greatly between subcategories, and most importantly between metal finishing job shops and printed wiring boards. Similarly, EPA received comments that the concentration of copper and tin differed widely between printed wiring board facilities and other subcategories. Therefore, for this analysis EPA is applying concentration data from unit operations by subcategory to the extent possible.

EPA has segregated the existing unit operations concentration data, including data used for proposal and newly collected data, by subcategory. EPA performed post-proposal sampling (*see* section II.A) of many printed wiring board unit operations in an effort to distinguish printed wiring board data from other MP&M subcategories with metal-bearing wastewater. For example, at proposal EPA used an average cyanide concentration of 27,959 mg/l for UP23 for all metal-bearing subcategories; however, EPA has revised the Cost & Loadings Model to use a cyanide concentration for UP23 of 5,200 mg/l for metal finishing jobs shops and 430 mg/l for printed wiring boards based on data obtained from these operations (*see* section III.B.1).

In addition to segregating the unit operations data by subcategory, EPA has segregated the unit operations for the ''zinc plater'' segment of the Metal Finishing Job Shops and General Metals subcategories. Therefore, the unit operations (raw wastewater) of a model site that is a zinc plater would be credited with the appropriate level (*i.e.,* higher level) of zinc and appropriate levels (*i.e.,* very low or non-detect) of other pollutants.

EPA has also collected unit operation data that is specific to the steel forming and finishing subcategory so that modeled pollutant loadings will better reflect wastewater characteristics at those sites.

Finally, EPA received comment concerning the variability of the wastewaters sampled to represent the ''testing'' unit operation. EPA defines the testing unit operation as the application of thermal, electrical, mechanical, hydraulic, or other energy to determine the suitability or functionality of a part, assembly or complete unit. Commenters are concerned that wastewater concentrations from testing of one type (*e.g.,* automotive radiators) does not represent the same wastewater characteristics as testing of another type (*e.g.,* aircraft engines). EPA is considering whether or not to further divide the testing unit operation, particularly for the General Metals Subcategory, by industry sector or testing type (*e.g.,* hydrostatic, dye penetrant, ultrasonic, magnetic flux). EPA data show automotive radiator testing molybdenum, fluoride, and vanadium concentrations are 774 mg/l, 0 mg/l (not measured) and 0.004 mg/L respectively, while aircraft parts testing molybdenum, fluoride, and vanadium concentrations are 0.271 mg/l, 49,000 mg/l, and 215 mg/l respectively. EPA solicits comment on whether or not to subdivide the testing unit operation and ways to appropriately divide the Agency's data from this unit operation.

The methodology for subcategorization of unit operation concentrations and a discussion of

remaining data transfers from one subcategory to another are described in a memorandum in the public record, entitled '' MP&M Pollutant Loadings Subcategory-Specific Data,'' section 16.7, DCN 16759. EPA solicits comments on this approach.

B. Pollutant Specific Revisions to Loadings and Removals

EPA received comment on several pollutant-specific issues related to the pollutant loadings and removals generated by EPA's Cost & Loadings Model. In some cases, commenters questioned results from a specific sampling episode. For example some commenters stated that the misclassification of a cyanide electroplating sampling point led to an overestimation of cyanide pollutant loadings and removals. In other cases, commenters raised more general issues, such as the percent removal value assigned to boron (at proposal boron was set equal to the long term average (LTA) for boron, not using a percent removal) in the Cost & Loadings Model. EPA solicits comment on how EPA has tentatively addressed these issues. EPA is also reviewing several data points that commenters concluded to be ''outliers.'' In several cases EPA has addressed these issues and in other cases, due to the need to work with the facility in question, EPA is working toward resolving them for the final rule. Below is a discussion of the revisions being considered regarding the most prominent of the pollutant-specific issues: cyanide, tin, copper, sulfide, and boron. A detailed summary of all the pollutant-specific issues under review may be found in a memorandum entitled, ''MP&M Pollutant Loadings Methodology Changes from Proposal'' in the public record for this document, section 16.7, DCN 16764. EPA notes that the pollutant loadings and removals for the final rule will reflect the addition of EPA and appropriate industry submitted unit operations data to the model. (*see* section IV of today's document for a discussion on EPA's current views on possible changes to pollutants selected for regulation).

1. Cyanide

The major issue regarding cyanide pollutant loadings raised by commenters involves the misidentification of a single sampling point. Prior to proposal, EPA sampled at one facility what it concluded was cyanide electroplating rinse water (*i.e.,* UP23R). For the proposal, that data was averaged with other cyanide concentrations for the same unit operation (UP23R) to obtain an average cyanide concentration for use in the Cost & Loadings Model for that unit operation. Although the concentration of cyanide was considerably higher than other facility data for the same unit operation, a check of the site report, which had been reviewed by the facility, verified that sample point as a rinse water. Based on comments received and additional follow-up discussion with the sampled site, EPA now has determined that the actual sample was taken from a drag-out tank that follows the cyanide electroplating bath and that the drag-out tank water is recycled. Therefore, the concentration of cyanide in that tank is not characteristic of cyanide electroplating rinse water (*i.e.,* UP23R) and EPA has removed this cyanide concentration (and concentrations of all other pollutants from that sampling point) from the electroplating with cyanide rinse unit operation (UP23R) and has reclassified it as a drag-out rinse that is recycled (UP23RDO). This change has a significant effect on the average cyanide concentration used for the proposal in the cost and loadings model for that unit operation and the resulting cyanide pollutant concentration levels (5,042 mg/l to 3.6 mg/l for general metals). Further, EPA is now considering using unit operations concentration data on a subcategory-specific basis for the final rule (*see* section III.A.2 of today's document). The cyanide data point discussed here was taken at a general metals facility. Therefore, this data point would no longer affect the cyanide loadings for the metal finishing job shops, printed wiring board, non-chromium anodizing, or steel forming and finishing subcategories for the final rule. Following this approach, the current estimated cyanide concentrations for cyanide electroplating rinse (UP23R) are as follows: 58.8 mg/l for metal finishing job shops, 22.02 mg/l for printed wiring board, 22.02 mg/l for non-chromium anodizing, and 22.02 mg/l for steel forming and finishing. This document reflects these concentrations. See section VII of today's document for a discussion on the overall change in pollutant loadings and removals due to revisions to the Cost & Loadings Model.

2. Tin

The major issue regarding tin concentrations raised by commenters in the Cost & Loadings model involves the misclassification of a sampled unit operation containing a large concentration of tin. Prior to proposal, EPA sampled a unit operation that it classified as UP4R (acid treatment without chromium rinse). However, based on comment and subsequent review of the sampling episode report, EPA has concluded that this unit operation is different from UP4R. This unit operation involved the use of a catalyst solution for electroless plating operations and did not fit in any of EPA's current unit operation descriptions. Therefore, EPA created a new unit operation for electroless plating catalyst solutions (UP87) and assigned the data for tin and all other pollutants associated with that particular sampling point to the new unit operation.

EPA estimated tin concentrations for acid treatment without chromium rinse (UP4R) across all subcategories in the proposal at 256.2 mg/L. The current estimated tin concentrations for UP4R are as follows: 1.97 mg/l for metal finishing job shops, 0.0204 mg/l for printed wiring board, 0.0444 mg/L for general metals, and 0.0432 mg/L for zinc platers. This document reflects these revised concentrations. See section VII of today's document for a discussion on the overall change in pollutant loadings and removals due to revisions to the Cost & Loadings Model.

3. Copper

The factors discussed above related to cyanide and tin also would result in changes in pollutant loadings for copper. When EPA revised the cyanide and tin concentrations for those two sampling points, it also revised the concentrations for all pollutants associated with those sampling points, including copper. Copper loadings are also largely affected by the subcategorization of unit operations data and EPA's post-proposal sampling of three additional printed wiring board facilities. In EPA's view, the copper loadings for non-printed wiring board facilities would be reduced through the use of subcategory-specific unit operations data. Further EPA has concluded that the copper loadings for printed wiring board facilities would be more reflective of those facilities due to the incorporation of additional printed wiring board sampling data.

EPA estimated copper concentrations for acid treatment without chromium rinse (UP4R) across all subcategories in the proposal at 52.85 mg/L. The current estimated copper concentrations for UP4R are as follows: 7.97 mg/l for metal finishing job shops, 58.97 mg/l for printed wiring board, 9.49 mg/L for general metals, and 7.97 mg/L for zinc platers. This document reflects these revised concentrations. See section VII of today's document for a discussion on the overall change in pollutant loadings

and removals due to revisions to the Cost & Loadings Model.

4. Sulfide

EPA received many comments concerning EPA's estimate of pollutant removals for total sulfide and EPA's proposal to regulate total sulfide. Commenters stated that the pollutant removals associated with total sulfide were inflated due to the analytical method EPA used to test for total sulfide. Commenters concluded that the method used (EPA Method 376.1) may yield erroneous results because of matrix interference (i.e., erroneous analytical results for the pollutant of concern due to certain substances present in the sample). This may result in higher reported sulfide concentrations than what is actually in the wastewater. In addition, many of the data points used for total sulfide were transferred from data for the Oily Wastes Subcategory to other subcategories. Therefore, as discussed in section II.A of today's document, EPA is now using two additional methods (EPA Method 376.2 and Standard Method 4500–S^{-2}[E], 18th edition) to test for total sulfide. For the purposes of establishing unit operations concentrations for a specific sampling point for the Cost & Loadings Model for the NODA analyses, EPA averaged the data from Methods 376.2 and 4500–S–$^{-2}$ (E). For the final rule EPA currently intends to follow the recommendations in the memorandum titled, ''Evaluation of Sulfide Results for Metal Products and Machinery Samples Analyzed by MCAWW Method 376.1, MCAWW Method 376.2, and Standard Method 4500–S^{-2} (E)'' (*see* section 16.2, DCN 16941). The memorandum's recommendations are specific for unit operations, influent, and effluent concentration data.

EPA is considering the effects of these recommendations on loadings and solicits comments on this analysis. EPA is also now using subcategory-specific unit operations data, so that in all cases total sulfide concentrations would not be transferred from oil-bearing subcategories to metal-bearing subcategories. If no sulfide concentration was identified for unit operations within a subcategory, EPA set the sulfide concentration equal to zero for today's document, and is considering doing the same in the analysis for the final rule.

5. Boron

Although EPA did not propose to regulate boron, many commenters expressed concern with EPA's estimates of boron pollutant removals. Commenters state that boron is not removed in chemical precipitation systems and any removal is an artifact of the database. EPA has revisited the analysis regarding the removal of boron in chemical precipitation systems and has concluded that boron shows widely variable removals in two BAT treatment systems and is not removed at all (or has negative removals) in the remaining three BAT treatment systems (*see* section 16.7, DCN 16758). EPA has concluded that, in most cases at MP&M facilities, boron is in the dissolved anionic form (as borate) and cannot be removed by chemical precipitation.

For the purposes of estimating boron removals for today's document for subcategories where EPA is using chemical precipitation as the basis for limitations, EPA has made a change to the methodology. For today's document, EPA has set the pollutant removals for boron equal to zero. Therefore, EPA is not claiming any removal for boron from chemical precipitation systems.

EPA also considered a more site-specific approach where EPA would apply the boron removal percentage from a particular EPA sampling episode to all model facilities with similar characteristics to the sampled facility. For example, commenters stated that one reason EPA's boron removals were inflated was because removals were based on a facility that also performs porcelain enameling, where the wastewaters are commingled for treatment. The commenters stated that the porcelain frit was the cause for the relatively high boron removals (i.e., the boron is in solid form and can be removed by gravity separation) compared to facilities that are not also performing porcelain enameling. Therefore, in this example, EPA considered applying the boron removal based on the sampled facility with the porcelain enameling and MP&M wastewaters only to other model facilities in EPA's database that also conduct porcelain enameling operations. EPA reviewed all sites in EPA's questionnaire database and found six survey sites that reported being covered by the Porcelain Enameling effluent guidelines. Of these six sites only one site was discharging wastewater from MP&M and porcelain enameling operations and the percentage of wastewater from porcelain enameling operations was less than two percent of their wastewater volume. It is likely that the national estimate of boron removals using this approach, relative to the removals for other pollutants, would be close to zero. EPA solicits comment on the revised results and which approach EPA should use for the final rule to estimate boron removals.

EPA intends to conduct further review of boron removals in other treatment systems, such as Dissolved Air Flotation (DAF). DAF is currently the basis for the limitations in the Shipbuilding Dry Dock and Railroad Line Maintenance Subcategories. EPA has data from the MP&M database as well as data from other previous regulations indicating positive removals of boron from DAF systems. EPA will review the form of the boron present in wastewater from these subcategories (e.g., dissolved or insoluble) and examine the mechanism for removal.

EPA will also perform an assessment for the final rule investigating molybdenum removals via chemical precipitation similar to that used for boron. EPA may determine from this analysis that: (1) Molybdenum is present in MP&M wastewaters as a dissolved form which is not removable by chemical precipitation; or (2) there is a low level of incidental molybdenum removal for use in the Cost & Loads Model. There may be incidental removals when molybdenum adheres to oily wastewaters that are removed in the oil water separation step or other treatment steps (e.g., flocculation). For the analyses performed for today's document, EPA is using the average effluent concentration achieved for molybdenum by EPA sampled facilities. (*see* section IV of today's document for a discussion on molybdenum as a pollutant selected for regulation). EPA solicits comment on molybdenum being removed through oil water separation step or other treatment steps (e.g., flocculation).

C. Stream Code Corrections

This section describes how EPA intends to revise several parts of the computer format of the model and data entry corrections EPA will make based on comments received regarding the Cost & Loadings Model. All revisions and corrections discussed in this section, affecting approximately 5% of the stream codes, have been incorporated into the analyses supporting today's document.

There were two cases where EPA's Cost & Loadings Model did not correctly link unit operations (UP) ''extender'' codes in the stream identification field of the database. Extender codes are used to indicate a rinse (''R'') or can be used to indicate the presence of multiple lines. For example, if the facility had 3 different acid treatment without chromium rinse lines, the lines would be labeled UP 04R–1, 04R–2, 04R–3. When the model did not correctly link

with these codes it led to the mis-assignment of each stream for the purposes of determining whether or not the stream should receive credit for having treatment-in-place (TIP). Therefore, at proposal there were a number of rinses or multiple lines that were not given proper credit for TIP.

Another example is where a site's questionnaire indicated that UP04 (acid treatment bath without chromium) goes to treatment, but did not say whether or not UP04R (acid treatment rinse without chromium) went to treatment. For the proposal cost and load analysis, TIP credit was given for UP04, but not for UP04R. EPA has corrected the model used for today's document. In another example, a site's questionnaire indicated UP04R goes to treatment, but when multiple lines (UP04R–1, –2, –3) are present, TIP credit did not get conveyed in the proposal cost and loads analysis to the streams labeled UP04R–1, –2, –3. EPA notes that less than three percent of all streams required a change in TIP assignment due to this error.

Similarly, when converting from numeric to text format for use in running the Cost & Loadings Model, some streams converted as UP1R–1 and UP4R–1 instead of UP01R–1 and UP04R–1. This caused a mismatch in the model databases and those streams were not given proper TIP credit. EPA has corrected the model used for today's document.

EPA has also identified a few data entry errors that were limited in scope, but do affect the output of the Cost & Loadings Model. In one case, the facility completed an erroneous page in their questionnaire for the treatment unit at their facility (e.g., equalization/neutralization instead of chemical precipitation). In correcting this error, the reviewer did not transfer all of the affected unit operations from the erroneous page to new treatment unit page, and therefore, some unit operations did not get entered and did not receive TIP credit. EPA has corrected the model used for today's document.

In another case, the facility completed the unit operation page of their questionnaire but did not indicate to which treatment unit the unit operation discharged. Therefore, TIP credit was not given for that unit operation. Upon further review of these streams and comparison to treatment diagrams (which indicated to which treatment units these streams discharged), a correction was made to the data entry and TIP credit was given. EPA has carefully reviewed questionnaires for all sites where full or partial TIP credit was not given, and has corrected the model used for today's document, accordingly (*see* section III.E).

D. Change in Imputed Flows

EPA uses wastestream-specific flow (not total facility flow) and production information in the Cost & Loadings Model. A number of questionnaires were submitted without data for flow or production related to an individual wastestream. In some instances EPA contacted the facility to gather the information. If the data was not available or if EPA did not contact the facility, EPA imputed data using data from similar facilities in the questionnaire database. The 1,003 facilities in the database had 17,424 different lines (i.e., tanks), of which EPA imputed values for 6,129 lines at 797 facilities. These imputed values included production and/or production normalized flows (PNFs) for most municipality surveys, because the surveys did not request this information from them. This section describes the changes in the data and imputed values from the proposal. This section also describes some changes that EPA is considering for the final rule.

Commenters stated their concerns regarding several large flow values that were created through imputation. Commenters noted that in these cases the flow for the wastestream, when added with all other streams at the facility exceeded the facility's reported total flow (including non-MP&M process wastewater). Commenters suggested using a comparison of the summation of a facility's stream flows with the facility's reported total discharge flow as a ''reality check.'' EPA has used this ''reality check'' in the imputations for today's document. Each survey requested the total flow information in different ways. Phase I surveys required respondents to report on the total facility flow. Phase II surveys listed three different fields: MP&M Process Water, Process Water, Total Facility Water Use. EPA used the MP&M Process Water value if it was given by the facility. If this value was not given, EPA used the Process Water value. If neither of these values were reported, EPA used the Total Facility Water Use value.

When EPA examined the data before imputing any values, 10 percent of the facilities in the database had the sum of their individual streams exceed the total facility flow. EPA also identified stream flows that appeared to be incorrect. After identifying these inconsistencies, EPA reviewed its hard copies of the surveys to look for any information which would provide more accurate total flows (e.g., perhaps the site wrote in their own units of measure which need to be converted). Most occurrences were with Phase I sites that were surveyed between 1989 and 1990, where previous reviews of the total flow had not been pursued as vigorously as the stream flow information. Based upon its findings, EPA revised the individual stream flows and the total flows in the database. The sum of individual stream flows for a facility were then compared to the reported total flow. EPA scaled back the individual stream flows when the sum of the individual stream flows were greater than the total flow (*see* memorandum titled ''Revisions to the Technical Portion of the Imputation Methodology,'' section 16.6.1, DCN 27711). EPA also excluded recycle and pollution prevention streams as a basis for imputed values because the flows are often quite large, but usually are not completely discharged. In addition, EPA excluded contract hauling streams from the summation of individual streams, because they would not be included in the facility's reported total discharge flow.

After incorporating those changes into its database, EPA imputed values for individual streams where the flows were unknown. As a check on the imputed values, EPA then compared the total flow at each facility to the sum of all flow values (i.e., imputed and others) for the individual streams at that facility. As a result of these changes, EPA found only 32 facilities (i.e., less than four percent) where the summation of the reported and imputed individual flows exceeded the total reported flows. For these facilities, EPA has either revised the stream flows based upon engineering review or proportionally decreased the imputed flows to be less than the reported total flow.

For the final rule, EPA has determined that further improvements in the imputation strategy may be warranted and solicits comments on its ideas. In the current strategy, EPA assumes that all missing flows correspond to operations that discharge water and thus missing flows have imputed values that are always greater than zero. However, the surveys identified that some unit operations are frequently dry operations. For the final rule, EPA may assign some missing flow values to be zero (i.e., dry).

In addition, while the imputation procedure uses relevant information from similar operations at the facility when it has some reported and some missing values, these similar operations may include several different types of unit operations. In its review of the data, EPA observed that values were often identical between different lines (or

tanks) of the same unit operation and would often differ between unit operations at that facility. Thus, EPA makes every attempt to use relevant information from similar operations at the facility when it has some reported and some missing values, EPA has determined that placing more emphasis on the unit-level operations may be more appropriate in the intra-facility imputations for streams.

When intra-facility information could not be used, the imputation procedure used the median value of all of the lines within a ''unit grouping.'' Within each unit grouping, EPA combined similar unit operations based upon water usage characteristics and the number of lines associated with each operation. EPA then calculated the median value of the lines for each unit grouping. However, when it examined summary statistics such as the 10th and 90th percentiles for each unit grouping, EPA observed that the production-normalized flows and production were extremely variable within many unit groupings. For the final rule, EPA intends to investigate the causes for this variability for the final rule, and possibly re-define the unit groupings to be more homogeneous.

Also, for the final rule, EPA will consider facility and subcategory effects on the imputed values. As stated above, EPA noted that values within a facility tended to be similar. Thus, a facility with many lines in a particular unit operation would have more influence on the median value than a facility with fewer lines. For the final rule, EPA may consider using a single value from each facility rather than using the values from every line in that unit operation. Also, because it has observed some differences between subcategories with the same unit operation, EPA will investigate whether the imputation procedure should incorporate subcategorization in some way.

In a memorandum in the public record (*see* section 19.2, DCN 36081), EPA has described the current strategy, unit groupings, and assumptions, and indicated the changes that it may incorporate for the final rule. These changes will probably have little or no impact for most facilities. For others, it may increase or decrease the flows of the imputed streams. This may have the effect of lowering pollutant loadings with the inclusion of zero discharge unit operations. EPA solicits comment on the approaches outlined in the memorandum.

E. Changes Considered for Methodology for Treatment-In-Place Credits

For the proposed rule, EPA estimated the baseline pollutant loadings (i.e., pollutant loading prior to compliance with the MP&M regulations) from model facilities based on actual treatment-in-place at those sites based on questionnaire responses. If a model site had no treatment-in-place for their MP&M wastewaters or if a metal-bearing site only had pH adjustment, neutralization or equalization without any mechanism for sludge removal, EPA estimated baseline pollutant loadings based on raw wastewater data from EPA sampling episodes. If a site had some or all of its MP&M wastewater going through a treatment system (BAT system, equivalent, or better), EPA estimated baseline pollutant loadings, for those streams going through the system, based on the long-term average (LTA) effluent concentrations (i.e., design concentrations) from the Metal Finishing effluent guidelines (40 CFR part 433) for pollutants regulated by that regulation (with the exception of cyanide) and based on treatment system specific effluent concentration data (i.e., MP&M LTAs) from EPA sampling episodes for cyanide and the other MP&M pollutants of concern. Commentors raised questions about whether EPA was providing appropriate treatment-in-place credits for certain technologies in the proposal, and this subject is specifically addressed later in this document. In the case where a facility was treating some MP&M wastewaters using its on-site treatment system, but not others, EPA estimated the baseline pollutant loadings for the streams receiving treatment using the treatment-specific effluent concentrations described above and using the raw wastewater data for those streams not going through treatment in the baseline. In the MP&M Costs & Loads Model, such facilities are referred to as having ''partial treatment-in-place credit.'' The same holds true for facilities that may have a portion of a BAT system, such as alkaline chlorination for cyanide destruction, but do not perform further treatment for metals using chemical precipitation and clarification.

EPA then estimates pollutant loadings for the proposed option for each model site. When estimating the pollutant loadings for the proposed option, EPA assumed the site was meeting the long-term average (LTA) concentrations (i.e., design effluent concentrations) achieved by EPA's sampled MP&M BAT facilities. If a site is performing better at baseline (e.g., microfiltration for solids removal) than required by the MP&M proposed option (e.g., clarification), EPA assumed for the NODA analysis that the site will continue to operate with the superior technology for the EPA proposed option.

EPA calculates the pollutant loads removed by the proposed option as the difference between the pollutant loadings estimated for the proposed option and the pollutant loadings estimate for the baseline. This means that for sites which have treatment-in-place at the baseline that is the same or equivalent to the BAT treatment (i.e., sites with full TIP credit), EPA is claiming very little, if any, additional pollutant removal due to the MP&M regulation. EPA notes that the MP&M regulation may still show significant removals for those facilities that have equivalent ''end of pipe'' technologies or treatment units (e.g., metal removal via chemical precipitation) but not the BAT pollution prevention technologies (e.g., paint water curtain, counter-current cascade rinsing, machine coolant recycling). For these facilities, the ''end of pipe'' technologies may be equivalent, but EPA's modeling drastically increase the efficiencies of their system with the increased influent concentrations. For sites that have some MP&M wastewaters receiving treatment in the baseline (i.e., sites with partial TIP credit), the additional pollutant removal EPA is claiming is largely from their untreated streams. Finally, sites with no treatment-in-place or only pH adjustment, neutralization, or equalization without any mechanism to remove sludge (i.e., sites with no TIP credit) are the largest source of the pollutant reductions that EPA estimated for the proposed rule.

The two most prominent issues received in comments regarding treatment-in-place (TIP) credit (with exception of the stream code corrections to the Cost & Loadings Model discussed in section III.C above) dealt with giving TIP credit for alternative technologies, including ultrafiltration, and with EPA's methodology for calculating the baseline load for currently regulated facilities (*see* also section 16.4, DCN 16883).

1. Equivalency of Alternative Technology as BAT

When determining whether or not to provide a site with TIP credit for an existing treatment system, EPA reviewed the site's questionnaire for information to determine if the treatment system was equivalent (or better) than the proposed BAT technology. The proposed BAT technology for existing facilities in the metal-bearing subcategories consists of segregation of chelated wastes, hexavalent chromium reduction, when necessary, cyanide destruction by alkaline chlorination, when necessary,

chemical emulsion breaking for oils removals, incorporation of pollution prevention and water conservation practices, and chemical precipitation (by sodium hydroxide) followed by a lamella slant-plate clarifier and sludge removal.

When determining whether a treatment system was ''BAT,'' equivalent, or better than BAT for the purposes of determining treatment-in-place credit, EPA assumed that facilities that indicated chemical precipitation systems would also have a clarifier (even when they did not indicate this) and vice versa. However, EPA assumed that sites with metal-bearing wastestreams must have some mechanism for sludge removal to truly be operating a chemical precipitation and clarification system. EPA also assumed for the proposal and today's document that: (1) Facilities operating chemical precipitation followed by microfiltration or membrane to be at least equivalent to BAT; (2) facilities which indicated membranes for solids removal (i.e., microfiltration, reverse osmosis) also had chemical precipitation and are at least equivalent to BAT; and (3) facilities which indicated on their surveys ''pH-Adjustment'' followed by solids removal (e.g., clarification, membrane, microfiltration but not gravity settling) as if they were operating a chemical precipitation and clarification system for metals removal. EPA gave these facilities TIP credit at least as equivalent to BAT. EPA will investigate for the final rule which types of ''pH-Adjustment'' with solids removal, including types and amount of treatment chemicals, should be equated with BAT TIP credit or better. EPA solicits comment on this issue. For cyanide destruction systems, at proposal, EPA assumed that BAT was alkaline chlorination. EPA is considering in-process ion exchange for cyanide removal to be equivalent to alkaline chlorination for the final rule (*see* further discussion below). For sludge removal, EPA assumed that facilities with sludge thickening or a filter press had both components in place. In the case of oily wastes, sites with dissolved air flotation or ultrafiltration were considered to be at least equivalent to the BAT of chemical emulsion breaking for oil removal; however sites with only oil skimming were not considered to be BAT for oil removal.

EPA received several comments from facilities that use alternative treatments for metals removals. For example, many sites use ion exchange systems to reclaim gold from gold-cyanide wastestreams. Ion exchange systems have the ability to remove the cyanide from the wastestream to very low levels. Commenters requested that EPA provide TIP credit for use of ion exchange for removal of cyanide. At proposal, EPA did not make this allowance; EPA is considering this change in methodology for the final rule and has given TIP credit for end-of-pipe ion exchange systems for cyanide destruction in today's document and is also considering giving TIP credit for in-process ion exchange for cyanide destruction in the final rule. EPA is also considering giving full TIP credit for ion exchange for metals removals. EPA expects that granting TIP metals credit to plants with ion exchange will lower pollutant removal estimates from today's pollutant removal estimates. EPA requests comment on which alternative technologies, in addition to ion exchange, should be set as equivalent to cyanide destruction and to chemical precipitation followed by clarification.

2. Pollutant Loadings Baseline

As discussed above, EPA provided credit for achieving the long-term average concentrations of the Metal Finishing rule and the EPA BAT long-term average concentrations for facilities that received TIP credit, regardless of whether or not they are currently covered under the Metal Finishing (40 CFR part 433) or Electroplating (40 CFR part 413) effluent guidelines. However, commenters requested that EPA give baseline part 413 or part 433 limits credit to all facilities currently covered under these existing effluent guidelines even when their questionnaires indicate that there is no BAT TIP. Commenters argue that even without any indication of MP&M BAT TIP, these facilities must be meeting their limits under the existing regulations or else there would be large numbers of facilities in violation of their compliance requirements.

In an effort to address this issue, EPA has performed a sensitivity analysis on the baseline pollutant loadings (''Baseline 413/433 Analysis'') for today's document. In this analysis, EPA assumed that all sites currently regulated by part 413 and/or part 433 meet their existing limits at the point of compliance regardless of the treatment they have in place. EPA used the monthly average limits from the part 413 and part 433 regulations to estimate site-specific baseline pollutant loadings. EPA performed this analysis for all direct and indirect discharging facilities currently regulated by part 413 and/or part 433 in the following subcategories: General Metals, Metal Finishing Job Shops, Printed Wiring Board, Non-Chromium Anodizing, and Zinc Plater. EPA also performed an additional analysis to estimate the revised baseline for sites that would likely be meeting local limits equivalent to the part 433 limits. In the first baseline sensitivity analysis, EPA applied the following rules:

- If the facility is currently covered by part 413 and not by part 433, the effluent wastewater concentrations for cadmium, cyanide, chromium, copper, nickel, lead and zinc were set equal to the part 413 monthly average limits and the concentrations for other MP&M pollutants of concern remain as they were set in the standard Cost & Loadings Model, described earlier in this section.
- If the facility is covered by part 433 or by both part 413 and part 433, the effluent wastewater concentrations for the pollutants mentioned above (with the additional of silver) were set equal to the part 433 monthly average limits and the concentrations for other MP&M pollutants of concern remain as they were set in the standard Cost & Loadings Model, described earlier in this section.
- If the facility is not covered by either part 413 and/or part 433, the effluent wastewater concentrations remain as they were set in the standard Cost & Loadings Model, described earlier in this section.

In the additional baseline sensitivity analysis EPA used the concentration from the part 433 monthly average limits to estimate the baseline pollutant removals for cadmium, cyanide, chromium, copper, nickel, lead and zinc for sites that are in the above mentioned subcategories that are not currently covered by either part 413 and part 433 (i.e., sites meeting local limits in the General Metals and Zinc Plater subcategories) and used the concentrations for other MP&M pollutants of concern as they were set in the standard Cost & Loadings Model, described earlier in this section. This way, EPA can evaluate those facilities that are currently regulated by national effluent guidelines separately from those that are not.

Table III.E–1 provides EPA's national estimates of facilities that are solely regulated under the Electroplating (40 CFR part 413) regulations, or solely regulated under the Metal Finishing (40 CFR part 433) regulations, or regulated by both regulations using the combined wastestream formula. EPA solicits comments on these estimates.

TABLE III.E–1: NATIONAL ESTIMATES OF FACILITIES REGULATED UNDER THE MP&M NODA, ELECTROPLATING ELGS (40 CFR PART 413), METAL FINISHING ELGS (40 CFR PART 433), OR BOTH 40 CFR PART 413 AND 40 CFR PART 433.

MP&M Subcategory[a]	National estimate of facilities covered under MP&M NODA		National estimate of facilities covered only under 40 CFR Part 413		National estimate of facilities covered only under 40 CFR Part 433		National estimate of facilities covered under both 40 CFR Parts 413 and 433	
	Direct	Indirect	Direct	Indirect	Direct	Indirect	Direct	Indirect
General Metals (GM)[b, c]	1,500	2,055	91[e]	286	534	3,538	68	395
Metal Finishing Job Shops (MFJS)[d]	24	1,165	0	278	12	444	12	162
Printed Wiring Board	4	840	0	354	4	122	0	304
Zinc Platers (GM)	21	332	0	62	9	210	12	0
Zinc Platers (MFJS)	0	105	0	36	0	12	0	68
Non-Chromium Anodizing	35	0	0	0	24	19	0	0
Steel Forming and Finishing	41	112	0	4	13	23	0	0
Oily Wastes[c]	2,749	288	0	6	16	329	0	0
TOTAL	4,374	4,897	91	1,026	612	4,697	92	929

[a] EPA uses the term ''zinc platers'' to describe facilities where over 95% of their wastewaters are generated from zinc electroplating operations (*see* section III.A.1)
[b] These national estimates of General Metals facilities do not include Zinc Platers.
[c] The MP&M NODA national estimates include the General Metals and Oily Wastes flow cut-offs (1 MGY and 2 MGY, respectively) while the remaining national estimates for these subcategories do not.
[d] These national estimates of Metal Finishing Job Shops do not include Zinc Platers.
[e] These sites have both direct and indirect discharges but indicated coverage under part 413 in their survey response.

The results of the two ''Baseline 413/433 Sensitivity Analyses'' are presented by subcategory in Table III.E–2 below. The results are presented as pollutant removals in pound-equivalents removed per year by subcategory. EPA has estimated pollutant loadings/removals but did not estimate analogous changes in the compliance cost estimates. If this methodology is incorporated into the Cost & Loads Model for the final rule, EPA will provide pollutant removals, compliance costs, cost-effectiveness, economic impacts, and environmental benefits using this analysis. EPA solicits comment on the Baseline 413/433 Sensitivity Analyses and any other possible approaches to address the issue of baseline loadings for facilities currently covered by the Metal Finishing or Electroplating effluent guidelines. In addition, EPA solicits comment on the use of the monthly average limit from part 413 and/or part 433 as opposed to using the long-term average concentration (*see* discussion of rationale below as part of the discussion on the low concentration analysis).

TABLE III.E–2: RESULTS OF ''BASELINE 413/433'' SENSITIVITY ANALYSES

MP&M Subcategory	MP&M NODA Removals (lb-eq/yr)		Removals with change in baseline loads (lb-eq/year)[1]		Removals with change in baseline loads (lb-eq/year)[2]	
	Direct	Indirect	Direct	Indirect	Direct	Indirect
General Metals (GM)	996,741	1,240,219	485,495	728,775	431,921	273,234
Metal Finishing Job Shops (MFJS)	1,652	93,190	1,282	35,550	1,282	32,130
Printed Wiring Board	186	153,653	186	63,227	186	41,832
Zinc Platers	937	123,210	160	19,414	160	19,414
Non–Chromium Anodizing	2,392,735	NA	2,387,268	NA	2,387,243	NA

[1] This analysis only changes the baseline for facilities currently regulated under part 413/433.
[2] This analysis changes the baseline for all sites, regulated and unregulated. NA—not applicable, EPA did not propose MP&M regulations for Non–Chromium Anodizing

EPA also received comment regarding facilities with low concentration raw wastewater characteristics that do not have treatment-in-place (TIP) for some or all of the their wastewater. Commenters state that such facilities do not have TIP because the pollutant loadings in their wastewaters are low enough to meet their current local limits or the Metal Finishing or Electroplating limits without end-of-pipe treatment. EPA's sampling program focused on facilities with TIP and these facilities may have wastewaters with significantly higher concentrations of pollutants than facilities with no TIP. EPA is considering segmenting these ''low concentration'' facilities in the Cost & Loadings Model for the final rule so that more representative raw wastewater concentrations may be applied to those facilities. Therefore, EPA is soliciting comment on this approach and concentration data at the unit operation level from these ''low concentration'' facilities, as well as other possible approaches. EPA notes that several of these ''low concentration'' facilities may now fall under the Oily Wastes Subcategory due to the change in the definition of ''oily operations'' being considered by EPA for the final rule. Facilities in the Oily Wastes Subcategory are not regulated for metals and have pollutant loadings that are specific to their subcategory.

EPA has performed a sensitivity analysis to identify the potential effect of segmenting the ''low concentration'' facilities in the General Metals, Metal Finishing Job Shops, Printed Wiring Board, Non-Chromium Anodizing, and Zinc Plater subcategories. In this sensitivity analysis, EPA substituted the Electroplating (40 CFR part 413) or

Metal Finishing (40 CFR part 433) monthly average limitations, as appropriate, for unit operation concentrations found in the Cost & Loadings Model for facilities with no treatment in-place. For facilities that indicated coverage under the part 413 regulations in their survey questionnaire, EPA used the limitations from part 413. For facilities that indicated coverage under the part 433 regulations or coverage under both part 413 and part 433, EPA used the limitations from part 433. For facilities that indicated no coverage by a national effluent guideline or coverage by another category's effluent guideline, EPA assumed these facilities would have local limitations equivalent to the limitations of the part 433 regulation and, therefore, used the limitations from part 433.

EPA used the monthly average limitations instead of the long-term effluent concentration (*i.e.*, design concentration) because the Agency concluded that it may be more appropriate as a facility with no treatment in-place is not targeting a design concentration (*i.e.*, there is no treatment system to design). EPA concluded that a facility is likely to use the monthly average as a determining factor in deciding whether the installation of treatment is necessary at their site. If the facility's discharge levels fall below the monthly average limit, EPA concluded that the facility is unlikely to expend the resources to install treatment. EPA's use of the monthly average limits from the part 413 and part 433 regulations results in higher estimates of baseline loadings for this sensitivity analysis than if EPA had used the part 413 and part 433 LTAs (*see* section 16.5.1, DCN 17802 for a comparison of part 413 and part 433 Limits and LTAs). EPA solicits comment on the use of the monthly average limit in the ''low concentration'' sensitivity analysis and in the ''Baseline 413/433'' sensitivity analysis discussed earlier in this section.

The results of this ''low concentration'' sensitivity analysis are given, below, in Table III.E–3. EPA solicits comment on the results of this sensitivity analysis for both direct and indirect discharge facilities and if this approach should be applied in the final rule. EPA also solicits comment on other possible approaches to address those facilities with low concentration raw wastewater characteristics and do not have treatment-in-place (TIP) for some or all of the their wastewater.

TABLE III.E–3: RESULTS OF ''LOW CONCENTRATION'' SENSITIVITY ANALYSIS

MP&M Subcategory	MP&M NODA Removals (lb-eq/yr)		Removals using the ''Low Concentration'' Analysis (lb-eq/yr)	
	Direct	Indirect	Direct	Indirect
General Metals (GM)	996,741	1,240,219	908,473	643,427
Metal Finishing Job Shops (MFJS)	1,652	93,190	1,652	54,135
Printed Wiring Board	186	153,653	186	148,742
Zinc Platers	937	123,210	335	31,286
Non-Chromium Anodizing	2,392,735	NA	2,387,268	NA

F. Revisions to the Cost Modules

In addition to the changes to the Cost & Loadings Model that affect the estimates of pollutant loadings and reductions, EPA has also revised several aspects of the costing portion of the model (''cost modules''). EPA has included explicit costs for increased analytical monitoring, incorporated the revised long-term average concentrations, and made several minor corrections to various cost modules. EPA is also considering the addition of a sand filter to the BAT technology option. All changes to the cost modules are fully described in a memorandum entitled, ''Cost Model Changes Incorporated into the MP&M Design and Cost Model Since Proposal,'' section 16.6.1 of the public record, DCN 16741.

1. Addition of Monitoring Costs

As discussed in the proposal (66 FR 478), EPA assumed that facilities meeting local limitations or national effluent guidelines and pretreatment standards will already incur monitoring costs. EPA did not include monitoring costs in the estimates of operating and maintenance costs for the proposal and solicited comments on that approach. EPA received many comments indicating that EPA needed to include monitoring costs as the proposed MP&M rule regulates several additional pollutants (e.g., tin, sulfide and lead) than previous applicable effluent guidelines. EPA is planning to incorporate monitoring costs into the cost modules for the final rule and has done so for the analyses presented in today's document. However, EPA concluded that the estimate used for today's document is conservative (i.e., potentially over-costed) as it applies an annual monitoring cost of $13,400 for all model sites; however, sulfide, tin, and/or lead are not proposed to be regulated in some subcategories (e.g., tin, lead, and sulfide were not proposed to be regulated for railroad line maintenance facilities or shipbuilding dry docks and tin and lead were not proposed for oily wastes facilities). For the final rule, EPA may apply the pollutant-specific additional monitoring costs to facilities in subcategories with proposed limits for tin, sulfide, and lead, as appropriate (e.g., if sulfide is not regulated in the metal-bearing subcategories, no cost for sulfide monitoring will be included at those facilities). EPA currently estimates the pollutant-specific additional annual cost of quick turn-around sample analysis for lead (by graphite furnace) to be approximately $2,500; for tin to be approximately $4,700; and for sulfide to be approximately $6,200 (*see* memorandum entitled, ''Incremental Monitoring and Analytical Costs at MP&M Facilities,'' section 16.6.1 of the public record, DCN 16733 for a discussion on the basis of this cost estimate).

2. Other Costing Changes

As discussed in section III of today's document, EPA is using over 82 new sets of additional data (7 new sets from EPA's sampling program and 75 new sets from industry submitted data) to revise the target effluent concentrations used for the MP&M Cost & Loadings Model. Facilities use target effluent concentrations (or Long Term Averages (LTAs)) for designing a wastewater treatment system. The revised LTAs used in the Cost & Loadings Model for today's document and the methodology to develop those LTAs can be found in a memorandum entitled, ''Cost Model LTA: Cost Model Procedure for Calculation Long Term Averages (LTAs)

for the MP&M Cost Model,'' section 16.5.1, DCN 16742.

In addition, EPA has reviewed the equations used for various pollution prevention cost modules (i.e., paint water curtain, counter-current cascade rinsing, machine coolant recycling) and has made several minor corrections. For example, EPA corrected an error in the equation to calculate labor and electrical costs in the machine coolant recycling cost module.

EPA is also reviewing data received in comments to enhance the pollution prevention cost modules to incorporate reductions associated with the practices of the Pollution Prevention Alternative for metal finishing job shops discussed in the preamble to the proposed rule (66 FR 512). EPA has also prepared a report summarizing the findings of several case studies and information from additional research on pollution prevention in the metal finishing industry. If EPA incorporates the Pollution Prevention Alternative into the final rule, EPA will use the data in this report and the data submitted by commenters to develop more comprehensive pollution prevention cost modules. See section 16.4 of the public record, DCN 16865 for the report entitled, ''Evaluation of the MP&M P2 Alternatives.''

3. Consideration of Additional Treatment to Existing Source BAT (Sand Filter)

EPA is considering the addition of a sand filter to follow the clarifier as BAT treatment technology for metal-bearing subcategories. EPA received many comments that the proposed limits were not consistently achievable by the proposed BAT technology. EPA has addressed this issue in several ways, including the collection of additional data and changes to the statistical methodology used for calculating numerical limits (*see* section VI of today's document for a discussion of revisions to the statistical methodologies). Commenters also suggested the use of a sand filter to further ensure that minor disruptions (or ''burps'') in the treatment system would not result in violation of the limits.

When sampling BAT treatment systems in the MP&M Phase I and Phase II sampling programs, EPA collected data for treatment efficiency of sand filters. EPA found that the concentrations of pollutants of concern exiting the clarifier and entering the sand filter were often below treatable levels or below detection. EPA concluded that this occurred due to the fact that the clarifiers at these facilities were performing exceedingly well. EPA has found that when there are treatable levels of pollutants in the sand filter influent, the sand filter has good treatment efficiency. Therefore, although the addition of a sand filter is not likely to have much effect, if any, on the achievable long-term average effluent concentrations, with the possible exception of total suspended solids, it would ensure consistent effluent quality. If EPA does add a sand filter for the final rule, EPA will also calculate the loadings reduced for both direct and indirect facilities.

EPA notes that such an addition would also increase the compliance cost for the rule. To add a sand filter to the existing treatment train, EPA has developed a cost module for sand filtration. See the Multimedia Filtration Cost Module (DCN 15823) in the public record for detailed information on the sand filtration cost module. EPA has estimated national costs for the proposed Option 2 technology plus the addition of a sand filter for each of the metal-bearing subcategories. In general the cost of the ''Option 2 + Sand Filter'' represents a 32% increase over the revised Option 2 cost presented in section VII.A of today's document (*see* a document entitled, ''Summary of Sand Filter Option Costs,'' in section 6.7.1 of the public record, DCN 15823). EPA solicits comment on the addition of a sand filter to the BAT proposed technology option for metal-bearing subcategories in order to consistently meet the MP&M limits and standards, and on the cost module and national cost estimates.

G. New Survey Weights

EPA has revised the survey weights used to generate national estimates for some Phase I sites used in the Cost & Loadings Model and is considering using these for the final rule. The proposal weights contributed 14,769 Phase 1 facilities to EPA's estimate of the total number of MP&M facilities; in contrast, the revised weights contribute 11,865 to the total. The revised sample weights adjust for additional zero dischargers, remove the overestimate bias for non-zero dischargers, and exclude ineligible facilities. Additional information is provided in DCN 36086, section 19.5 of the public record. The revisions to the Phase I estimates are partly based upon imputed flows. For the final rule, if the imputed flows are substantially different as a result of using the revised imputation strategy described in section III.D, EPA also may decide to revise the sample weights for the Phase I facilities.

IV. Changes Considered to Applicability, Definitions, and Regulated Pollutants

A. Changes Considered to Applicability and Definitions

EPA received comment on several aspects of the applicability of the proposed rule. This section discusses changes EPA is considering for the final rule including: (1) The definition of ''oily operations'' for the Oily Wastes Subcategory; (2) clarification of differences between the General Metals and Oily Wastes subcategories; (3) clarification of applicability language as it pertains to printed wiring board job shops and printed wiring assembly facilities; and (4) clarification to the definition of new sources and the ''grandfather'' clause for facilities currently regulated as new sources under 40 CFR part 433 or 420.

As discussed in section III.A.1 of today's document, EPA is considering revising the applicability of the Oily Wastes Subcategory based on changes to the proposed definition for ''oily operations.'' EPA notes that such a revision would also affect the applicability of the General Metals Subcategory. EPA received comments concerning the definition of ''oily operations'' used in the applicability statement of the Oily Wastes Subcategory. Commenters provided data on several MP&M unit operations which were not part of the ''oily operations'' definition in the proposed rule. The data demonstrate low levels of metals in these unit operations that would not require treatment for metals removal. Based on the data received and a review of other unit operations containing only low concentrations of metals, EPA is currently considering a revision of the definition to read as follows:

> Oily operations means one or more of the following: alkaline cleaning for oil removal, aqueous or solvent degreasing, corrosion preventative coating (as specified in § 438.61(b)); floor cleaning; grinding; heat treating; deformation by impact or pressure; machining; painting (spray or brush); steam cleaning; and testing (such as hydrostatic, dye penetrant, ultrasonic, magnetic flux); iron phosphate conversion coating; abrasive blasting, alkaline treatment without cyanide; assembly/disassembly; tumbling/barrel finishing/mass finishing/vibratory finishing; burnishing; electrical discharge machining; polishing, thermal cutting; washing of final products; welding; wet air pollution control for organic constituents; bilge water; adhesive bonding; and calibration.

EPA notes that iron phosphate conversion coating should be distinguished from zinc, manganese, or nickel phoshate conversion coating based on the constituents of the bath.

Manganese, nickel, or zinc phosphate conversion coating baths contain metals in addition to what may be added from the substrate. EPA solicits comment on the following definition: ''Iron phosphate conversion coating baths consist of a phosphoric acid solution containing no metals. Any metal concentrations in the bath are from the substrate.''

EPA notes that in addition to adding several low metal concentration unit operations to the definition under consideration, the Agency is also considering the removal of ''laundering'' from the definition. EPA does not consider wastewater discharges from laundering (uniforms, etc.) at MP&M facilities to be process wastewater under the MP&M rule. The inclusion of laundering in the proposed definition of oily operations was an oversight which the Agency intends to correct for the final rule.

EPA did not include sampling data from paint stripping and electrolytic cleaning due to the elevated levels of metal constituents from these sources. For this notice, EPA did not include these unit operations in the definition of oily operations. However, EPA solicits comment on whether paint stripping for non-lead based paints should be included in the definition of oily operations. EPA solicits comment on the definition of iron phosphate conversion coating as an oily wastes operation to distinguish it from other phosphate conversion coating operations such as zinc or manganese phosphatizing. EPA also solicits comment on the need for a definition of ''wet air pollution control for organic constituents'' to distinguish it from ''wet air pollution control for metals or fumes or dust.''

EPA is also clarifying the determination for placing a facility in the Oily Wastes or General Metals Subcategory. EPA notes that the determination for the Oily Wastes Subcategory depends on whether the facility discharges wastewater from only those operations considered as ''oily operations,'' as defined above. With the exception of mixed-use facilities, as proposed, a MP&M facility would fall under only one subcategory. If a facility is discharging wastewater from only ''oily operations,'' as defined above, then it would be in the Oily Wastes Subcategory. If a facility is discharging wastewater from oily operations and other MP&M operations, it would not be covered in the Oily Wastes Subcategory. If this facility is not a printed wiring board facility, metal finishing job shop, non-chromium anodizer, or steel forming & finishing facility, then it would be regulated under the General Metals Subcategory. If a facility was discharging wastewater from oily operations and performed, but did not discharge wastewater from, other MP&M operations, it would still be considered in the Oily Wastes Subcategory.

EPA received comment requesting clarification of whether or not wastewaters from MP&M-like operations, such as gravure cylinder and metallic platemaking, conducted within or for printing and publishing facilities were covered by the MP&M regulation. EPA excluded such facilities from the Electroplating (40 CFR 413.01(c)) and Metal Finishing (40 CFR 433.10(c)(1)) effluent guidelines. However, in the proposed MP&M rule, EPA did not discuss the applicability to these facilities. EPA did not include these facilities in the data collection efforts for the proposed regulation, and therefore, EPA's current intent is that the final rule would not apply to these facilities.

As discussed in section III.A of today's document, EPA has made some revision to the subcategorization of certain facilities. As discussed, EPA received comments that indicated that PWB job shops are more similar to PWB facilities than metal finishing shops and are therefore not properly categorized with the Metal Finishing Job Shops Subcategory. EPA also reviewed the operations of Printed Wiring Assembly facilities to determine whether it properly categorized these for proposal. As a result, EPA is considering a number of changes for the final rule in the categorization of such facilities. EPA's rationale for these changes is discussed in further detail in section III.A. EPA would place printed wiring board job shops in the Printed Wiring Board Subcategory instead of the Metal Finishing Job Shops Subcategory and would place printed wiring assembly facilities in the General Metals Subcategory.

EPA solicits comment on these intended revisions and whether or not EPA should include a definition to identify printed wiring assembly facilities in the General Metals Subcategory applicability statement. Commenters have suggested the following definition for Printed Wiring Assembly or Electronic Manufacturing Services facilities in the General Metals Subcategory:

Contract electronics design and assembly, also known as electronics manufacturing service (EMS) facilities provide some or all of the following services: electronics design, electronics assembly, electronics testing, and product assembly for other company's electronics products. Electronics assembly is the practice of building up the electronic product by inserting electronic components onto/into a bare circuit board, soldering the components to the board, and in some cases applying a conformal coating and/or cleaning the completed assembly. Other manufacturing functions include testing, ''burn-in'' of the components, and box build. Bare boards are, along with electronics components, an input to the assembly process. The manufacture of bare circuit boards is not part of the assembly or EMS process.

As described in the proposed MP&M rule (66 FR 506), both indirect and direct dischargers would be ''new source'' under the new rule if construction commences following 60 days after publication of the final rule. EPA recognizes that, for indirect dischargers, this may be different from what was done in past effluent guidelines, where the proposal date was used to determine a new source.

In addition, EPA received comments regarding the confusion of the ''grandfather'' clause for facilities that are currently subject to new sources limitations and pretreatment standards under either 40 CFR part 433 or 40 CFR part 420. EPA included language in the proposal to provide a protection period for facilities currently subject to ''new source'' regulation. This language may be found in the codified portion of the proposal under the NSPS and PSNS (new source) sections for the General Metals, Metal Finishing Job Shop, Non-Chromium Anodizing, Printed Wiring Board, and Steel Forming & Finishing subcategories. EPA's intent was to include language to protect facilities that are currently regulated as new sources under other regulations from a requirement to comply with the Metal Products and Machinery limitations and standards for a period not greater than 10 years from the date of completion of the new source construction. Section 306(d) of the CWA provides that any point source which is constructed to meet new source performance standards shall not be subject to any more stringent standards of performance during a 10-year period beginning on the date of completion of such construction or another statutorily defined period whichever ends first. 33 U.S.C. 1316(d).

At the suggestion of some commenters, EPA is considering moving the grandfathering language it had proposed to the existing source provisions (BPT, BAT, PSES) of each relevant subcategory for the final rule. For example in the General Metals Subcategory proposed §§ 438.12 (BPT) and 438.14 (BAT) this change could appear as follows:

(d) If a point source meets the applicability criteria in § 438.10, and construction was

commenced on that point source after [insert date 10 years prior to the date that is 60 days after the publication date of the final rule] but before [insert date that is 60 days after the publication date of the final rule], and it was subject to the provisions of 40 CFR 433.16, then the point source must continue to achieve the applicable standards specified in 40 CFR 433.16 until the expiration of the applicable time period specified in 40 CFR 122.29(d)(1). Thereafter, the source must achieve the applicable standards specified in this section.

Section 438.15 would be amended to add paragraph (e) as follows:

(e) If a source meets the applicability criteria in section 438.10, and construction was commenced on that source after [insert date 10 years prior to the date that is 60 days after the publication date of the final rule] but before [insert date that is 60 days after the publication date of the final rule], and it was subject to the provisions of 40 CFR 433.17, then the source must continue to achieve the applicable standards specified in 40 CFR 433.17 for ten years beginning on the date the source commenced discharge, or for the period of depreciation or amortization of the facility for the purposes of section 167 or 169 (or both) of the Internal Revenue Code, whichever is shorter. Thereafter, the source must achieve the applicable standards specified in this section.

Sections 438.16 (NSPS) and 438.17 (PSNS) would be amended by removing paragraph (a) and renumbering the remaining paragraphs. If EPA were to make this change for the final rule, it would make the appropriate changes for all effected subcategories. Finally, EPA has received comment regarding the transfer of certain operations from the existing Iron & Steel effluent guidelines (40 CFR part 420) to the proposed MP&M effluent guidelines. In the proposed MP&M rule, EPA refers to facilities with these operations as the Steel Forming & Finishing Subcategory. Specifically, EPA proposed to move the following operations from Iron & Steel to MP&M: surface finishing or cold forming of steel bar, rod, wire, pipe or tube; batch electroplating on steel; continuous electroplating or hot dip coating of long steel products (*e.g.* wire, rod, bar); batch hot dip coating of steel; and steel wire drawing. These operations produce finished products such as bars, wire, pipe and tubes, nails, chain link fencing, and steel rope. The Agency proposed to move these operations into the MP&M rule from stand-alone facilities, as well as from facilities that also have other operations that are currently regulated by the Iron & Steel effluent guidelines (i.e., facilities that are making steel and producing wire and wire products and are subject to both ELGs and the combined wastestream formula).

Since proposal, EPA revisited the record of the representative iron and steel finishing operations and compared the associated wastewater characteristics to those from the wire drawing facilities that were sampled under the MP&M rulemaking effort. EPA confirmed that the wastewater characteristics of the proposed transferred operations more closely resemble those from MP&M operations than those from representative iron and steel finishing operations. For instance, the average lead and zinc concentrations in wastewaters from the transferred wire drawing facilities are one to three orders of magnitude higher than those from representative iron and steel facilities. On the other hand, the concentrations for these pollutants are within the range of pollutant concentrations found in similar MP&M operations. Furthermore, most of the unit operations present in facilities being considered for transfer are the same as those found in the MP&M facilities, while only approximately 30% of these operations are the same as those found in the iron and steel facilities. EPA performed a comparison of flow rates between the transferred facilities and the proposed iron and steel finishing subcategory. The average flow rate from the proposed Iron & Steel Finishing subcategory is approximately half billion gallons per year, while the average flow rate from the transferred facilities is less than 30 million gallons per year (*see* Iron & Steel ELG record, Docket Number W–00–25, section 14.2, DCN #IS10740). EPA also notes that the average flow rate from the General Metals Subcategory of the MP&M rule is of the same order of magnitude as that from the transferred facilities. As a result of the above evaluations, EPA continues to conclude that the transferred operations would be more appropriately regulated under part 438, the MP&M effluent limitations guidelines and standards, in the Steel Forming & Finishing Subcategory. If EPA finalizes limitations and standards for the Steel Forming and Finishing subcategory of the MP&M regulation, EPA will also amend the applicability section of the iron and steel rulemaking to reflect this change. Until then, these operations continue to be regulated under part 420.

EPA also proposed moving certain electroplating operations currently subject to the Metal Finishing part 433 effluent limitations guidelines and standards into the revised part 420. Commenters on the Iron & Steel proposed rule strongly opposed the incorporation of the continuous electroplating of flat steel products (*e.g.,* sheet, strip, plate) into part 420, indicating the preference for electroplating operations of all types to be considered as a whole (*e.g.,* under the part 433 regulations or eventually the MP&M regulations). EPA proposed to regulate similar operations in the MP&M proposal in a number of subcategories. EPA decided not to include wastewater discharges from continuous electroplating of flat steel products in the final Iron & Steel regulations (signed on April 30, 2002). Wastewater discharges from these operations are currently subject to part 433 and EPA's present intention would be to include these in the Steel Forming & Finishing Subcategory of the final MP&M regulations. EPA will include these facilities in its analyses for the final rule. All non-confidential items pertaining to these facilities can be found in the public record for this document.

B. Changes Considered to the Pollutants Selected for Regulation

EPA received comments on several of the pollutants that were selected for regulation in the proposed rule. Based on new data from industry sources and EPA's data collection effort, EPA is considering whether to revise the list of pollutants selected for regulation. For example, EPA has also collected analytical data specific to the Steel Forming & Finishing Subcategory after proposal and is including this data in its analyses and in the MP&M rulemaking record.

1. Tin

EPA received comments regarding EPA's selection of tin as a regulated pollutant for metal-bearing subcategories. Many of the comments revolved around whether or not tin can be precipitated using EPA's proposed BAT technology that includes hydroxide precipitation. Of the 25 sites having tin data, 20 show tin removals greater than or equal to 95 percent. EPA's sampling data show a median removal of tin in BAT treatment systems of 98.6 percent. Analysis of the treatment systems employed by these sites shows that all but two use chemical precipitation followed by solids removal with either a clarifier or membrane filter. The two sites not using chemical precipitation list ultrafiltration, presumably for removal of oil and suspended solids, as their treatment technology.

Unlike other priority pollutant metals, tin does not readily form insoluble metal hydroxides in the chemical precipitation process. Based on information provided in the CRC

Handbook of Chemistry and Physics (68th Edition), there are two possible insoluble forms of tin that are produced during treatment of MP&M wastewater: tin sulfide (SnS) and tin phosphate ($Sn_3(PO_4)_2$). The CRC lists the solubility of tin sulfide at 0.02 mg/L. The CRC lists tin phosphate as insoluble, but provides no maximum concentration. According to another reference (Freeman, H.M., ''Standard Handbook of Hazardous Waste Treatment and Disposal, 1989), tin in metal-bearing wastewater is often found complexed with other constituents such as chelating agents present in electroless plating wastewater or cleaning solutions. Removal of the tin complex requires pH adjustment to break the tin-chelant bond followed by the reduction of tin to its elemental form.

Based on the information provided in the literature and gathered from the MP&M sampling episodes, no conclusions can be drawn regarding the excellent tin removals by the chemical precipitation systems sampled by EPA. The mechanism of tin removal is likely dependant on the chemistry of the influent wastewater, and involves a combination of sulfide precipitation, phosphate precipitation, and co-precipitation with other metals such as iron. EPA currently intends to retain tin as a regulated pollutant. EPA will reevaluate this intention if additional data received in comment indicates chemical precipitation followed by gravity settling will not meet the proposed effluent limit.

2. Total Sulfide

EPA also received many comments on its proposal to regulate total sulfide for many of the proposed subcategories. Commenters in the metal-bearing subcategories (i.e., general metals, metal finishing job shops, printed wiring boards, steel forming & finishing, and non-chromium anodizing) were concerned that regulation of sulfide would limit their ability to use sulfide-based chemistries in their treatment systems. Commenters pointed to other chemicals that EPA chose to not regulate based on their use as treatment chemicals (*e.g.,* aluminum, iron, calcium, magnesium, sodium, sulfate, chloride, ziram). Based on its use as a treatment chemical in the metal-bearing subcategories EPA intends to not regulate total sulfide for the metal-bearing subcategories in the final rule. EPA solicits comment on this change.

3. Molybdenum

EPA received comments regarding the selection of molybdenum as a regulated pollutant. Similar to the comments on tin, the comments revolved around whether or not molybdenum can be precipitated using hydroxide precipitation as is used in EPA's proposed BAT technology. EPA has reviewed literature to find out whether or not molybdenum will precipitate using either hydroxide or sulfide precipitation. and has found that molybdenum does not form metal hydroxide precipitates (*see* memorandum titled ''Molybdenum,'' section 16.2, DCN 17754). Molybdenum was observed at detectable concentrations in 283 of 1306 treatment system samples representing all 111 sampling episodes. The molybdenum raw waste concentrations ranged from 0.0007 to 40.3 mg/l. Effluent concentrations ranged from 0.0007 to 3.22 mg/L. Treatment effectiveness calculations of the chemical precipitation systems ranged from a negative 249% to a positive 71% removals (*see* memorandum titled ''Molybdenum,'' section 16.2, DCN 17754).

The sampled hydroxide precipitation treatment systems did not show a consistent ability to remove molybdenum from waste water. Molybdenum is, however, present is waste waters as described above and is removed incidentally in waste treatment systems. These removals may occur when molybdenum adheres to oily wastewaters that are removed in the oil water separation step or other treatment steps such as flocculation. EPA is reviewing these removal mechanisms for molybdenum. In addition to EPA's sampling data, airline industry submitted data demonstrates removals of molybdenum from BAT treatment systems with supplementary chemical additives between a negative 4% to a positive 85%. Therefore, EPA has included molybdenum removals in its estimates of pollutant reduction for the MP&M NODA. However, based on its inability to be treated by EPA's proposed hydroxide chemical precipitation technology, EPA is considering not regulating molybdenum in the final rule. EPA solicits comment on this change.

4. Steel Forming & Finishing Subcategory

As discussed in section II of today's document, EPA did not sample any BAT Steel Forming & Finishing facilities prior to proposal and solicited data from such facilities. Based on post-proposal sampling data collected for the Steel Forming & Finishing (SFF) Subcategory, EPA is considering the following pollutants for regulation of direct dischargers for this subcategory: chromium, copper, lead, nickel, zinc, manganese, molybdenum, tin, oil and grease (as HEM), and total suspended solids. EPA is considering the same pollutants as above for indirect dischargers except for oil and grease (as HEM) and total suspended solids. At proposal, EPA based the selection of pollutants for regulation for this subcategory on data transfers from the General Metals Subcategory. Of the pollutants proposed for regulation for the Steel Forming & Finishing Subcategory, EPA is considering to no longer regulate cadmium, cyanide, silver, total sulfide, organics (*e.g.,* TOP, TOC) as these pollutants are not found in SFF wastewater at treatable levels.

V. New Information and Consideration of Revision to Economic & Benefit Methodologies

A. Revised Cost Pass-Through and Market Structure Analysis

As discussed in Chapter 5 of the document titled, ''Economic, Environmental, and Benefits Analysis for the Proposed Metal Products & Machinery Rule,'' (EEBA) (EPA–821–B–00–008), and in response to comments received on the proposal economic impact analysis, EPA revised the analysis of cost pass-through potential for the 19 MP&M sectors. This analysis estimates how much of compliance-related cost increases a sector can be expected to pass on to its customers in higher prices. The analysis consists of two parts:

- An econometric analysis of the historical relationship of output prices to changes in input costs, and
- An analysis of market structure characteristics.

These two analyses together provide a cost pass-through coefficient for each sector. This analysis refines the methodology developed for the Phase 1 and proposal MP&M analyses in several places, and updates the data used through 1996, the base year of the regulatory analyses. Changes to reporting by NAICS codes for the Census economic data but not for price indices in 1997 prevented use of later years' data in this analysis. Today's document provides a summary of the revised analysis. More complete documentation is provided in section 17.2.1, DCN 35250, of the public record.

1. Econometric Analysis

EPA performed an econometric analysis of input costs and output prices to estimate cost pass-through elasticities for 18 of the 19 Phase I and Phase II MP&M Sectors. These elasticities indicate the changes in output prices by

sector that have occurred historically in relation to changes in the cost of production inputs.

EPA estimated the cost elasticity of price by regressing annual output price indices on annual input price indices. Use of historical data took into account the full range of possible mechanisms by which input costs affect output prices, including technical changes, substitution, non-competitive pricing mechanisms, imperfect information, and any other shifts or irregularities in the supply and demand functions.

The 19 MP&M industry sectors encompass 224 different SIC codes. EPA was able to estimate the cost elasticity of price based on historical data for only 170 manufacturing SIC codes. EPA could not estimate the cost elasticity of price for Aerospace and all non-manufacturing industries due to data limitations. The Agency assigned a cost pass-through coefficient to the aerospace sector based on the market structure analysis. EPA assumed zero cost pass-through for non-manufacturing industries because these industries tend to be more competitive due to lower entry barriers than in manufacturing industries.

The estimated parameters show that 16 of the 18 MP&M industrial sectors have been able to increase selling prices between 0.39 percent and 1.2 percent for every one percent increase in input costs. This means that some industrial sectors exhibit a potential for recovering only a fraction of the input price increase through an increase in the output price while other sectors have the ability to raise their output prices in excess of input price increases. The estimated input cost coefficients are negative for two industrial sectors: Printed Circuit Boards and Office Machines. In both of these sectors, output prices decreased as input costs increased. This negative relationship indicates that significant competition in these sectors combined with technological innovation have yielded market conditions with declining output prices regardless of the change in production input costs. Based on these findings, EPA assumes that the Printed Wiring Board and Office Machine sectors have zero cost pass-through ability. Estimated regression coefficients for the 18 industrial sectors are presented in section 17.2.1, DCN 35250, of the public record.

EPA assigned MP&M sectors to low, average, and high cost pass-through categories based on the results of the regression analysis. EPA then compared the classifications with the results of the market structure model.

2. Market Structure Analysis

EPA assessed the market structure characteristics of each MP&M sector, in order to validate the values for cost pass-through potential estimated in the regression analysis. How much of a cost increase a firm can pass on through higher prices depends on the relative market power of the firm and its customers. The market structure analysis assesses the relative market power enjoyed by firms in each MP&M sector and provides ordinal rankings that were used to validate the cost pass-through coefficients estimated by the econometric analysis. EPA analyzed five indicators of market power: concentration, import competition, export competition, long term growth, and barriers to entry and exit. Section 17.2.1, DCN 35250, of the public record provides detailed descriptions of the rationale for using these measures and the metrics and data sources EPA used to evaluate each measure. EPA only considered manufacturing firms; it excluded non-manufacturing firms due to data limitations. As noted above, EPA assigned zero cost pass-through ability to non-manufacturing firms.

EPA again assigned each sector to high, medium and low cost pass-through categories based on the results of the market structure analysis, and compared the results of this classification with the classification based on the regression analysis.

The two analyses classified 13 of the 19 sectors in the same cost pass-through (CPT) category (high, medium or low). For these sectors, the market structure analysis appears to validate the cost pass-through coefficient derived using the econometric analysis. No econometric estimate is available for the aerospace sector. EPA categorized this sector in the high CPT category based on the market structure analysis only and estimated its cost pass-through coefficient as the average CPT value for all sectors classified in the high category based on the regression analysis (excluding Mobile Industrial Equipment whose CPT coefficient was also revised based on the market structure analysis). For the remaining five sectors; however, the two analyses assign sectors to different cost pass-through categories. EPA undertook a more detailed analysis of these sectors' market structures to validate their cost pass-through coefficient. EPA based the choice of a cost pass-through coefficient for this document on this more detailed analysis for the following sectors: Job Shops, Other Metal Products, Aircraft, Motor Vehicle, and Mobile Industrial Equipment. In 4 cases (Job Shops, Other Metal Products, Motor Vehicle, and Aircraft), the more detailed market structure analysis confirmed the regression estimates of the econometric analysis, and in one case (Mobile Industrial Equipment) EPA rejected the classification based on the econometric analysis.

EPA assigned the Mobile Industrial Equipment sector to the high category by the econometric analysis and the average category by the market structure analysis. EPA concluded that this sector is more appropriately characterized by average cost pass-through because the sector has witnessed trends in recent years suggesting that firms in this sector lack strong ability to pass through cost increases. Specifically, growth rates in the construction industry and in the farm and machinery equipment industries began leveling or even declining in recent years after a sustained period of growth. These declining trends are not fully represented in the regression analysis because the last year of data for the analysis is 1996. EPA therefore revised the cost pass-through coefficient for this sector to equal the average cost pass-through value for all sectors classified in the average category based on the regression analysis.

Section 17.2.1, DCN 35250, of the public record provides the choice of a cost pass-through coefficient for this document selected for each sector. The specific values selected for each sector (high, average and low) are the regression elasticities for the 17 sectors where the regression results were confirmed by the market structure analysis (including the detailed analysis), and the average of the regression coefficients in the appropriate category (high, average or low) for the sector that was re-classified based on the market structure analysis (Mobile Industrial Equipment) and for Aerospace. The revised cost pass-through analysis resulted in a significantly lower cost pass-through coefficient of 0.57 for Job Shops than was used in the proposed rule analysis, and zero cost pass-through for Printed Wiring Boards, Office Machines, and all non-manufacturing facilities. In the analysis for proposal, EPA assumed that non-manufacturing facilities in a given sector had the same cost pass-through potential as manufacturing facilities in the same sector.

The estimated cost pass-through coefficients reflect sector-level cost pass-through potential. Cost increases that affect all facilities in an industry are more likely to be recovered through industry-wide price increases, whereas cases where only some facilities in an

industry incur cost increases are less likely to result in price increases. To account for the likelihood that cost pass-through ability will vary with the extent to which regulation-induced cost increases apply generally over production in a sector, the analysis adjusts the estimated cost pass-through potential for the estimated extent of industry coverage. Specifically, the analysis adjusts the cost pass-through potential by multiplying the estimated sector-wide cost pass-through coefficient by the fraction of a sector's production value that is expected to incur compliance costs.

Findings from the revised cost pass-through analysis in general are consistent with findings from the cost pass-through analysis reported by the industry associations, including Printed Wiring Board and Metal Finishers. Specifically, facilities belonging to the Printed Wiring Board subcategory were found to have zero cost pass-through potential. The Metal Finishing Job Shops Subcategory was found to have a low cost pass-through potential. EPA estimated new cost pass-through coefficients and adjusted them by the fraction of the sector's production value that is expected to incur compliance costs. The effect of these two changes decreased the cost pass-through coefficient assigned to the Job Shop subcategory from 0.91 at proposal to 0.25.

The estimated cost pass-through coefficients reflect industry-wide cost pass-through potential. Under conditions of perfect competition—including product homogeneity (i.e., products produced by one firm are perfect substitutes for products produced by other firms), and homogeneity of production technology and cost across firms—the price response to a general industry-wide change in production costs is likely to be industry-wide and similar across all firms. However, for a number of reasons, markets in modern manufacturing industry generally diverge to some degree from these perfect competition conditions. Example reasons include: variation in product quality; imperfectly competitive markets (*e.g.,* markets in which individual firms possess different degrees of market power); and segmented markets (*e.g.,* geographically segmented markets). In the presence of such imperfections, individual firms will very likely respond differently in their ability to pass on cost increases in higher output prices even when the production cost increase applies to all, or a substantial fraction, of an industry's production. To assess the sensitivity of the economic impact analysis results to the sector-wide cost pass-through estimates, EPA also conducted the economic impact analysis based on the assumption that no cost increases can be recovered through price increases. The Agency found that results for 17 of the 19 MP&M industrial sectors do not significantly vary when the zero cost pass-through assumption is used instead of the estimated cost pass-through capabilities. The only exceptions are the Metal Finishing Job Shop and Iron and Steel sectors. Assuming a zero cost pass-through coefficient for these sectors resulted in an increase in the number of severe impacts from 520 to 565 and 17 to 21, respectively, under the NODA option with methodology changes. Detailed results using zero cost pass-through assumption can be found in section 17.1.5, DCN 35060, of the public record. EPA solicits comment on these changes to the methodology for cost pass-through.

B. Consideration of Changes to Closure and Financial Stress Test Methodologies

1. Sector-Specific Thresholds for Evaluating Moderate Impacts

For the proposed rule analysis, EPA evaluated moderate impacts based on two measures of financial health: pre-tax return on assets (PTRA) and the interest coverage ratio (ICR). PTRA is a measure of profitability and measures the firm's ability to provide returns adequate to attract external capital or to justify reinvestment of the firm's own resources. ICR is a measure of the firm's ability to pay fixed interest costs, and affects the firm's ability to obtain debt financing. EPA used a single threshold for each measure (8 percent for PTRA and 4 for the ICR) to determine when a firm might experience financial stress in the proposed rule analysis. Commenters questioned this approach because a single threshold measure does not account for differences in the rates of return required to attract investment in different industries. For the final rule analysis, EPA is considering using sector-specific thresholds for these measures. Use of thresholds specific to each sector will account for industry differences in the factors that contribute to financial distress, such as the volatility of their earnings, and will improve the reliability of the analysis. For the analyses presented in section VII.A.3 of today's document, EPA has incorporated these changes into the methodology.

Risk Management Associates (RMA, formerly Robert Morris Associates) provides information on the distribution of selected financial ratios for specific industries, defined by SIC codes. The RMA data come from credit data submitted by RMA-member lending institutions. As a result, the RMA data may not include the most vulnerable firms in each industry, which are unlikely to be applying for loans. EPA used as a threshold the lowest fourth-quartile value for two financial indicators: (1) Pre-tax return on sales (PTRS) and (2) interest coverage ratio. EPA substituted PTRS for the pre-tax return on assets ratio used in the analysis for the proposed rule. In theory, return on assets is a more appropriate measure of financial performance as viewed by investors. RMA notes, however, that firms with heavily depreciated plant, large intangible assets, and unusual income or expense items can lead to distortions in the return-on-asset ratios. While the return-on-sales ratio can also be distorted by unusual income or expense items, it is not subject to distortions based on reported assets. EPA therefore chose the sales-based ratio as a more reliable comparison of financial performance within sectors. The twenty-fifth percentile is the value below which the lowest quarter of firms in each industry fall. It is important to note that these thresholds may indicate financial distress, but are not a reliable measure of potential closure. A quarter of the firms in each industry report values below the thresholds, many of which may continue to operate comfortably with those financial characteristics. The thresholds used are likely to overstate moderate impacts for the following reasons: (1) The RMA database may not include the most vulnerable firms in each industry; and (2) having values in the lowest fourth quartile may be adequate to support continued trouble-free operation for some firms.

EPA developed thresholds by weighting the RMA lowest quartile value for each SIC in a sector by the 1997 value of shipments for that SIC relative to the total 1997 sector value of shipments. The calculations were done separately for manufacturing and non-manufacturing SICs in those sectors that have both. The thresholds were weighted using 1997 value of shipments because data are available from the Census for all SICs for that year, while data for between-Census years are only reported for manufacturing SICs. EPA assumed that the value of shipment weights for 1997 would be similar to the weights for 1996, if 1996 value of shipments data were available for all SICs. The PTRS and ICR sector-specific thresholds can be found in section 17.5.1, DCN 35450, of the public record.

2. Use of Single Net Present Value Test To Assess Potential for Closures

For the proposed rule analysis, EPA estimated the potential for facility closures due to the regulation using two tests: negative Net Present Value (NPV) (based on going concern value minus liquidation value) for facilities that provided information on liquidation values (most Phase I facilities and Phase II facilities with flows greater than 1 million gallons per year), and negative After-Tax Cash Flow (ATCF). Facilities that failed both tests under baseline or post-compliance conditions are baseline or post-compliance closures, respectively. For facilities that did not provide liquidation values, EPA used only the ATCF test. Commenters questioned this use of a two-test approach for estimating closures in facilities for which it can be done both ways. For the final rule, EPA is considering using a single test for closures, based on the NPV of the facility.

NPV including liquidation values is conceptually an appropriate measure of long-term viability, for two reasons. First, a firm can have positive cash flow but still not be making a return sufficient to retain investment over time. The net present value test takes into account the return required for a facility to continue to attract sufficient investment to continue operating. Second, a firm's decision to close a facility can be influenced by the extent to which the facility's assets can be sold or put to other uses. In addition, firms consider the direct costs of closing the facility, which may include the costs of cleaning up contaminated sites, state requirements to treat contaminated sediments, legal fees, lease obligations, employee termination costs, and the like, when deciding whether to close a site. Both industry- and site-specific factors influence the value of a site's assets for other uses, including the transferability of fixed assets to other uses and current market demand for products in inventory.

Where estimates of liquidation value are available the most reasonable way to assess the potential for site closures is to compare the value of the site if it continues to operate (the net present value of the business as a ''going-concern'') with its value if it is closed (the liquidation value.) Net liquidation values (proceeds from closing less the costs of closing) can be either positive or negative. Facilities will be more likely to close, other things being equal, the higher their liquidation values and the lower their post-closure costs.

EPA requested information on site liquidation values in its Phase 2 economic surveys. Of the 938 sample MP&M facilities, 219 provided liquidation values in the survey. EPA attempted to estimate liquidation values where they were not reported but concluded that predicting liquidation values based on the facility-specific information provided by the surveys would add substantial uncertainty to the analysis. Estimates of liquidation value are available only for 23 percent of the sample facilities. Given EPA's belief that liquidation value estimates are substantially speculative and subject to considerable error, EPA intends for the final rule analysis, to calculate net present value based solely on the facility's value as a going concern and to not account for liquidation value as part of the net present value test. The Agency recognizes that assessing closures based only on going concern value may overstate the likelihood of closure where liquidation value is negative and understate the likelihood of closure where liquidation value is positive. EPA seeks comment on this approach. Analyses presented in section VII.A.3 of today's document include the use of a single test based on NPV excluding consideration of liquidation values.

To assess the sensitivity of the economic impact analysis results to the inclusion or exclusion of liquidation values, EPA also conducted its analysis including liquidation values in the NPV test for facilities that reported liquidation values. The Agency found that including liquidation values in the NPV test resulted in a decrease in the number of severe impacts for the Metal Finishing Job Shop, General Metals, and Oily Wastes subcategories from 520 to 348 and from 111 to 96 and from 1 to none, respectively. On the other hand, including liquidation values in the NPV test resulted in an increase in the number of severe impacts in the Printed Wiring Board subcategory from 55 to 83 under the NODA option. Other subcategories were not sensitive to inclusion of liquidation values in the NPV test. Detailed results using available liquidation values can be found in section 17.1.3, DCN 35050, of the public record.

3. Evaluation of Altman Z' as an Alternative Test for Moderate Impacts

Based on comments received, EPA is evaluating use of the Altman Z' test as an alternative to the PTRA and ICR tests for moderate impacts for the final rule. This test has been used in other ELGs, and it is commonly used as a predictor of bankruptcies. The Altman Z' test predicts firm bankruptcies based on a weighted set of firm financial ratios. The ratios and weights were developed in a multiple discriminant analysis of 33 publicly-traded firms that declared bankruptcy between 1945 and 1965 and another 33 non-bankrupt publicly-traded firms. The original model was later re-estimated to allow its use for privately-held firms, although the analysis was based on the same sample firms and financial data. The resulting model calculates a ''Z'' score as a combination of five financial ratios: working capital/total assets, retained earnings/total assets, earnings before interest and taxes (EBIT)/total assets, book value of net worth/total liabilities, and sales/total assets. ''Z'' scores of less than 1.23 indicate high potential for bankruptcy, scores above 2.90 indicate low potential for bankruptcy, and scores in between are indeterminate.

C. Consideration of Changes to Cash Flow Calculations

EPA received a number of comments on the calculation of cash flows used to assess the potential for closures and moderate impacts as a result of the rule. EPA is considering a number of changes to the calculation of cash flow to address these comments. These include incorporating a measure of normal capital outlays in baseline cash flow, limiting the recognition of tax shields associated with compliance costs, updating survey financial data to current dollars using sector-specific price indices, and adjusting the methods used to recognize the cost of financing compliance capital costs. EPA solicits comment on these issues.

1. Baseline Capital Outlays

Commenters expressed the view that EPA's economic impact analyses should take account of MP&M firms' regular need to replace and update their pollution control and other capital equipment. The commenters suggested using accounting depreciation data provided in the MP&M surveys as a proxy to include these expenditures in estimated cash flows.

EPA recognizes that cash outlays for capital replacement and additions are required for a firm to remain in business, and should be reflected in the cash flows used to assess economic impacts. However, the Agency does not conclude that accounting depreciation provides a reliable proxy for these continuing capital expenditures. Reported depreciation is a periodic accounting charge for capital assets acquired in the past, and may be either larger or smaller than annual future capital expenditures for several reasons.

Depreciation is based on historical cost, which may not equal the replacement cost of capital assets. In addition, reported depreciation is based on various accounting and tax reporting conventions that may bear little resemblance to the actual economic life and consumption of capital assets. Finally, a firm's capital outlay decisions are influenced by the quality of its investment opportunities, the financial health of the enterprise, and by general business conditions, which vary over time.

As an alternative approach, EPA developed a regression model of capital outlays that relates capital expenditures to a firm's financial characteristics and the general business environment. Specifically, the model relates a firm's historical capital expenditures to: firm-specific revenues, capital turnover rate, and capital intensity; capacity utilization in the relevant industry; and the economy-wide cost of debt capital and rate of change in the price of capital goods. This model can be used to estimate baseline continuing capital outlays for each MP&M facility, which can then be included in the discounted cash flow analyses used to assess facility economic impacts. EPA's goal is to estimate baseline cash flow for the business as it is (under steady-state conditions). EPA therefore estimated the model using data for a 10-year period that reflected a range of economic conditions. The Agency would use the estimated model in conjunction with MP&M facility characteristics and indicators of the general business environment for the relevant years to estimate facility capital expenditures. The analyses presented in section VII.A.3 of today's document include baseline capital outlays based on the regression model discussed above.

EPA seeks comment on the regression model and its use to calculate baseline capital expenditures. The regression model is described in detail in section 17.3.1, DCN 35350, of the public record.

2. Consideration of Tax Effects

Compliance costs are tax deductible for income tax purposes. Firms incurring these costs will therefore pay fewer taxes than they otherwise would pay, which partially offsets the negative impact of the compliance costs on firms' income. The proposed rule analysis assumed that firms would benefit by the full amount of tax shields on compliance costs, based on a standard assumed 34 percent marginal tax rate. Some commenters expressed concerns about MP&M firms' ability to make use of the full tax shield from compliance costs. In particular, firms may not be paying sufficient taxes in the baseline to take advantage of the tax shields in the year compliance costs are incurred. Some firms with lower net income may also be paying less than the assumed 34 percent marginal tax rate. While firms may be able to carry forward losses to reduce taxes in later years, EPA recognizes that the methods used in the proposed rule analysis to calculate tax benefits may overstate those benefits in some cases. This is more likely to be true for single-facility firms, whereas parent companies with multiple facilities might take current advantage of tax benefits from losses at individual facilities.

To address this issue, EPA is considering limiting the calculation of tax shields to no greater than the amount of tax paid by facilities in the baseline. For the purposes of the analyses presented in today's document, EPA has incorporated this change in methodology. As a result, the analysis assumes that facilities will not be able to offset an implicit negative tax liability against positive tax liability elsewhere in the firm's operations or to carry forward (or back) the negative income and its implicit negative tax liability to other positive income/positive tax liability operating periods. On average, this approach will overstate impacts on facilities, because some MP&M firms may be able to use tax shields that exceed baseline taxes at the affected facility, especially if the facility is owned by a multiple-site firm. EPA is also considering applying this limitation on tax benefits only to single-facility MP&M firms. The Agency seeks comments on this issue.

D. Updating Survey Data to Current Dollars

For the proposed rule analysis, EPA used the Producers Price Index (PPI) for all industrial goods to update Phase II MP&M survey data to 1996 values. Since that analysis was completed, EPA has compiled sector-specific PPI values and intends to use these values to update the survey data for the final rule analysis. The analyses presented in section VII.A.3 of today's document include the use of sector-specific price indexes. Detailed information on the methods used to calculated sector-specific PPIs and the results are provided in section 17.5.2, DCN 35460, of the public record.

E. Adjusting Abnormally High Labor Cost Estimates

Since proposal EPA found that the per-employee labor costs for certain privately held facilities are materially higher than the average over all facilities in the same subcategory. Labor costs for these facilities thus appear to be overstated and include ''excess owner compensation'' that, under a more precise accounting regime, would be recorded as facility profit. Including the excess owner compensation in the labor cost account reduces the apparent profitability of these facilities and increases the likelihood that they will fail the post-compliance closure test (if they passed the baseline closure test). To illustrate, one facility, a Job Shop, reported per employee labor cost of $71,000 that is nearly triple the average of other facilities in this industrial sector and its labor costs as a percent of reported total operating costs are also extremely high. This per-employee level of labor costs indicates that the owner of the facility may have reported the business' net income in compensation expense (i.e., as compensation to the owner that exceeds the fair market value of management services) instead of facility profit.

The Agency found that about two percent of the sample facilities report abnormally high labor costs. To estimate more accurately the profits for facilities that appear to overstate their labor cost, the Agency is considering adjusting reported facility labor costs based on Economic Census data. This adjustment involves the following steps. First, the Agency estimated average per-employee labor cost by establishment size for the MP&M sectors based on Economic Census data. Second, EPA identified facilities reporting per employee labor costs in excess of 1.5 times the average per employee labor cost, estimated for facilities in that sector and of that establishment size. For facilities with per-employee costs exceeding the 1.5-multiple-of-average threshold, the Agency revised the calculation of facility net present value based on the adjusted labor costs and used the revised facility value in the facility closure test. For the analyses presented in section VII.A.3 of today's document, EPA has incorporated these changes into the methodology. Section 17.5.3, DCN 35470, of the public record summarizes average per employee labor cost by establishment size for the MP&M sectors based on Economic Census data. EPA solicits comment on this approach and on the extent to which ''excess owner compensation'' occurs within various MP&M sectors.

F. New Information on POTW Administrative Costs

EPA received comments regarding the use of EPA's 1997 POTW survey. Commenters stated that EPA underestimated the administration costs

to POTWs to implement this rule. Commenters provided new information on POTW characteristics which EPA will use to refine its analysis of POTW administrative costs and benefits for the final rule. The Association of Metropolitan Sewage Agencies (AMSA) conducted a survey of the 150 POTWs included in EPA's 1997 POTW survey. Responses to the AMSA survey were received from 70 sewerage authorities representing 177 POTWs. The 177 POTWs responded to the AMSA survey correspond to 77 POTWs included in the EPA survey. In addition, the North Carolina Pretreatment Consortium conducted a survey of POTWs in that state. EPA is evaluating the results of these surveys, and will use the results as appropriate to verify and supplement information from the previous MP&M POTW survey on loadings, number of MP&M facilities served, and administrative costs. The AMSA and North Carolina Pretreatment Consortium surveys can be found in section 17.6 of the public record.

G. Human Health Benefits From Reduced Exposure to Lead

For the proposed rule analysis, EPA assessed benefits of reduced lead exposure from consumption of contaminated fish tissue to three population groups: (1) Preschool age children, (2) pregnant women, and (3) adult men and women. The quantified health effects in children included neurological effects to preschool children and neonatal mortality. The quantified health effects in adults all related to lead's affect on blood pressure (BP) and included incidence of hypertension in adult men, initial non-fatal coronary heart disease (CHD), non-fatal strokes (cerebrovascular accidents (CBA) and atherothrombotic brain infarctions (BI)), and premature mortality.

The health effect quantified for the proposed rule presented only a portion of the spectrum of adverse health effects potentially caused by exposure to lead, even at relatively low doses. Health effects related to lead that were not valued in the benefits calculations of the proposal include cancer, cognitive and behavioral effects in older children and adults, infertility in men and women, decreased physical growth in children, hematological and kidney effects, and peripheral nervous system effects. EPA continues to evaluate the available information to determine whether there is sufficient data to support a dose-response function for one or more of these additional lead effects on human health.

Since the proposed rule analysis was completed, EPA analyzed the data available on the carcinogenic effects of lead. EPA classified lead as a B2-probable human carcinogen based on ''sufficient'' animal evidence in its evaluation in 1989 and reported its findings in the IRIS file (IRIS 2002; *see* section 17.7.7, DCN 35740). Kidney tumors linked to lead exposure were the most common tumor type reported at statistically significant levels by EPA. EPA examined the supporting evidence for lead carcinogeneity (*e.g.,* animal assays and human epidemiological studies) and calculated a cancer potency value for lead. This value can be used when evaluating oral exposure to lead associated with consumption of contaminated food. EPA obtained the cancer potency value based on a study by the California Air Resources Board (CARB, 1997), which is supported by EPA in its IRIS file. The estimated cancer potency value for lead is 8.5×10^{-3} (mg/kg/day)$^{-1}$. A discussion of derivation of the lead cancer potency factor by the CARB appears in section 17.7.7, DCN 35740, of the public record. Based on the cancer potency factor of 8.5×10^{-3} (mg/kg/day)$^{-1}$ the regulatory options presented in the NODA would reduce the number of cancer cases associated with exposure to lead by 0.009 cases and result in annual monetized benefits of $0.06 million (1999$).

EPA also revised the analysis of neurological effects in preschool age children. Avoided neurological and cognitive damages from reduced exposure to lead are expressed as changes in overall IQ levels, including reduced incidence of extremely low IQ scores (<70, or two standard deviations below the mean), and reduced incidence of blood lead levels above 20 mg/dL. The analysis of neurological effects in children relies on blood lead concentrations as a biomarker of lead exposure and a dose-response relationship between blood lead level and IQ decrements determined by Schwartz (Schwartz, 1994). For this rulemaking, we are using EPA's Integrated Exposure, Uptake, and Biokinetics (IEUBK) Model for Lead in Children to obtain both baseline and post-compliance distribution of blood levels in the population of exposed children. In estimating blood lead levels in the population of exposed children for the proposed rule analysis, EPA assumed that children are most sensitive to lead exposure up to age 7 (i.e., through age 6 or from 0 to 72 months) and that infants are introduced to fish at 11 months. EPA revised these assumptions for the NODA analysis based on recommendations from Dr. Mark Maddaloni, member of the EPA technical review workgroup for lead (*see* section 17.7.7, DCN 35741). First, for the final rule analysis, the Agency is considering a revised assumption that children are at risk from exposure to lead from 0 to 84 months. Second, since the proposed rule analysis, the Agency reviewed recommendations on infants' diets and found that children may be introduced to fish earlier than 11 months. Various child care organizations, including the National Network for Child Care *(http://www.nncc.org),* recommend introducing infants to fish between 6 and 12 months (*see* section 17.7.7, DCN 35742). Children from recreational and, in particular, subsistence fishing families may therefore start eating fish at an age earlier than 11 months. EPA is considering using the assumption for the final rule analysis that children of recreational and subsistence anglers are introduced to fish at 9 months. Finally for the proposed rule analysis, the Agency assumed that the bioavailability of lead in food is three percent. EPA based this assumption on recommendations made for the analysis of adult health effects (*see* section 17.7.7, DCN 35743). Using the bioavailability factor developed for adults in the analysis of children's health effects was incorrect because lead absorption rates are different in children and adults. As a result of this error, the estimated benefits from reduced exposure to lead were biased downward (*see* section VII). EPA is considering the use of the standard IEUBK assumption regarding lead bioavailability in food for the final rule analysis. According to the standard IEUBK assumptions, the bioavailability factor used in calculating blood lead levels in the population of exposed children changes from 0.03 to 0.5 for the NODA analysis. EPA is soliciting comment on the appropriateness of using the revised assumptions in the analysis of neurological effects in preschool age children.

H. Ohio Case Study

For the proposed rule, EPA conducted an original travel cost study in the State of Ohio, using the National Recreational Demand Survey (NDS) and a Random Utility Model (RUM) of recreational behavior, to estimate the changes in consumer valuation of water resources that would result from improvements in water quality. The case study supplements the national level analysis performed for the proposed MP&M regulation analysis by using additional

data on MP&M facilities, non-MP&M dischargers, and the baseline water quality in Ohio and methods to determine MP&M pollutant discharges from both MP&M facilities and other sources, and by estimating a state-specific model of recreational behavior for four water-based recreation activities (including fishing, boating, swimming, and wildlife viewing). The RUM used in the analysis estimates the effects of the specific water quality characteristics analyzed for the proposed MP&M regulation (i.e., the presence of ambient water quality criteria (AWQC) exceedances and concentrations of the nonconventional nutrient Total Kjeldahl Nitrogen.) The direct link between the water quality characteristics analyzed for the rule and the characteristics valued in the RUM analysis aimed at reducing uncertainty in benefit estimates and to make the analysis of recreational benefits more robust. Chapter 21 of the proposed rule EEBA presents this study in detail.

After the proposal, EPA submitted its RUM analysis for an official peer review using EPA's official peer review process. To review the analysis, EPA's contractor selected four well-respected resource economists with extensive experience in developing RUM models for valuing the effects of improving environmental quality on recreational decisions as shown by their publication in the Journal of Environmental Economics and Management, Land Economics, and the American Journal of Agricultural Economics or related journals. These individuals are (listed in alphabetical order):

- Dr. Michael W. Hanemann, Chancellor's Professor, Department of Agricultural and Resource Economics, and Goldman School of Public Policy, University of California;
- Dr. Daniel Hellerstein, USDA/ERS;
- Dr. John B. Loomis, Professor, Department of Agricultural and Resource Economics, Colorado State University, CO; and
- Dr. I. E. Strand Jr., Professor Department of Agricultural and Resource Economics, University of Maryland, College Park, MD.

The peer review concluded that EPA had done a competent job, especially given that the available data and that the methodology of the linked trip and RUM model is ''nearly the state of the art for the problem of estimating recreational benefits'' (J. Loomis, 2001; *see* DCN 35660). The reviewers also noted that EPA was quite conservative in its analysis and may have understated the recreation benefits of the environmental improvements due to the omission of multiple-day trips. As requested by the Agency, peer reviewers provided suggestions for further improvements in the analysis. Since the proposed rule analysis, the Agency made changes to the Ohio model and conducted additional sensitivity analyses suggested by the reviewers. The peer review report appears in section 17.7.3, DCN 35660, of the public record. EPA's response to peer reviewers' comments along with the revised model appears in section 17.7.3, DCN 35661, of the public record.

I. Recreational Benefits

For the proposed rule national analysis, EPA assessed recreational and non-use benefits from reduced effluent discharges and improved habitats or ecosystems for three water-based recreation activities: (1) Recreational fishing, (2) recreational boating, and (3) wildlife viewing. EPA used the National Demand Study data to estimate the number of person-days of boating and wildlife viewing in counties affected by MP&M discharges. EPA used county level fishing license data to estimate the number of recreational fishermen.

When estimating the percentage of state populations participating in recreational boating and wildlife viewing for the proposed rule, EPA considered only those persons who made single-day trips during the period specified in the survey. Accordingly, when estimating the average number of recreation days per person per year for each activity, EPA used the survey responses of only those individuals whose last trip for the activity was a single-day trip. EPA excluded multiple-day trips from the proposed rule analysis because these trips generally involve longer travel distances from a participant's home. In effect, EPA assumed that participants would be less aware of reductions in concentrations of MP&M pollutants in these farther-located water bodies.

Since completion of the proposed rule, EPA has revised its methodology for estimating person-days of recreational boating and wildlife viewing. EPA no longer restricts its analysis to single-day activities; instead, it considers all participants who took a single- or multiple-day trip close to their home. EPA made this change in response to peer reviewers' comments on the Ohio case study analysis. The peer review report appears in section 17.7.3, DCN 35660, of the public record. The revised analysis includes multiple-day trips that were within 120 miles one-way from a participant's home. The Agency concluded that participants will be sufficiently aware of improvements in the water quality of water bodies located within this distance to justify their inclusion in the benefits analysis for the final MP&M rule. EPA included multiple-day trips for an activity for only those participants whose last trip was within 120 miles one-way from their homes. EPA assumes that other multiple-day trips taken earlier in the year by these participants for the same activity were also within the 120-mile threshold and includes these trip days in the benefits analysis. For participants whose last multiple-day trip for an activity took them more than 120 miles from their homes, EPA assumes that all their prior multiple-day trips for this activity were also more than 120 miles from their homes and thus excludes them from the benefits analysis. Excluding from the analysis those recreational users who take multiple day trips farther than 120 miles from their homes may underestimate the total number of recreational users benefitting from water quality improvements if a site is a nationally important recreational area (*e.g.,* Great Lakes). However, the analysis could overstate the total number of recreational users by including all multiple day trips taken by residents of the counties affected by MP&M discharges because some of these trips can be taken to remote destinations.

The methodology revisions have increased the national estimates for total person-days of recreational boating and wildlife viewing. For reference purposes, an analysis of various characteristics of the National Demand Study data appears in section 17.7.4, DCN 35680, of the public record.

EPA solicits comment on the appropriateness of including recreational users who took multiple day trips in the vicinity of their home to assess the total number of recreational users benefitting from water quality changes associated with the MP&M rule.

J. POTW Characteristics

For the proposed rule analysis, EPA obtained information on characteristics of POTWs receiving discharges from the sample MP&M facilities from the EPA's Permit Compliance System (PCS) database. POTW characteristics that serve as input data into the environmental assessment analyses include POTW flow, location, and the receiving water body name and identification number. The PCS database, however, does not often provide POTW flow information if a POTW is classified as a minor discharger (i.e., if a POTW discharges less than two million gallons of wastewater per day). For the proposed

rule analysis, EPA set the POTW flow rate equal to the arithmetic mean flow among POTWs associated with the sample MP&M facilities in the absence of data on POTW flow rates in PCS. The estimated arithmetic mean flow for POTWs associated with the sample MP&M facilities for which flow information is provided in the PCS database is 61.4 million gallons per day (MGD). In response to comments received on the environmental assessment analysis, EPA has revised its approach to assigning a POTW flow value in the absence of data on POTW flow in PCS. Because all POTWs receiving discharges from the sample MP&M facilities for which flow data are not available in the PCS databases are classified as minor dischargers in the PCS database, EPA calculated an arithmetic mean flow for minor POTWs for which either actual or design flow information is available. The estimated mean flow for POTWs that are classified as minor dischargers is 1 MGD. EPA will use this estimate for all POTWs that receive discharges from the sample MP&M facilities in the absence of flow data in PCS. Results of the POTW flow analysis are provided in section 17.6.2, DCN 35553, of the public record.

K. Drinking Water Intakes

EPA revised the database of drinking water intakes that it uses for estimating human health effects associated with consumption of contaminated drinking water. The proposed rule used drinking water intakes data derived from EPA's software BASINS 1.0, which was released in May 1996. For the NODA analysis, EPA replaced the older BASINS 1.0 data with information on drinking water intakes from the Safe Drinking Water Information System (SDWIS). SDWIS is being updated on a continuous basis and provides the most comprehensive and up-to-date information on drinking water intake structures, including latitude/longitude data and the number of individuals served by a given drinking water system. This resulted in the reduction of the total number of drinking water supply systems from 6,603 facilities to 6,048 facilities. However, correcting the latitude/longitude information for drinking water intakes changed the receiving reach and the number of households served by each drinking water intake based on the data provided in SDWIS. These changes resulted in a significant increase of the total number of individuals served by some public water supply systems located downstream from MP&M facilities. EPA presents the number of individuals served by public water supply systems affected by MP&M dischargers by reach ID in section 17.7.7, DCN 35744, of the public record.

L. Extrapolation of Sample-Based Results to the National Level

As discussed in the Executive Summary of the proposal EEBA, EPA historically extrapolates baseline conditions, costs, economic impacts, and benefits associated with sample facilities to the total industry population using sample facility weights. The weights are derived as part of the stratification process involved in developing the questionnaire. The sample weights are based on the stratification of the facility population using known variables such as facility size and SIC code or industry sector. Due to the lack of data on non-facility characteristic variables (*e.g.,* receiving water body type and size and size of the affected population), stratification generally does not reflect variables related to these characteristics, even though they may influence the occurrence and magnitude of the expected benefits. The national-level analysis therefore assumes that facilities represented by the sample facility not only have the same technical and economic/financial characteristics but also have the same benefit characteristics. These assumptions may introduce a larger than desired uncertainty in both economic impact and benefits analyses and even cause anomalies in the results.

As discussed in the proposal (66 FR 536), the Agency is currently working on alternative methods to extrapolate the MP&M facility sample to address this issue, and expects to complete this effort as part of the analysis for the final regulation.

One method to extrapolate benefits to the national level is to use post-stratification. Post-stratification would require classifying all sample facilities into several classes or groups called secondary strata. If, for example, occurrence or the size of benefits differs markedly among facilities discharging to different water body types or sizes, then post-stratification of the MP&M sample using such strata would be helpful in improving the precision of benefits estimates. The Agency identified secondary strata and determined the impacts of those characteristics on both benefit occurrence and magnitude. EPA identified the following secondary strata: water body type (i.e., bay, ocean, Great Lakes, lakes, and streams), water body size (as defined by reach flow), and population size in the vicinity of the affected reach. This analysis was performed based on the input data used for the proposed rule analyses because new loading estimates were not available at the time when this analysis was performed. A summary of this analysis appears in section 17.7.5, DCN 35700, of the public record. EPA is seeking comment on the appropriateness of using the listed secondary strata such as water body type, stream flow, and population size in post-stratifying of the MP&M sample.

EPA is also considering use of the Ohio case study results to develop an alternative estimate of the monetary value of national benefits. Specifically, the Agency is considering making a national extrapolation of the Ohio case study results, based on two key factors that affect the occurrence and magnitude of benefits: (1) The estimated change in the MP&M pollutant loadings; and (2) the level of recreational activities on the reaches affected by MP&M discharges. The first factor—the estimated change in total pollutant loadings (measured as toxic pounds removed)—reflects the potential for improvements in surface water quality. Note that changes in total pollutant loadings can be also measured as total suspended solids (TSS) or chemical oxygen demand (COD) removed. The three different measures can be used to develop a range of benefit estimates. The second factor—the level of recreational activity in the relevant geographic areas (i.e., counties where MP&M facilities are located)—reflects the degree to which there is a demand by local residents to use water resources that are likely to be affected by MP&M discharges. Another important factor that impacts the magnitude of benefits is the type and significance of water resources affected by MP&M dischargers. The State of Ohio includes a wide variety of water body types affected by MP&M dischargers, including freshwater streams, large rivers, and the Lake Erie. Therefore the estimated state level benefits may be representative of benefits associated with the majority of water bodies types affected by MP&M discharges. The two variables can be used to develop a range of national level benefits based on the Ohio study results.

The first step in applying this alternative extrapolation method is to develop a measure of benefits per toxic pounds removed. This measure can be developed by simply dividing the state-level benefit estimates by the total number of toxic pounds removed in the state of Ohio ($ per toxic pound removed). Both values are readily available from the Ohio case study. Multiplying the estimated per toxic pound values by the total number of

toxic pounds removed extrapolates the state level benefits to the national level. EPA was unable to apply this methodology to estimating national benefits for the NODA option because new pollutant loading estimates have not been estimated for the MP&M facilities that completed the Ohio case study questionnaire.

The second factor, the number of recreational angling, boating, and wildlife viewing days, can be used to scale up or down the national level estimates developed based on the total number of toxic pounds removed. The appropriate adjustment factor is the ratio of the number of recreational users per reach mile at the national level to the number of recreational users per reach mile in Ohio. Accounting for differences between Ohio and the nation in recreational intensity is necessary because the total user value of water quality improvements is a function of the number of users associated with a particular reach. EPA will also examine recreation valuation literature to determine whether willingness to pay (WTP) for water quality improvements in Ohio is likely to be different compared to other states. If necessary, EPA will develop adjustment factors to reflect variations in the WTP values in different states or regions.

This alternative extrapolation method can be used to determine state-level benefits in addition to the total national benefits. First, the state level analysis would first estimate the state-level number of toxic pounds removed by apportioning the national estimate of toxic pounds removed to each state based on the level of MP&M business activity in a given state (*e.g.,* total revenues associated with MP&M sectors in a given state). Multiplying the estimated per toxic pound benefits by the total number of toxic pounds removed in a given state yields the estimate of state-level benefits. The estimated state level benefits can be adjusted up or down based on the level of recreational activity per reach mile in a given state compared to the level of recreational activity in Ohio. The state-based approach would produce more precise results than a national analysis because some states may have fewer MP&M facilities and a large number of water bodies suitable for recreation, while other states may have a relatively large number of MP&M facilities and fewer water bodies suitable for recreation.

EPA solicits comment on the appropriateness of using the alternative approach to assess the national level benefits, based on extrapolating the Ohio case study results.

VI. Consideration of Preliminary Revised Limitations and Standards

This section describes how EPA developed limitations and standards presented in Section VIII of today's document. The first subsection, VI.A, discusses the limitations and standards; EPA's evaluation of the achievability of these limitations and standards; and its evaluation of factors that commenters suggested would influence the values EPA calculated for the long-term averages. The second subsection, VI.B, describes EPA's consideration of alternatives to the limitations and standards for the total organic pollutants (TOP) parameter. The third subsection, VI.C, describes minor revisions to the statistical methodologies that EPA is considering in developing numerical limitations and standards for the MP&M industry. For the most part, these revisions are consistent with the methodology used in recent effluent limitations guidelines rulemakings for other industries.

This section uses slightly different terminology from that used in the statistical support document and the technical development document (TDD) for the proposal. Rather than using the term ''facility-specific'' for long-term averages and variability factors calculated using each episode data set, this section refers to these as ''episode long-term averages'' and ''episode variability factors.'' As explained in section VI.C, in developing the long-term averages and variability factors, EPA may have used data from more than one episode at a particular facility. In these cases, EPA has calculated separate values for each episode. EPA also has changed the terms ''pollutant-specific long-term average'' and ''pollutant-specific variability factor'' to ''option long-term average'' and ''option variability factor'' to refer to estimates for long-term averages and variability factors for each pollutant in an option for a subcategory.

In section VIII of today's document, EPA is presenting limitations and standards in units of concentration (i.e., milligrams per liter) for all subcategories except steel forming and finishing (SFF). For this subcategory, EPA has expressed the limitations and standards as lb/1000 lb (pounds per 1000 pounds of production). To obtain these production-normalized values, EPA used the concentration-based limitations and standards in section VIII, the production values in Table 14–7 of the proposal TDD, and the appropriate conversion factor as described in the proposal statistical support document. However, in its evaluations described in this section VI, EPA used the concentration-based long-term averages, variability factors, and limitations and standards for all subcategories, including the SFF subcategory. The discussion in this Section would not be altered if EPA had used production-normalized data rather than the concentration data in its evaluations of the SFF subcategory data.

Section 19 of the record section contains the documents for the DCNs cited in this section of the NODA. In addition to the hardcopy version of each document, DCN 36092 in section 19.4 contains the electronic files for the public version of those documents.

A. Preliminary Revised Limitations and Standards [1]

In developing the proposed limitations and standards, EPA used only data from EPA sampling episodes. Commenters on the proposal asserted that facilities that were currently operating the BAT model technology could not achieve the levels mandated by the proposed limitations and standards for certain subcategories. This section describes the approach that EPA is considering to address this issue in the final rule. This section also describes EPA's evaluation of factors that commenters suggested would influence the values EPA calculated for the option long-term averages.

1. Approach

This section describes the revised limitations and standards based upon the NODA episodes and EPA's approach for determining the preliminary revised limitations and standards presented in Section VIII of today's document. In general, the preliminary revised daily maximum limitations and standards shown in today's document are the greater (i.e., less stringent) of either the revised daily maximum limitations calculated using the NODA episodes or the daily maximum limitations previously proposed. (Section VI.A.1.d describes the calculation of the long-term average and monthly average limitations and standards.) EPA requests comment on this approach that EPA has used to develop the preliminary revised limitations and standards presented in section VIII of today's document.

[1] In this section, EPA distinguishes between the numerical limitations and standards which it proposed in January, 2001 (''proposed limitations and standards''), the numerical limitations and standards calculated using the NODA episode data base (''revised limitations and standards'') and the numerical limitations and standards which, for a particular pollutant, represent the greater of the revised limitations and standards or the proposed limitations and standards (''preliminary revised limitations and standards'').

a. Revised Limitations and Standards (Based on NODA Episodes)

In its statistical analyses subsequent to the proposal, EPA used a combination of the data from the proposal, additional EPA sampling data, and industry supplied data. The combined episodes are referred to as ''the NODA episodes'' in this Section (*see* section II of today's document for a summary of the more than 70 new data sets). These data are listed in DCN 36000 in section 19.1. The electronic version (in both Excel and SAS formats) is provided by DCN 36091 in section 19.6.

In today's document, EPA's use of the term ''revised limitations'' refers to limitations calculated using the NODA episodes and the modifications to the statistical methodology described in section VI.C. In most cases, the revised limitations and standards were lower than those in the proposal (*see* DCN 36001, section 19.1). This result was contrary to comments on the proposal that had asserted that the values of the proposed limitations and standards were too low and therefore could not be achieved by facilities currently operating the BAT technology. Instead, the additional data submissions from industry generally supported the achievability of the proposed values. Because of industry's concerns about the proposed limitations and standards, EPA performed additional evaluations on the revised limitations and standards.

b. EPA's Evaluation of the Revised Limitations and Standards

EPA compared the data from the NODA episodes to the revised limitations and standards (*see* DCN 36002, section 19.1). Although the NODA data were generally supportive of the achievability of the revised limitations and standards, the evaluation showed that some facilities in the NODA episodes data base might have difficulty in achieving some of the revised values. Thus, as described in the next section, EPA reevaluated the proposed limitations and standards in terms of the NODA episodes. The NODA data were generally supportive of the achievability of the proposed limitations and standards.

c. Determination of Values for Preliminary Revised Limitations and Standards

Based upon its evaluations of the revised and proposed limitations and standards, EPA is considering selecting the greater of the proposed value and the revised value as the limitation/standard in the final rule (*see* section VIII for these preliminary revised limitations and standards). In developing these preliminary revised limitations, EPA first compared the two values of the proposed and revised daily maximum limitations and selected the one with the greater value. In order to have a single long-term average basis for the limitations and standards presented in section VIII of today's document, EPA then selected the long-term average and monthly average limitation corresponding to the daily maximum limitation/standard that had been selected. For a few cases, the proposed and revised daily maximum limitations/standards had the same value, but the proposed and revised monthly average limitations/standards had different values (*see* DCN 36050, section 19.2). In these few cases, EPA selected the greater value of the proposed and revised monthly average limitation/standard and the corresponding long-term average. (The Costs & Loadings model used long-term averages based upon the NODA episodes only, not the greater of the two proposed and revised values.)

The term 'preliminary revised limitations' refers to the limitations selected as a result of these comparisons and the following exceptions.

The first exception to using the greater of the two values is for the case where EPA transferred the option long-term average and/or option variability factors in order to calculate the proposed limitations and standards. At proposal, these transfers were necessary because data were unavailable for some pollutants in some subcategories. Rather than retain these proposed transfers, EPA is considering an approach where the final limitations and standards would be based upon the available data and only using the data transfers described in section VI.C.

The second exception to using the maximum value is for the total organic parameter (TOP). Here, EPA is considering several other methods as discussed in section VI.B and has presented the results from one of these methods as the preliminary revised limitations and standards for TOP in section VIII of today's document.

2. Assessment of Achievability

In order to be responsive to the many comments about the achievability of its proposed limitations and standards for certain subcategories, EPA evaluated the preliminary revised limitations. As explained in the following sections, in evaluating the preliminary revised limitations and standards in this NODA, EPA compared those preliminary revised values to the effluent data from the model technology, effluent from more sophisticated technologies ('BAT+'), and the data excluded because information about influent levels were unavailable (as explained in section VI.C.6). EPA performed this comparison for all subcategories and pollutants (except TOP), not just those corresponding to specific comments.

a. Effluent Data From Model Technology (NODA Episodes)

EPA compared the preliminary revised daily maximum limitations to the effluent data that had influent at treatable levels and used the model technology. As previously explained, the data from these ''NODA episodes'' were a combination of the episodes used in the proposal, more recent EPA sampling episodes, and industry submitted information.

In this evaluation, EPA performed a check of the preliminary revised limitations and standards similar to that discussed in the proposal (66 FR 431). For the nonchromium anodizer and railroad line maintenance subcategories, none of the data from the NODA episodes exceeded the preliminary revised daily maximum limitations. For the other subcategories, EPA found that some values were greater than the preliminary revised daily maximum limitations (*see* DCN 36051, section 19.2). The following paragraphs describes EPA's review of two pollutants and its plans for further review of all regulated pollutants.

For amenable and total cyanides that EPA has proposed to regulate for several subcategories, while ten to fifteen percent of the values are greater than the preliminary revised limitations and standards, EPA notes that some facilities operate the cyanide destruction system better than others. EPA has observed these differences in the operation of cyanide destruction system over many years of evaluating treatment systems for this and other industries. In addition, as described in the proposal, facilities with cyanide treatment would be able to select one of the two cyanides to monitor with approval by the permitting authority. Thus, while EPA intends further evaluation of these data before the final rule, EPA may consider today's preliminary revised limitations and standards to be achievable by facilities that properly operate their cyanide destruction systems (e.g., sufficient detention time for alkaline chlorination).

For TOC, which had about ten and twenty-five percent of the values greater than the preliminary revised limitations and standards for the Oily Wastes and General Metals subcategories,

respectively, EPA notes that treatment systems are not primarily targeting this pollutant. Further, monitoring TOC is only one of several options for monitoring organic pollutants (*see* section VI.B) and facilities may select a different option. Thus, while EPA intends further evaluation of these data before the final rule, EPA may determine that today's preliminary revised limitations and standards to be achievable by facilities that select this option.

For all regulated pollutants in the final rule, EPA plans an engineering review of its data to verify that the limitations and standards are reasonable based upon the design and expected operation of the control technologies and the facility process conditions. As part of that review, EPA plans to examine the range of performance represented by the episode data sets with the model technology. Some episode data sets will demonstrate performance reflecting the best available technology and an effluent quality meeting the limitations. Other episode data sets may demonstrate performance from the same technology, but not reflect the best design and/or operating conditions for that technology. For these facilities, EPA will evaluate the degree to which the facility can upgrade its design, operating, and maintenance conditions to meet the limitations or standards. If such upgrades are not possible, then the limitations and standards would be modified to reflect the lowest levels that the technologies can reasonably be expected to achieve. Even though some individual values may be greater than the final limitations and standards, EPA may determine that they adequately reflect the treatment capabilities of the model technologies. In the following paragraphs, EPA presents three examples and possible considerations for the final rule. These examples are not meant to be exhaustive, but rather provide examples of the types of evaluations and potential outcomes that EPA may consider. EPA solicits comment on these evaluation approaches and additional approaches that could be used.

In the first example, EPA would evaluate limitations where a few episodes contribute a large majority of the values greater than the preliminary revised limitation for a pollutant. In the General Metals subcategory, 78 of the 93 values greater than the copper limitation are all from the same episode (4737D). For the final rule, in its evaluation of cases like this example, EPA will evaluate whether this facility needs to make improvements to optimize its treatment performance. Based upon this review, EPA also may consider the possibility of excluding the data from developing the limitations and standards because they probably reflect less than optimal performance. EPA may also consider retaining the data as a conservative approach in developing the limitations and standards. As an alternative, EPA may consider using only those data to develop the final limitations and standards.

In the second example, EPA would evaluate the analytical methods. In the Shipbuilding Dry Dock subcategory, all the values greater than the HEM limitation are from one episode of self-monitoring data provided by industry (4892D). As explained in section VI.C.8, EPA has excluded all oil and grease data measured by chemical analytical methods that use freon. In cases like this, in addition to evaluating the treatment performance, EPA may investigate whether the analytical method has been incorrectly identified in its database.

In the third example, EPA would evaluate the effect of influent levels on treatment performance. For the oily subcategory, the HEM values greater than the preliminary revised limitation are from two (4872, 4876) of the five episodes. These two episodes are associated with the highest influent values. In examples like this, EPA may investigate the impact on the performance of the technology due to the influent levels.

b. Effluent Data From ''BAT+'' Technology

Because many commentors asserted that some facilities were unable to achieve the low concentration even with more sophisticated technology (''BAT+'') than the option model technology, EPA compared ''BAT+'' data to the preliminary revised daily limitations and standards (*see* DCN 36052, section 19.2). EPA considered data from two types of technology as being ''BAT+ data.'' The first technology, ''CPTF'', is chemical precipitation with clarification using a clarifier followed by additional treatment such as a sand filter which is an additional treatment step following the proposed BAT model technology. The second technology is chemical precipitation with clarification using microfiltration or ultrafiltration (CHUM).

In general, in comparison to the BAT data, EPA found smaller or relatively the same percentages of the BAT+ data had values greater than the preliminary daily maximum limitations. EPA also noted that some episodes, but at different sample points, were considered in both the BAT and BAT+ comparisons. For some of these episodes, if the BAT data were greater than the preliminary revised limitations, then the BAT+ data also were greater than the preliminary revised limitations. EPA does not consider this to be a surprising result. As explained in section VII, addition of a sand filter is not expected to provide much additional removal for the pollutants when clarifiers are operating properly.

For nickel in the General Metals subcategory, EPA notes that, on a percentage basis, more BAT+ values than BAT values were greater than the preliminary revised limitations. EPA intends to investigate this result further before the final rule.

c. Effluent Data Without Influent Information

As another evaluation of the preliminary revised daily limitations and standards, EPA compared the preliminary revised limitations and standards to the self-monitoring data that it had excluded because of the unavailability of information about the influent levels at the facility (*see* section VI.C.6). In general, in comparison to the BAT data, EPA found smaller, or relatively the same, percentages of data with values greater than the preliminary daily maximum limitations (*see* DCNs 36053 and 36054, section 19.2). EPA expects that detailed review of these self-monitoring data will not be possible. However, if any extreme differences are identified, EPA is likely to contact the facilities for more information.

3. Evaluation of Option Long-Term Averages

In addition to comparing the data values to the preliminary revised limitations and standards, EPA has evaluated factors (*e.g.,* influent pollutant concentrations, multiple metals) that the comments assert would affect the achievability of the limitations and standards. EPA specifically focused its attention on the option long-term averages for the metals pollutants, because EPA expects facilities to target their treatment systems to achieve the option long-term averages used to calculate the limitations and standards and because comments indicated that achievability of those pollutants were of primary concern. In these evaluations, EPA used the NODA episodes (*i.e.,* effluent data from the episodes used in the proposal, more recent EPA sampling episodes, and industry submitted data, where the facilities had influent at treatable levels and used the model technology). However, EPA did not find

evidence of dramatic impacts on the option long-term averages. EPA solicits comment on the factors that it evaluated and its analyses described below.

a. Influent

Some commentors stated that the relative concentration levels in the influent would affect the concentration levels in the effluent. In particular, commentors asserted that facilities with more concentrated influents would have more concentrated effluents and would be unable to achieve the proposed limitations and standards that were developed in part using data from facilities with less concentrated influents. EPA notes that, in calculating the proposed limitations and standards, it had already excluded effluent data corresponding to low levels in the influent. EPA's purpose in excluding these effluent data sets was to ensure that the effluent concentrations resulted from treatment and not simply the absence or extremely low levels of that pollutant passing through a treatment system. EPA is still using this criterion in selecting the data used to develop the revised limitations and standards based on the NODA episodes. This type of data editing is explained further in section VI.C.6.a.

To determine whether the remaining effluent concentrations for the metal pollutants could still be affected by varying levels of influent, EPA reviewed graphical displays of the paired influent and effluent values and compared the values of option long-term averages for three subsets of the NODA episodes based upon the averages of their influent values. Because the results are inconclusive and sometimes inconsistent with other results as described in the following sections, EPA is not currently planning any modifications to the limitations and standards that would incorporate varying levels of influent concentrations within a subcategory. EPA solicits comment on the conclusions that should be drawn from these analyses and if any other evaluations of the data should be performed for the final rule.

i. Graphical Displays

For each metal pollutant in each subcategory, the graphical display (*see* DCN 36003, section 19.1) shows both the influent long-term averages (where available) and the corresponding effluent long-term averages for the NODA episodes. (Some influent long-term averages are missing because EPA used other information to determine that the influent was at treatable levels.) DCN 36004 in section 19.1 lists the influent and effluent long-term averages plotted in these graphical displays. EPA would expect to see upward trends for both the influent and effluent long-term averages if more concentrated influent is associated with more concentrated effluent.

In general, EPA did not find any evidence of such trends or any patterns in the influent. Rather, EPA notes that both low and high influent values were often associated with the lowest effluent values. EPA also notedsthat some facilities (such as episode 7038P) with relatively high influent concentrations had relatively low effluent values of that particular pollutant and also had relatively low effluent levels of other pollutants. Thus, the facility's treatment system did not appear to be targeting a single pollutant, but rather, was able to simultaneously treat different metal pollutants to low levels. EPA concludes from these data that some facilities have been successful in treating concentrated wastes. For the final rule, EPA is considering further evaluation of these facilities to ascertain whether the facility operations are different from other ''BAT'' facilities.

EPA also notes that the industry-supplied data appear to be evenly distributed across the range of effluent concentrations which was not consistent with industry comments which stated that industry-supplied data would have higher effluent concentrations than EPA sampling data.

ii. Three Subsets Based on Influent Concentrations

For each pollutant, EPA grouped the NODA episodes into three subsets based on the relative levels of the influent concentrations. The first subset contained the NODA episodes with the lowest 50 percent of the influent averages. The second subset contained the NODA episodes with the highest 50 percent of the influent concentrations. The third subset contained the NODA episodes without any influent data but for which EPA had other information (*e.g.,* production information) indicating treatable levels in the influent.

For each subset, EPA calculated an option long-term average of the effluent data using the median of the episode long-term averages. As the following paragraphs explain, the comparisons were inconclusive and inconsistent for the two subsets with the lowest and highest influent averages (*see* DCN 36005, section 19.1).

EPA noted that the subset with the lowest influent averages did not always correspond to the lowest option long-term average for the effluent data and the subset with the highest influent averages did not always have the highest option long-term average for the effluent data. The pattern of influent and effluent relationships was not consistent for all pollutants within a particular subcategory, nor consistent between subcategories for a particular pollutant.

For some pollutants in some subcategories, there appeared to be a substantial difference between the option long-term averages of the effluent data for the different subsets. For example, for copper in the General Metals subcategory, there was an order of magnitude difference in the option long-term averages of the effluent data for the subsets with the lowest and highest influent averages. In contrast, for other pollutants in some subcategories, the results appeared to be about the same for the three subsets. For example, for nickel in the General Metals subcategory, the option long-term average for the effluent data was approximately 0.2 mg/L for all three subsets.

Contrary to comments received on the proposal, EPA found from these data that lead in the General Metals subcategory had a higher option long-term average for the effluent data from the subset with the lowest influent averages than the option long-term average for the effluent data from the subset with the highest influent averages.

EPA also noted that the results were sometimes inconsistent between subcategories. For example, for the copper effluent data in the General Metals subcategory, there was substantial difference in the option long-term averages for the effluent data for the subsets with the lowest and highest influent values. However, for those two subsets in the Metal Finishing Job Shops subcategory, the option long-term averages for the copper effluent data were similar. While EPA considers the wastestreams to be different between the two subcategories, the range between the minimum and maximum episode long-term averages for copper are similar (see DCNs 36006 and 36007, section 19.1).

The third subset (*i.e.,* the subset without any influent data) did not have results that were consistently like either of the other two subsets which made it difficult to evaluate. For the final rule, EPA will consider whether it has enough information to assume that those episodes should be assigned to either of the other subsets for its evaluation.

b. Industry Supplied Data

Some commentors stated that EPA sampling data were responsible for the

low values of the proposed limitations and standards. To evaluate these comments, EPA calculated the option long-term averages using only the industry supplied effluent data (*i.e.,* the paired influent/effluent data and the self-monitoring data) from the NODA episodes. Again, the option long-term averages were lower than those calculated using all of the NODA episodes. Because the paired influent/effluent data were not collected in order to demonstrate compliance, EPA used just only the self-monitoring (compliance) data and still obtained option long-term averages that were generally lower than the values using all of the NODA episodes. Generally, as shown in DCN 36008 in section 19.1, the highest option long-term averages resulted from using only the EPA sampling episode data.

c. Optimum pH

Some commenters reported that different metals pollutants are associated with different optimal pH values and that it was not possible to achieve the low levels of the limitations and standards simultaneously using a single-stage chemical precipitation system. Ideally, in order to remove a particular pollutant, a facility would target its pH to the optimum pH level for chemically precipitating that metal. For example, cadmium has an optimum pH of about 11.4, while chromium, copper, lead, manganese, and zinc have optimum pH of about 9 to 9.5. If optimum pH were a factor in achieving low levels, a facility that targeted its system at a pH of 9 would be expected to have relatively lower effluent levels of chromium, copper, lead, manganese, and zinc than a facility that targeted a pH of 11.4 to treat cadmium, but also had these other metals present at treatable levels.

EPA examined the target pH values for the facilities that supplied that information (*see* DCN 36009, section 19.1). Most facilities target their systems in the pH range of 8.5 to 10.5. For some facilities (generally those that EPA sampled), EPA had the pH values targeted by the facility and the actual operational pH values during the EPA sampling episode. EPA identified several facilities where the target pH range did not overlap its operational range (*see* DCN 36010, section 19.1). Thus, EPA questions the reliability of the reported target pH ranges. However, the target pH ranges were the best information available, because few facilities had supplied the operational ranges corresponding to the influent data. EPA compared the midpoint of the target pH ranges to the episode long-term averages from the NODA facilities. In reviewing the midpoint pH targets to the long-term averages (*see* DCN 36011, section 19.1), EPA notes that for a given pH target, the episode long-term averages vary substantially. Contrary to comments received on the proposal, EPA found that the highest episode long-term averages are sometimes associated with facilities that target the optimum pH for the pollutant (*see* DCN 36012, section 19.1). In addition, EPA notes that facilities where the midpoint, of their target pH values, were outside the accepted range for some pollutants had the lowest long-term averages for those pollutants. In a further analysis, EPA calculated option long-term averages using only episodes associated with target pH ranges of 9.0 to 9.5. By excluding episodes outside this pH range and episodes where pH was unavailable, EPA generally had lower option long-term averages than those calculated with all the NODA episodes. Thus, EPA has not modified its criteria to consider pH in selecting the data for the preliminary revised limitations and standards.

d. Minimum Solubility

In addition to evaluating the available pH targets at the facilities, EPA also considered the minimum solubility points associated with a single-stage chemical precipitation system. These theoretical values were identified in ''Engineering and Design—Precipitation/ Coagulation/ Flocculation'' (*see* (1) *www.usace.army.mil/inet/usace-docs/eng-manuals/em1110–1–4012/chap2.pdf,* and (2) DCN 36013, section 19.1) and is the theoretical solubility in a pure solution at standard temperature. EPA compared these theoretical solubilities to the values that were used in determining treatable levels of influent. As explained in section VI.C.6.a, EPA defined its treatable levels of influent as ten times the minimum levels in EPA Method 1620.

For cadmium, chromium, copper, nickel, and tin, the theoretical solubilities were less than the treatable levels. Thus, for those metals, the effluent data used in EPA's analyses were associated with influent levels that were greater than the theoretical solubilities, and therefore, the metals theoretically should precipitate.

For lead, manganese, silver, and zinc, the theoretical solubilities are greater than the treatable levels. Lead, manganese, and zinc have approximately the same optimal pH of 9.5 while silver has an optimal pH of 13+. All four metals have relatively high theoretical solubilities: 2.1 mg/L (lead), 1.2 mg/L (manganese), 13.3 mg/L (silver), and 1.1 mg/L (zinc). For zinc, as explained in section III.A, EPA is considering using data from the sampling of zinc platers to set the zinc limitations and standards. If EPA determines that this approach is appropriate, the final limitations and standards will be more than double the theoretical solubility and similar to those for the metal finishing industry in 40 CFR part 433. The solubilities for lead and silver are substantially greater than the daily maximum limitations of 0.69 mg/L (lead) and 0.43 mg/L (silver) that EPA established for the metal finishing industry in 40 CFR part 433. The industry has successfully complied with the daily maximum limitations for zinc, lead, and silver since they were promulgated in the 1980s. EPA concludes that EPA's model technology is not completely reliant on the theoretical solubilities as other mechanisms (*e.g.,* co-precipitation, mixed metals, and sulfides) may help to lower the concentration in the dissolved phase. Further, as explained in section VI.A.1, EPA evaluated the achievability of the limitations by comparing several types of data to the preliminary revised limitations and standards. As a result of that comparison, manganese was one of the pollutants with the greatest difference between the daily maximum limitation/standard and the daily values. EPA is considering whether manganese should be regulated. Based on this analysis, EPA has not adjusted its criteria to consider theoretical solubilities in developing the preliminary revised limitations and standards.

e. Sample Size

EPA also evaluated comments that stated that episode data sets with smaller sample sizes were associated with lower effluent concentrations and lower variability. While this was true for some smaller episode data sets, other episode data sets of similar size had the highest concentrations and highest variability. Also, the largest data sets were sometimes associated with the lowest concentrations and lowest variability. Thus, EPA has not modified its criteria to consider sample size.

f. Relationship to Total Suspended Solids

As previously stated in the proposal, EPA excluded data from chemical precipitation and clarification systems that did not have solids removal indicative of effective treatment. In general, EPA identified as having poor solids removal systems that did not achieve at least 90 percent removal of

total suspended solids (TSS) and had effluent TSS concentrations greater than 50 milligrams per liter. However, indirect dischargers may not target TSS as effectively as direct dischargers as indirect dischargers do not have TSS standards. For this reason, EPA excluded some episode data sets where the average effluent TSS concentrations did not fall below 50 mg/L. In other cases, EPA did not exclude such TSS data because the facility was achieving effective removal of targeted metals. While EPA compared the episode long-term averages of TSS and the metal pollutants, it did not find any trends indicating that TSS was a factor in the effluent. For the final rule, EPA may consider a more thorough analysis of the relationship between TSS and metals removal and solicits comment on this issue.

g. Other Factors

Before the final rule, EPA intends to review its sampling episode reports to determine if there are any other common factors that should be considered in developing the final limitations and standards. Some factors that EPA may evaluate are treatment chemicals, flocculants, whether any special polymers were used, capacity including whether the system was over-designed, and clarifier overflow rates. EPA solicits comment on evaluating these and other factors.

B. Alternative Approaches Considered to TOP Limitations and Standards

In today's document, EPA solicits comment, especially from permit writers and control authorities, as to whether a limitation/standard for the Total Organic Parameter (TOP) is necessary in the final rule. The following sections describe EPA's concerns about adequate characterization of the organic compounds; possible alternatives to the TOP limitations and standards; and three methods of calculating the TOP limitations and standards that EPA is considering for the final rule.

To reduce the burden associated with monitoring for organic pollutants, EPA proposed three alternatives to allow for maximum flexibility while ensuring reductions in the amount of organic pollutants discharged from MP&M facilities. A facility would be required to: (1) Meet a numerical limit for the total sum of a list of specific organic pollutants called ''Total Organics parameter'' or ''TOP'' (similar to the TTO parameter used in the Metal Finishing effluent guidelines); (2) meet a numerical limit for total organic carbon (TOC) as an indicator parameter; or (3) develop and certify the implementation of an organics management plan.

1. Concerns About Adequate Characterization of Organic Compounds

EPA is concerned that TOP limitations and standards may not be adequately characterizing the organic compounds present at facilities in different subcategories. Therefore, EPA is considering whether it should eliminate the option of the TOP limitations and standards in controlling organic discharges. Today's preliminary revised limitations and standards for TOP are based upon all effluent data associated with the options 2, 6, and 10 technologies, regardless of subcategory. Although it has used data corresponding to the option 10 model technology, EPA has not proposed TOP limitations and standards for any option 10 subcategory (i.e., the shipbuilding dry dock and railroad line maintenance subcategories).

Although EPA evaluated organics data from 118 episodes, it only used data from 15 episodes because they were the only episodes with detectable concentrations of one or more of the 47 organic pollutants in the influent. EPA did not have influent data for one of the 15 episodes (7007P). Further, EPA's database contained measurable levels (i.e., were detected) in the effluent for only 10 of the 47 pollutants (*see* DCN 36039, section 19.1). (**Note:** The proposed limitations and standards were based upon 48 organic pollutants, but EPA has excluded benzoic acid from further consideration as explained in section II.C.)

Because of the variability in the type of organic pollutants found at different facilities, EPA is concerned that a thorough evaluation of the TOP limitations and standards may not be possible. For example, EPA notes that the TOP preliminary revised limitations and standards have fairly large values, partly because data from different subcategories and options are combined and partly because the data are combined from different episodes. EPA considers the values of the preliminary revised limitations and standards to be ''large'' because they account for the concentration levels of 47 pollutants, when the episodes had at most 25 of the 47 pollutants at measurable concentrations in the influent, and at most 7 of the 47 pollutants at measurable concentrations in the effluent (this occurred for episode 4851). In other words, although the preliminary revised limitations and standards allows for concentration levels for 47 pollutants, EPA did not find any episode data set which contained all 47 organic constituents in either the influent or effluent. Thus, EPA is considering whether these large values are sufficiently protective of the environment. Conversely, facilities tend to be fairly unique in the types of organic compounds that they generate in the influent. Thus, EPA may not have provided adequate allowance for the discharge of organic constituents from some unique facilities.

2. Consideration of Alternative to TOP Limitations and Standards

Instead of a limit for TOP, EPA is considering another alternative where EPA would provide guidance on developing limitations and standards for the specific organics that would be present in the influent at a particular facility. These limits would be the alternative, instead of TOP limits, to the other two proposed alternatives (i.e., meeting a limit for total organic carbon or implementing the best management plan). EPA solicits comment on this approach.

From those facilities that would prefer to retain the final MP&M TOP limitations and standards, EPA solicits comment from facilities on when they would choose to monitor for the TOP list of pollutants (alternative (1)) rather than meet the TOC limitation (alternative (2)) or develop an organics management plan (alternative (3)). EPA also solicits comment on whether monitoring for TOP, for which each organic compound present in the wastestream must be measured, would be more cost-effective than monitoring for TOC which requires a single measurement. Additionally, EPA solicits comment from permit writers and control authorities on which alternative is preferable and least burdensome to implement.

3. Consideration of Three Methods of Calculating TOP Limitations and Standards

EPA is considering three methods for calculating the TOP limitations and standards. In Method A, EPA would follow the same approach that was used at proposal to calculate the limitations and standards, and incorporate EPA sampling data from the NODA episodes and information from the validation study. By using this method, EPA would calculate the TOP limitations and standards based on an allowance for organic pollutants that were not detected in the effluent in addition to those pollutants that were detected. In addition, EPA would exclude the data for benzoic acid in developing the

limitations and standards for TOP based on the results of the validation study.

In Method B, EPA would calculate the TOP limitations and standards using data only from the organic pollutants detected in the effluent (i.e., not provide an allowance for those not detected). For Method B, EPA also would use the sampling data from the NODA episodes and exclude benzoic acid in developing the limitations and standards for TOP.

By using Method C, as a slight variation on Method B, EPA would include industry self-monitoring data in addition to the EPA sampling data in the NODA episodes. (The self-monitoring data include very few organic constituents.) EPA found little difference in the results from applying the three different methods to develop the preliminary revised limitations and standards (*see* DCN 36014, section 19.1).

Today's preliminary revised limitations and standards correspond to results from the third method, which includes the industry self-monitoring data. EPA notes that this method resulted in somewhat larger values than the other two methods. If the TOP limitations and standards are retained in the final rule, EPA also intends to modify the minimum level for carbon disulfide from 10 ug/L to 5 ug/L to be consistent with the results of the validation study described in section II.C. Thus, these changes will result in slightly lower values for the TOP limitations and standards in the final rule, regardless of which of the three methods is selected for the final rule. EPA solicits comment on the three methods that are being considered in today's document.

C. Consistency of Statistical Methodology With Other Recent Effluent Guidelines

EPA received comments concerning the consistency of the statistical methodology used for the MP&M proposal with that used for other recent effluent guidelines (*e.g.,* Centralized Waste Treatment, Iron and Steel).

As explained in section VI.A.1, the preliminary revised limitations and standards in today's document are the greater of the values of the proposed and revised limitations and standards.

This section discusses other features of the methodology for calculating revised limitations and standards that are consistent with EPA's approach in recent effluent limitations guidelines (ELGs). This section also identifies changes from the proposal that EPA has used in calculating the revised limitations and standards, and that are being considered for the final rule.

In today's document, EPA has used the episode long-term averages and variability factors in the same manner as for the proposal. The option long-term average for a pollutant is the median of the episode long-term averages from the BAT facilities in a particular subcategory. The option daily (or monthly) variability factor is the arithmetic mean of the episode daily (or monthly) variability factors. The daily maximum limitation (or standard) is the product of the option long-term average and the option daily variability factor. The monthly average limitation (or standard) is the product of the option long-term average and the option monthly variability factor. The episode long-term averages and episode variability factors from the NODA episodes are listed in DCN 36015 in section 19.1. The option long-term averages and option variability factors based upon these NODA episodes are listed in DCN 36016 in section 19.1.

1. Variability Factors

In calculating the variability factors, commenters requested that EPA use more of the available data. This section describes the types of additional data sets that EPA considered in developing the revised limitations and standards. The minor changes in calculating the variability factors described in this section are consistent with other recent guidelines and EPA considers them to be appropriate for the MP&M final rule.

To calculate the variability factors for the proposal, EPA used data sets that contained four or more data points. Commenters noted that the minimum of four data points was higher than the three data points that EPA had specified as the minimum sample size in developing the limitations and standards for the Centralized Waste Treatment and the Iron and Steel rules. Commenters also expressed a preference for a minimum of three data points. Most of the data sets contain more than four values, so changing the minimum sample size from four to three values has limited impact on the values of the option variability factors. However, by specifying a minimum of three data points, a few more data sets have been used into calculations of the option variability factors. EPA is considering this change for the final rule and has used it in developing the revised limitations and standards. DCN 36017 in section 19.1 lists the data sets that have been included as a result of this change.

As a result of its evaluation of the variability factors for today's document, EPA intends to investigate whether variability factors for an episode data set should be included if all noncensored values were less than the minimum detection limit in that data set. For the proposal and today's document, EPA has excluded such data sets in calculating the variability factors (see DCN 36018, section 19.1 to identify today's exclusions). As there are a limited number of these data sets, it is likely that their inclusion would have minimal impacts on the values of the option variability factors. However, to include as much data as possible in calculating the option variability factors (which is consistent with requests by commenters and EPA's objectives when the data are appropriate), EPA is considering the inclusion of these data sets for the final rule.

EPA also performed an additional review of the episode variability factors to ensure that all values were greater than 1.0 (i.e., the upper percentile is greater than the long-term average) and that the daily variability factor had a greater value than the corresponding monthly variability factor (i.e., the resulting limitations/standards would be greater for a single daily measurement than for an average of measurements collected throughout the month where one high value can be counterbalanced by lower values). If an episode variability factor failed this review, then EPA excluded both the daily and monthly variability factors calculated from that episode data set in developing the revised limitations and standards.

EPA also reviewed the episode data in greater detail when the lowest and/or highest daily variability factor for a particular pollutant seemed substantially different from the daily variability factors for other episodes. EPA's review of such episode data sets will continue after the NODA.

2. Long-Term Averages

In calculating the option long-term averages for the NODA, EPA has made two changes. As explained below, the first change was to use the delta-lognormal distribution for episode long-term averages. The second change was to compare the option long-term averages to the minimum level in Method 1620 for the metals pollutants. EPA also considered the use of the mean instead of the median for option long-term averages.

a. Use of Modified Delta-Lognormal Distribution

In calculating the long-term averages for each episode data set for the proposal, EPA used arithmetic averages. For the NODA, EPA has used the modified delta-lognormal distribution to

calculate the episode long-term averages. As in the proposal, EPA then calculated the option long-term average as the median of the episode long-term averages. Generally, as shown in DCN 36020 in section 19.1, the resulting option long-term averages have similar or higher values when the episode long-term averages are based on the modified delta-lognormal distribution rather than arithmetic averages. Using the modified delta-lognormal distribution to calculate the episode long-term averages is: (1) Consistent with the regulation for the iron and steel industry and other ELGs; and (2) appears to be appropriate to use in calculating the limitations and standards for the MP&M industry.

b. Comparison to Minimum Levels in Analytical Methods for Metals

For the NODA, EPA has ensured that the option long-term average concentrations (and limitations) do not fall below the specific minimum level in EPA Method 1620 for each metal pollutant. If the option long-term average fell below the minimum level, it was raised to the value of the minimum level in Method 1620, which was used for EPA's sampling of metal pollutants (*see* DCN 36021, section 19.1 which refers to the minimum levels as ''baseline values''). EPA has determined that some laboratories, under certain conditions, can measure to levels lower than those specified in some of the methods. EPA has concluded that these results are quantitatively reliable, and therefore can be used to calculate long-term averages and variability factors. However, EPA also recognizes that not all laboratories consistently measure to these lower levels. To ensure the revised limits reflect ''typical'' laboratory reporting levels for approved methods, EPA established the option long-term averages at values equal to or greater than the minimum levels specified in Method 1620. However, EPA made one exception to these minimum levels by adjusting the minimum level for lead upward to 0.05 mg/L from 0.005 mg/L to correspond to levels achievable by inductively coupled plasma atomic emission (ICP) spectroscopy. This comparison of the option long-term averages to the minimum level in Method 1620 is consistent with other recent effluent guidelines and EPA considers this comparison to be appropriate for the MP&M rulemaking.

c. Mean Versus Median

EPA considered comments that recommended the use of the mean rather than the median in calculating the option long-term average. EPA's use of the median is consistent with other recent guidelines. The median is the value at which half of the episode long-term averages will be above and half will be below. Using the mean would allow a single facility with a much higher or much lower long-term average to significantly influence the option long-term average. Thus, EPA considers that the median is appropriate to use in developing the limitations and standards for the MP&M industry.

3. Autocorrelation

For the final rule, EPA intends to investigate whether autocorrelation is likely to be present in the effluent data. When data are said to be positively autocorrelated, it means that measurements taken at specific time intervals (such as 1 day or 2 days apart) are related. For example, positive autocorrelation would be present in the data if the final effluent concentration of lead was relatively high one day and was likely to remain at similar high values the next and possibly succeeding days. In some industries, measurements in final effluent are likely to be similar from one day to the next because of the consistency from day-to-day in the production processes and in final effluent discharges due to the hydraulic retention time of wastewater in basins, holding tanks, and other components of wastewater treatment systems. To determine if autocorrelation exists in the data, a statistical evaluation is necessary and will be considered before the final rule. To estimate autocorrelation in the data, many measurements for each pollutant would be required with values for equally spaced intervals over an extended period of time. If such data are available for the final rule, EPA intends to perform a statistical evaluation of autocorrelation and if necessary, provide any adjustments to the limitations and standards. This adjustment would increase the values of the variance and monthly variability factor. However, the estimate of the long-term average and the daily variability factor are generally only slightly affected by autocorrelation. The adjustment for autocorrelation is consistent with EPA's assumption for some pollutants in the Iron and Steel effluent limitations guidelines. If EPA determines that autocorrelation is present and that adjustments to estimates using the data from the NODA episodes will result in higher limitations and standards than the preliminary revised limitations and standards in this NODA, EPA is likely to incorporate those adjustments into the final limitations and standards.

4. Continuous and Batch Flow Systems

For each influent and effluent sample point of interest, EPA determined whether wastewater flows were ''continuous'' or ''batch.'' The distinction between flow systems is consistent with the assumptions used for EPA's rule for the Centralized Waste Treatment industry which also had data from some batch flow systems. While this same assumption was used in developing the proposed MP&M limitations and standards, the following explanation further clarifies that assumption.

At sample points associated with continuous flow processes, EPA collected composite samples for all analytes except for hexane extractable material (HEM) for which the analytical method specifies grab samples. Also, if EPA field composited samples of batches for each day at a batch flow system, the statistical analyses used the data as if they were from continuous flow systems. For each sample point associated with a continuous flow process, EPA aggregated all measurements within a day to obtain one value for the day. This daily value was then used in the calculations of long-term averages, variability factors, and limitations and standards.

At sample points associated with batch flow processes, EPA usually collected grab samples of different batches. For each sample point associated with a batch flow process, EPA aggregated the measurements to obtain one value for each batch. This batch value was then used as if it were a daily value.

5. Different Episodes at a Facility

In general, each episode identifier corresponds to a unique facility. For those facilities associated with multiple episodes, EPA has treated each episode as if it were a separate facility in the statistical analysis. While there were few facilities with multiple episodes used for the proposal, the NODA episodes include data from more facilities with multiple episodes. Thus, to provide another opportunity for public comment, the following sections provide EPA's rationale for treating the episodes separately in its analyses. As described in the following sections, these multiple episodes were from different EPA sampling episodes, different treatment trains, paired influent and effluent data from industry, and other industry submitted compliance data.

a. EPA Sampling Episodes

If EPA collected samples from a facility over two or more distinct time

periods, EPA analyzed the data from each time period separately. (All episode numbers that have no letter designation or end with an ''A'' are EPA sampling episodes.) In the documentation, EPA identifies each time period with a distinct ''facility'' identifier. For example, episodes 4805 and 4815 are actually a single facility in the Dry Dock subcategory, but the data from the two episodes are from two time periods. Three other facilities are associated with multiple EPA sampling episodes and they are all in the Metal Finishing Job Shops Subcategory (*see* DCN 36022, section 19.1). In effluent guidelines for other industrial categories including Centralized Waste Treatment, EPA has made similar assumptions for such data, because data from different time periods generally characterize different operating conditions due to changes such as management, personnel, and procedures.

b. Different Treatment Trains

If a facility had entirely separate process and treatment trains which EPA sampled separately, EPA has treated the data as if they were collected from two different facilities because the two trains are operated independently with different wastestreams. In the documentation, the episode identifier is appended with an ''A'' to indicate that the data are from the second treatment train. EPA's assumption for these data is consistent with the Centralized Waste Treatment rule.

c. Paired Influent and Effluent Sampling

EPA received self-monitoring data along with proposal comments from industry with influent and effluent paired concentration data. These data were specifically collected in response to the proposal and generally adhered to EPA's guidelines for collecting such data. Because the sampling and chemical analysis may have been somewhat different from other industry self-monitoring data, EPA has treated these data as separate episodes from the EPA sampling data and industry self-monitoring data. In the documentation, the industry paired data have a ''P'' following the 4-digit episode identifier.

d. Compliance Monitoring Data

In comments on the proposal and from other sources, EPA received compliance monitoring data from industry. These data are sometimes referred to as ''Discharge Monitoring Report'' (DMR) or self-monitoring data. In the documentation, self-monitoring data are indicated by a ''D'' appended to the 4-digit episode identifier. At a specific facility, this 4-digit episode identifier is the same as the 4-digit identifier used for EPA sampling data or the paired industry data. In the statistical analyses, the self-monitoring data are treated separately from the EPA sampling data and the paired data. This practice is consistent with other guidelines and is used because the data tend to be associated with different time periods and/or analytical methods than EPA sampling data.

For facilities that submitted self-monitoring data over an extended period, if there are substantial differences between certain time intervals, EPA will reevaluate whether the data should be assumed to be associated with different episodes in the final rule. EPA will consider using DMR data in the development of the final limitations and standards.

6. Inclusion of Effluent Data Based Upon Influent Values

Before including effluent data in the statistical analyses for the limitations and standards, EPA evaluated whether the influent concentrations were at treatable levels and whether the treatment system had efficient removal capability. While this same assumption was used in developing the proposed limitations and standards, EPA is including this discussion because many comments addressed the relationship between influent and effluent concentrations.

a. Evaluation of Treatable Levels

As in the proposal, the effluent data were used if EPA had some information indicating that the influent data were at the ''treatable'' level for the pollutant. As shown in DCN 36023 in section 19.1, this treatable level was defined as ten times the nominal quantitation limit that generally was associated with the analytical method most frequently used to measure samples collected during EPA's sampling episodes. (The nominal quantitation limit is the smallest quantity of an analyte that can be reliably measured with a particular method. The record items in section 19 generally refer to the 'nominal quantitation limit' as the ''baseline value.'') If the influent data were below the treatable level or just slightly above, EPA excluded the effluent data from the analyses for the limitations and standards.

If influent data corresponding to the same time period as the effluent data were unavailable, EPA used different assumptions depending upon the availability of other data about the facility. If influent data from a different time period were available and were at treatable levels, EPA included the effluent data in its analyses. If influent data were unavailable but EPA determined from other information about that facility that it generated the pollutants at treatable levels in the influent (for example, some automakers), then EPA included the effluent data in its analyses.

For the remaining episodes for which information about influent data were unavailable, EPA excluded their data in developing the option long-term averages and option variability factors. The episode long-term averages and variability factors for these episodes are located at DCN 36024 in section 19.1. Although EPA excluded these data from those analyses, EPA has included them in its evaluation of the preliminary revised limitations and standards. This comparison is described in section VI.A.1.c.

EPA applies this concept of ''treatability'' to the influent concentrations so that it selects effluent concentrations resulting from some treatment, rather than the absence, or relatively low levels, of the pollutant in the influent. Although EPA has used the term ''treatability levels,'' it does not mean to imply that lower levels cannot be treated by the model technologies. However, the lower levels may need less treatment than concentrations above the treatability levels that EPA has used in developing today's preliminary revised limitations and standards.

b. Removals

EPA also considered whether the treatment at the facility resulted in negative removals (i.e., the concentrations in the effluent were higher than the concentrations in the influent before treatment). Generally, EPA has excluded data that have negative removals. Exceptions are generally for Total Organic Carbon (TOC) or for removals that are close to zero. EPA requests comment on this approach. These exceptions are listed in DCN 36025 in section 19.1.

7. Minimum Data Values

For organic pollutants and hexane extractable material (HEM) which are measured by Methods 1624B/1625 and 1664 that use the minimum level (ML) concept, EPA has substituted the value of the minimum level for any detected concentration or sample-specific detection limit reported below the minimum level. EPA substituted the minimum level for these values because when an ML is published in a method, the Agency has demonstrated that at least one well-operated laboratory can achieve the ML, and when that laboratory or another laboratory uses

that method, the laboratory is required to demonstrate, through calibration of the instrument or analytical system, that it can make measurements at the ML (defined as the lowest level at which the entire analytical system must give a recognizable signal and an acceptable calibration point for the analyte). In its statistical models, EPA assumes that these substitutions are non-detected concentrations. These substitutions also are consistent with other recent guidelines. EPA considers these substitutions to be appropriate as well for the MP&M industry. Therefore, EPA has incorporated them into calculations of the revised limitations and standards.

8. Oil and Grease

In general, for the proposal and today's document, EPA used self-monitoring data when they were measured by analytical methods specified in or approved under 40 CFR part 136 that facilities are required to use for compliance monitoring. One exception was EPA's exclusion of all self-monitoring data for oil and grease measured by methods that require freon, an ozone-depleting agent, as an extraction solvent. Although EPA excluded oil and grease data from freon-based methods from the proposal, it had done so for other reasons (which are documented elsewhere) than the type of analytical method that was used. However, EPA is excluding some self-monitoring data from the NODA episodes because these data were determined by analytical methods that use freon. The following provides EPA's rationale for these exclusions.

Instead of using data measured by methods that require freon, EPA used only data from its sampling episodes and the self-monitoring data from a more recent method, Method 1664, which uses normal hexane (n-hexane) as the extraction solvent and measures oil and grease hexane extractable material. While developing Method 1664, EPA received comments about potentially differing results using the new method that could bring a permittee into noncompliance under certain circumstances (*see* DCNs 36026 and 36027, section 19.1). Although EPA has determined that the methods are comparable and that direct replacement of the new method is warranted, EPA expects that facilities will choose to use Method 1664 rather than the freon methods as freon becomes more expensive and difficult to obtain. Further, EPA has determined that it collected sufficient data to establish the oil and grease limitations using only the HEM data. Thus, EPA has chosen to develop the oil and grease limitations solely on the HEM measurements from Method 1664.

In evaluating the oil and grease data for today's document, EPA determined that its own sampling data in Phase 1 had been analyzed by EPA Method 413.2, a method utilizing freon. In addition to other reasons for excluding the data (i.e., due to its analytical method and other reasons documented elsewhere), EPA has determined that the data should be excluded because the method was unlikely to produce comparable results to methods approved under 40 CFR part 136 (such as EPA Method 413.1).

9. Data Aggregation

In reviewing its documentation after the proposal, EPA determined that it had incorrectly summarized the data aggregation procedure that EPA used for duplicates and grab samples in the statistical support document for the proposal. EPA determined that it had, in fact, used the same aggregation procedure used in developing its regulations for the Centralized Waste Treatment and the Iron & Steel industries. This procedure averages the values and assumes that the result is noncensored if one or more of the samples in the average has detected concentrations of the pollutant. In addition to using this procedure for the proposed MP&M limitations and standards, EPA has used this aggregation procedure in developing the revised limitations and standards from the NODA episodes.

10. Significant Digits

In presenting the preliminary revised limitations and standard in section VIII of today's document, EPA has rounded the results to three significant digits to conform with its usual procedure for presenting effluent limitations guidelines. The rounding procedure used for today's document rounds up values of five and above, and rounds down values of four and below, and is the same as that used in presenting the regulations for the Iron and Steel industry. This rounding procedure has minor differences from the procedure used at the proposal (*see* DCN 16385, section 10.0).

One exception is with reporting HEM results. Section 14.3 of EPA method 1664A requires reporting of results for HEM below 10mg/L to two significant digits. In section VIII, EPA has presented the limitations and standards for HEM with two significant digits when the corresponding concentration-based limitations were less than 10mg/L.

11. Data Transfers

For the proposal, EPA noted that it had transferred some option long-term averages and variability factors from one subcategory to another in order to calculate some limitations and standards (*see* section 5.3 and appendix C of the proposal statistical support document). Because new data were made available after the proposal, EPA is considering using these data wherever possible rather than transferring the option long-term averages and variability factors from the proposal. Thus, the preliminary revised limitations and standards incorporate these data to the extent possible.

For some subcategories, even with the additional data from the NODA episodes, EPA was unable to calculate the option long-term average and/or the option variability factors (*see* DCN 36028, section 19.1). This could occur for a pollutant in an option where no data were available or the episode data sets had too few noncensored measurements (i.e., the pollutant was not detected at measurable levels). For example, if a pollutant had all noncensored values for all of the episodes in an option, then it was not possible to calculate the option variability factors. The availability of more data allows for more choices in transferring option long-term averages and variability factors, therefore, EPA is considering some different transfers than it used for the proposal. In general, EPA has transferred option long-term averages and variability factors from one subcategory to another with the same model technology. The following describes the transfers that EPA used for today's preliminary revised limitations and standards and those that were used for the proposed limitations and standards.

For oil and grease (as HEM), in the subcategories with the option 2 model technology, only the General Metals (GENL) subcategory had both an option long-term average and option variability factors. For NSPS, EPA transferred those to the Non-Chromium Anodizers (ANO) and Printed Wiring Boards (PWB) subcategories which are also associated with the option 2 model technology. EPA was able to calculate an option long-term average for HEM in the Steel Forming and Finishing (SFF) subcategory (another option 2 subcategory), so only the option variability factors from the GENL subcategory for NSPS were transferred. In the proposal, EPA transferred both the option long-term average and variability factors for all four subcategories.

For total sulfide, the MFJ subcategory is the only subcategory with the option 2 technology that had both an option long-term average and option variability factors. Thus, these values were transferred to the GENL and SFF subcategories. For the PWB subcategory, because EPA was able to calculate an option long-term average, EPA transferred only the option variability factors from the MFJ subcategory for total sulfide. EPA notes that it may not regulate total sulfide in these subcategories for the final rule (*see* section IV.B.2). Since these subcategories all have the same technology basis, EPA has determined that these transfers are more appropriate than the transfers used for the proposal which were from the Oily Wastes subcategory, which uses a different technology basis.

For the SFF subcategory, EPA also was unable to calculate limitations and standards for cadmium and silver. Because the model technology is the same and the concentrations of these pollutants would be most similar to the GENL subcategory, EPA transferred the option long-term averages and option variability factors from this subcategory. EPA notes that as discussed in section IV.B, EPA is considering not regulating cadmium or silver for the SFF subcategory in the final rule. Because EPA transferred the GENL option long-term average and variability factors before the GENL proposed limitations and standards were compared against the revised limitations and standards, the SFF preliminary revised limitations and standards have values that are less than those for the GENL subcategory. This is because the proposed values for the GENL subcategory had greater values than the revised limitations and standards, and thus, EPA selected the proposed limitations and standards as the preliminary revised limitations for the GENL subcategory. However, EPA did not perform this same comparison for the SFF subcategory. For the final rule, EPA is considering whether the SFF subcategory should have the same limitations and standards as the GENL subcategory.

For the ANO subcategory, EPA was unable to calculate limitations and standards for manganese, nickel, and zinc due to insufficient data. Because the model technology is the same, EPA transferred the option long-term averages and option variability factors to the ANO subcategory from the GENL subcategory. These transfers were consistent with EPA's transfers for the proposal. EPA solicits comment on the approach used for data transfers.

12. Transfers of BPT Limitations from Other Rulemakings

For those subcategories for which EPA previously promulgated BPT/BCT limitations for TSS, O&G, and pH under other categorical guidelines, EPA proposed to transfer those values to the rule for the MP&M industry.

In particular, EPA proposed transferring the BPT/BCT limitations for oil and grease (O&G), TSS, and pH from the Metal Finishing effluent guidelines (*see* 40 CFR part 433.13) to the ANO, PWB, and MFJ subcategories. These are summarized in DCN 36060 in section 19.2. .

For the SFF subcategory, EPA proposed the same BPT/BCT limitations for O&G, TSS, and pH as it had proposed for the General Metals subcategory. EPA is now considering whether it should promulgate the less stringent BPT/BCT limitations for O&G, TSS, and pH from the Iron and Steel guidelines (*see* 40 CFR part 420) for this subcategory. These are summarized in DCN 36059 in section 19.2.

For NSPS for TSS and O&G, EPA intends to use the values calculated from its database except for the TSS NSPS for the Metal Finishing Job Shops (MFJ) subcategory. Because the TSS standards calculated from its database were greater than the BPT limitations, EPA is considering transferring the BPT limitations to NSPS. EPA also intends to review its database to determine if changes should be made to the data selection for TSS.

For the final rule, EPA intends to identify O&G limitations and standards calculated from the NODA episodes as ''O&G (HEM)' to indicate that the parameter should be measured as hexane extractable material (HEM). In contrast, EPA intends to retain the previous notation of ''O&G'' for the existing BPT/BCT limitations, and intends to include footnotes or definitions in the final rule that indicate it can be measured as HEM. EPA intends to use the two different notations because the existing BPT/BCT limitations and the limitations/standards calculated using the MP&M database were based upon analytical testing methods that used two different extraction solvents: freon and n-hexane, respectively. EPA has determined that the two methods are comparable (*see* DCNs 36026 and 36027 in section 19.2). Because freon is an ozone-depleting agent and becoming more expensive, EPA believes that facilities will prefer to measure oil and grease as HEM for the existing BPT limitations.

Except for the BPT/BCT limitations that it transferred, EPA notes that it assumed a weekly monitoring frequency in developing the proposed and preliminary revised limitations and standards. For the Metal Finishing guidelines, EPA assumed a monitoring frequency of 10 times a month in developing the BPT/BCT limitations. For the Iron and Steel guidelines, EPA assumed a daily monitoring frequency. These assumed monitoring frequencies are accounted for in the associated costs in assessing economic achievability of each rule. In general, the actual monitoring requirements will be determined by the permitting authority and compliance with the monthly average limitations and standards will be required in the final rule regardless of the number of samples analyzed and averaged. While the assumed monitoring frequency does not affect the calculated values of the option long-term average and the daily maximum limitation, it does affect the value of the monthly average limitation/standard.

13. Data Review for Final Rule

While EPA has reviewed the data for the NODA, EPA will conduct a more detailed engineering and statistical review of the data before the final rule, similar to that performed for other rules. The following paragraphs identify specific data reviews that EPA typically performs before promulgating a final rule.

For the proposal and NODA, EPA assigned various qualifiers to some data. These qualifiers are briefly explained in DCN 36029 in section 19.1 and most are described in section 10 of the proposal TDD. EPA excluded some data associated with some qualifiers (such as effluent associated with extremely low influent values). For the final rule, EPA intends to review the data exclusions as a result of the qualifiers. EPA also intends to reevaluate which data qualifiers justify data exclusions.

Comments on the proposal asserted that sample-specific detection limits were inflated for the influent data. EPA has conducted a brief review of the sample-specific detection limits and found that most appear to be the same as the nominal quantitation limits identified in the analytical methods (*see* DCN 36030, section 19.1). For the final rule, EPA will review the consequences of assuming that the concentration values are equal to the sample-specific detection limits for the few influent sample-specific detection limits that are elevated.

For the final rule, EPA intends to review graphical displays of the daily measurements in the larger episode data sets to evaluate patterns in the data, such as steadily increasing or decreasing

values over time or during certain time intervals. The plots may also indicate data values that should be reviewed further and possibly excluded because they appear to be outliers (*i.e.,* values that stand out as being extremely lower or higher than the others).

EPA also intends to review summary statistics for each episode (*see* DCNs 36031 and 36032, section 19.1). EPA may further review episodes with patterns such as minimum and maximum values far apart or extreme ranges in sample-specific detection limits. EPA will also evaluate whether some episodes appear to have data in ranges different from most other episodes in the same subcategory.

EPA also will review multiple grab measurements taken on the same day and field duplicates for extreme discrepancies between values. These measurements are listed in DCNs 36033 and 36034 in section 19.1. In addition, EPA will review its data listings of daily values (see DCN 36000, section 19.1). Where both influent and effluent are available, EPA will evaluate extreme discrepancies between influent and effluent at particular episodes. EPA also intends to review the EPA sampling data to verify that each sample day is listed for a particular pollutant unless otherwise specifically excluded. EPA will review the data for consistency and any unusual patterns (such as all values being associated with the same noncensored value over a period of time which can indicate nondetected values rather than measured values, lack of sensitivity in the laboratory procedures, or other causes).

VII. Revised Estimates of Costs, Loadings, Economic Impacts, and Cost-Effectiveness

A. Revised National Estimates of Economic Impacts

EPA is providing the results of its preliminary economic analysis results based on revised costs and selected changes in methodologies discussed above in section V. All analyses presented in this section incorporate new the costs and loadings and reflect use of the revised imputation methods and sample weights previously discussed in this document. To separate the effects of changes (i.e., revised costs, baseline loadings, removals, sample weights and imputation methods) from changes to the economic analysis, this section first presents a version of the analysis that applies the same economic impact methodologies used at proposal. The second analysis presents results using the revised cost pass-through coefficients discussed in section V.A of this document. The third analysis presents results based on a number of further changes in economic impact methodologies discussed in section V of this document. All other aspects of the economic analysis methodology remain as described in the proposal EEBA. The final part of this section presents economic impact analysis results for the Sand Filter Option described in section III of this document.

All results presented here remain in 1999 dollars, for purpose of comparison with the results of the proposed rule analysis. The analysis EPA will prepare for the final rule will be presented in 2001 dollars.

1. Results Using the Economic Impact Analysis Methodologies Used at Proposal

This section presents economic impact results using revised technical inputs (i.e., costs, baseline loadings, removals, imputation methods and sample weights), but applying the same economic impact analysis methodologies used at proposal. The analysis includes a larger number of facilities than in the proposed rule analysis (63,909 sample weighted facilities vs 62,752 at proposal). The revised imputation methods for flows allow analysis of additional facilities. In addition, some facilities were reclassified into different subcategories and a new Zinc Platers subcategory is being considered, as described in section III.A.1 of this document. Table VII.A–1 shows the number of facilities in each subcategory assessed as closures under baseline conditions. The differences in the totals between the two analyses reflects the larger number of facilities analyzed, the revised sample weights, and the reclassification of some facilities in different subcategories.

TABLE VII.A–1.—SUMMARY OF CHANGES IN THE TOTAL NUMBER OF DISCHARGERS AND BASELINE CLOSURES DUE TO CHANGES IN COSTS, WEIGHTS AND NUMBERS OF FACILITIES: EIA METHODOLOGIES USED AT PROPOSAL

Subcategory	Total number of dischargers		Number of baseline closures[a]	
	Proposed rule analysis	NODA analysis	Proposed rule analysis	NODA analysis[b]
General Metals	29,975	12,287	3,199	758
Metal Finishing Job Shop	1,530	1,189	286	60
Non-Chromium Anodizing	190	178	40	29
Printed Wiring Board	635	844	3	236
Steel Forming & Finishing	153	153	6	6
Oily Wastes	29,425	47,956	295	2,347
Railroad Line Maintenance	832	832	0	0
Shipbuilding Dry Dock	11	11	0	3
Zinc Platers	NA	458	NA	8
All Categories	62,762	63,909	3,829	3,447

[a] Both the proposed rule analysis and NODA analysis are based on proposed rule low flow cutoffs and exclusions.
[b] Changes in the number of facilities and closures are largely due to changes in the different subcategories and the facilities within them. For details see section III of this document.

The results of the post-compliance impact analyses are presented first for the PSES requirements considered for indirect discharging facilities, and then for the BAT/BPT options considered for direct discharging facilities. The comparisons are based on the Proposed Option and the NODA Option, both of which incorporate the low-flow cutoffs and exclusions of the Proposed Option. The differences in results are therefore due to the revised costs, loads and imputation methods, rather than to any changes in the regulatory option being analyzed. Similar comparisons excluding the proposed flow cut-offs and exclusions are available in section 17.1.1, DCN 35020, of the public record.

Table VII.A–2 presents economic impacts for indirect dischargers. Of the 56,169 indirect discharging facilities potentially subject to regulation after baseline closures, EPA estimates that 329 facilities or 0.6 percent could be expected to close as the result of the proposed rule, based on revised technical inputs. This compares with 179 facility closures or 0.3 percent predicted by the proposal analysis.

TABLE VII. A–2.—INCREMENTAL SEVERE IMPACTS (FACILITY CLOSURES) ON INDIRECT DISCHARGERS DUE TO CHANGES IN COSTS, WEIGHTS AND NUMBERS OF FACILITIES: EIA METHODOLOGIES USED AT PROPOSAL

Subcategory	Total operating in baseline		Number of facility closures due to the rule[a]	
	Proposed rule analysis	NODA analysis	Proposed rule analysis	NODA analysis
General Metals	23,140	10,115	24	93
Metal Finishing Job Shops	1,231	1,105	128	164
Non-Chromium Anodizing	150	113	0	0
Printed Wiring Board	620	604	7	25
Steel Forming & Finishing	105	106	6	6
Oily Wastes	28,219	42,891	14	17
Railroad Line Maintenance	799	802	0	0
Shipbuilding Dry Dock	6	3	0	0
Zinc Platers	NA	429	NA	24
All Categories	54,270	56,169	179	329

[a] Both the proposed rule analysis and NODA analysis are based on proposed rule low flow cutoffs and exclusions.

Another 627 facilities, or one percent of the indirect dischargers operating in the baseline, would experience moderate economic impacts under the proposed rule based on the revised costs, as shown in Table VII.A–3.

TABLE VII.A–3.—INCREMENTAL MODERATE IMPACTS ON INDIRECT DISCHARGERS DUE TO CHANGES IN COSTS, WEIGHTS AND NUMBERS OF FACILITIES: EIA METHODOLOGIES USED AT PROPOSAL

Subcategory	Total operating in baseline		Number of facilities experiencing moderate impacts due to the rule[a]	
	Proosed rule analysis	NODA analysis	Proosed rule analysis	NODA analysis
General Metals	23,140	10,115	153	121
Metal Finishing Job Shops	1,231	1,105	117	150
Non-Chromium Anodizing	150	113	0	24
Printed Wiring Board	620	604	301	293
Steel Forming & Finishing	105	106	4	14
Oily Wastes	28,219	42,891	0	9
Railroad Line Maintenance	799	802	0	0
Shipbuilding Dry Dock	6	3	0	0
Zinc Platers	NA	429	NA	16
All Categories	54,270	56,169	575	627

[a] Both the proposed rule analysis and NODA anaysis are based on proposed rule low flow cutoffs and exclusions.

Governments own 5,005 of the 56,169 indirect discharging facilities in the revised analysis. Of these, 43 incur compliance costs above one percent under the proposed rule, but none of the affected governments experience significant impacts as a result.

Table VII.A–4 presents the results of the same analyses for direct discharging facilities. Of the 4,293 direct dischargers subject to regulation after baseline closures, EPA estimates that 27 facilities or 0.6 percent could be expected to close as the result of the proposed rule.

TABLE VII.A–4.—INCREMENTAL SEVERE IMPACTS (FACILITY CLOSURES) ON DIRECT DISCHARGERS DUE TO CHANGES IN COSTS, WEIGHTS AND NUMBERS OF FACILITIES: EIA METHODOLOGIES USED AT PROPOSAL

Subcategory	Total operating in baseline		Number of facility closures due to the rule[a]	
	Proposed rule analysis	NODA analysis	Proposed rule analysis	NODA analysis
General Metals	3,636	1,444	20	13
Metal Finishing Job Shops	12	24	0	0
Non-Chromum Anodizing	.....	35	.....	0
Printed Wiring Board	11	4	0	0

TABLE VII.A–4.—INCREMENTAL SEVERE IMPACTS (FACILITY CLOSURES) ON DIRECT DISCHARGERS DUE TO CHANGES IN COSTS, WEIGHTS AND NUMBERS OF FACILITIES: EIA METHODOLOGIES USED AT PROPOSAL—Continued

Subcategory	Total operating in baseline		Number of facility closures due to the rule[a]	
	Proposed rule analysis	NODA analysis	Proposed rule analysis	NODA analysis
Steel Forming & Finishing	43	41	0	0
Oily Wastes	911	2,688	0	13
Railroad Line Maintenance	34	31	0	0
Shipbuilding Dry Dock	6	6	0	0
Zinc Platers	NA	21	NA	0
All Categories	4,653	4,293	20	27

[a] Both the proposed rule analysis and NODA analysis are based on proposed rule low flow cutoffs and exclusions.

Another 46 facilities, or one percent of the direct dischargers operating in the baseline, are expected to experience moderate economic impacts under the proposed rule, as shown in Table VII.A–5.

TABLE VII.A–5.—INCREMENTAL MODERATE IMPACTS ON DIRECT DISCHARGERS: EIA METHODOLOGIES USED AT PROPOSAL

Subcategory	Total operating in baseline		Number of facility experiencing moderate impacts due to the rule rule[a]	
	Proposed rule analysis	NODA analysis	Proposed rule analysis	NODA analysis
General Metals	3,636	1,741	34	15
Metal Finishing Job Shops	12	24	0	0
Non-Chromum Anodizing	.....	35	.....	24
Printed Wiring Board	11	4	0	0
Steel Forming & Finishing	43	41	7	7
Oily Wastes	911	2,391	.....	.....
Railroad Line Maintenance	34	31	0	0
Shipbuilding Dry Dock	6	6	0	0
Zinc Platers	NA	21	NA	0
All Categories	4,653	4,293	41	46

[a] Both the proposed rule analysis and NODA analysis are based on proposed rule low flow cutoffs and exclusions.

Governments own 722 of the 4,293 direct discharging facilities in the revised analysis. Of these, 236 (or 33 percent) incur compliance costs above one percent of their baseline cost of service under the proposed rule, but none of the affected governments experience significant impacts as a result.

2. Results With Revised Cost Pass-Through Coefficients

Table VII.A–6 presents economic impacts using the revised cost pass-through coefficients described in section V.A of this document.

TABLE VII.A–6.—INCREMENTAL CLOSURES AND MODERATE IMPACTS FOR NODA OPTION: ORIGINAL CPT VERSUS REVISED CPT[a]

Subcategory	Total operating in baseline	Incremental closures		Incremental moderate impacts	
		CPT used at proposal	Revised CPT	CPT used at proposal	Revised CPT
General Metals	11,559	107	110	121	127
Metal Finishing Job Shops	1,129	164	245	150	150
Non-Chromum Anodizing	148	0	0	24	24
Printed Wiring Board	608	25	28	293	346
Steel Forming & Finishing	148	6	6	14	14
Oily Wastes	45,579	31	31	9	9
Railroad Line Maintenance	832	0	0	0	0
Shipbuilding Dry Dock	9	0	0	0	0
Zinc Platers	450	24	81	16	16
All Categories	60,462	356	500	627	686

[a] Both the proposed rule analysis and NODA analysis are based on proposed rule low flow cutoffs and exclusions. These analyses include new costs, weights, and number of facilities.

Use of the revised cost pass-through coefficients result in an additional 144 closures and 59 moderate impacts.

Table VII.A–7 shows the estimated percentage price increases that result from use of the revised cost pass-through coefficients, by sector. These estimated percentage price increases are estimated for, and apply only to, the segment of the industry sectors that is estimated to incur costs as a result of the MP&M regulation. In all cases, the price increases are less than one percent.

TABLE VII.A–7.—SECTOR PERCENTAGE PRICE INCREASES PREDICTED BY NEW COST PASS-THROUGH COEFFICIENTS (NODA ANALYSIS)

Sector	Percent sector price increase [a]
Aerospace	0.04
Aircraft	0.03
Bus & Truck	0.06
Electronic Equipment	0.04
Hardware	0.08
Household Equipment	0.02
Instruments	0.08
Iron & Steel	0.20
Metal Finishing Job Shops	0.60
Mobile Industrial Equipment	0.17
Motor Vehicle	0.07
Office Machines	0.00
Ordnance	0.12
Other Metal Products	0.04
Precious & Non-Precious Metals	0.03
Printed Wiring Board	0.00
Railroad	0.01
Ships & Boats	0.03
Stationary Industrial Equipment	0.05

[a] Based on an analysis including revised costs and weights, financial data updated using sector-specific producer price indices, and new cost-pass-through coefficients. This analysis does not include other methodology changes discussed in the NODA.

3. Results Based on Revised Economic Impact Methodologies

Section V of this document discusses a number of changes EPA is considering making to the economic impact methodologies. This section presents economic impact analysis results based on a number of these changes, including:

- Use of sector-specific thresholds for the moderate impact analysis tests (pre-tax return on sales (PTRS) and interest coverage ratio (ICR);
- Use of a single test, based on net present value, to assess the potential for closures; this test excludes consideration of liquidation values for all MP&M facilities, including the 219 facilities that reported them in their response to the MP&M survey;
- Including baseline capital outlays in the calculation of cash flow;
- Updating survey data using sector-specific price indices;
- Adjusting labor costs for facilities that report abnormally high labor costs; and
- Limiting post-compliance tax shields to no greater than reported baseline taxes.

These results also include revised costs, imputation methods, and sample weights, and use the revised cost pass-through coefficients.

Table VII.A–8 shows the effects of these methodology changes in combination, compared with results based on the proposal economic impact methodologies combined with revised cost pass-through coefficients.

TABLE VII.A–8.—BASELINE CLOSURES AND INCREMENTAL CLOSURES AND MODERATE IMPACTS FOR THE PROPOSED RULE, WITH AND WITHOUT CHANGES IN ECONOMIC IMPACT ANALYSIS METHODOLOGIES

Subcategory	Total operating in baseline [a]		Incremental closures		Incremental moderate impacts	
	Without changes [b]	With changes [c]	Without changes [b]	With changes [c]	Without changes [b]	With changes [c]
General Metals	11,559	11,435	110	111	127	151
Metal Finishing Job Shops	1,129	1,139	245	520	150	36
Non-Chromium Anodizing	148	148	0	0	24	0
Printed Wiring Board	608	605	28	55	346	56
Steel Forming & Finishing	148	148	6	17	14	17
Oily Wastes	45,579	46,286	31	1	9	0
Railroad Line Maintenance	832	832	0	0	0	0
Shipbuilding Dry Dock	9	9	0	0	0	0
Zinc Platers	450	435	81	93	16	0
All Categories	60,462	61,036	500	797	686	260

[a] See Table VII.A–1 for baseline closures.
[b] Results of revised cost pass-through analysis as reported in Table VII.A–6 are included in the ''Without Changes'' columns.
[c] The results based on revised EIA methodologies also include the revised cost pass-through coefficients.

Use of the new economic impact analysis methodologies results in an increase in estimated closures for the General Metals, Metal Finishing Job Shops, Printed Wiring Board, Steel Forming and Finishing, and Zinc Plater subcategories and in a decrease in estimated closures for the Oily Waste subcategory. This result primarily reflects the recognition of ongoing capital expenditures in the cash flow analysis and use of a single test for closures.

The difference in estimated moderate impacts reflect the lower sector-specific PTRA and ICR thresholds estimated based on industry data. These lower thresholds affected both baseline and moderate impacts, with a net decrease in impacts attributed to the proposed rule. EPA concluded that the revised thresholds provide a more realistic measure of financial distress. As noted by commenters, the thresholds used in the proposal analysis resulted in substantial portions of the MP&M facilities being classified as experiencing financial distress even under baseline conditions. The sector-specific thresholds result in a more reasonable characterization of baseline conditions and of the incremental impacts of the proposed rule on financial stress.

B. Revised National Estimates of Cost-Effectiveness

EPA performed a revised cost-effectiveness analysis based on the revised estimates of costs, loadings and removals described previously. Cost-effectiveness analysis is used in the development of effluent limitations guidelines to evaluate the relative efficiency of alternative regulatory options in removing toxic pollutants from the effluent discharges to the nation's waters.

The cost-effectiveness of a regulatory option is defined as the incremental annual cost (in 1981 constant dollars) per incremental toxic-weighted pollutant removals for that option. This represents the unit cost of removing the next pound-equivalent of pollutants and is expressed in constant 1981 dollars per toxic pound-equivalent removed ($/lb-eq) to allow comparisons with other options being considered. Although not required by the Clean Water Act, cost-effectiveness analysis is a useful tool for evaluating regulatory options that address toxic pollutants.

For the proposal, EPA based BPT and BAT limitations on the same technology for all subcategories. Because the Agency does not evaluate the cost-effectiveness of BPT technology (*see* relevant discussion in the Centralized Waste Treatment ELG Proposal; 64 FR 2306) and EPA proposed BAT limitations that are equivalent to BPT limitation, EPA is only providing the cost-effectiveness analysis for indirect dischargers.

Table VII.B–1 summarizes the total cost-effectiveness analysis for the PSES regulatory option applicable to indirect dischargers, by subcategory. This analysis reflects the flow cutoffs and exclusions of the proposed rule, and includes all revised inputs. Estimates of costs and pollutant removals do not include facilities that close in the baseline.

TABLE VII.B–1.—COST-EFFECTIVENESS FOR INDIRECT DISCHARGERS BY SUBCATEGORY

Subcategory	NODA incremental before-tax compliance cost (million $1981)	NODA incremental removals (lbs-eq)	NODA cost-effectiveness ratio ($1981/lb-eq)	Cost-effectiveness ratio, proposal analysis ($1981/lb-eq)
General Metals	300.56	683,305	440	136
Metal Finishing Job Shops	45.14	64,199	703	39
Non-Chromium Anodizing	.....	.....	.....	.....
Oily Wastes	50.58	8,989	5,627	178
Printed Wiring Boards	76.08	138,458	549	68
Railroad Line Maintenance	.....	.....	.....	.....
Shipbuilding Dry Dock	.....	.....	.....	.....
Steel Forming & Finishing	9.69	63,368	153	68
Zinc Platers [a]	38.13	97,304	392	NA
All Indirect Dischargers	520.18	1,055,623	493	108

[a] Assuming no flow cutoff.

C. Results for the Sand Filter Option

EPA is considering a Sand Filter Option for the metal-discharging subcategories, as described in section III of this document. Table VII.C–1 presents economic analysis results for this option. This analysis is based on all revised inputs, revised cost pass-through coefficients, and new economic impact analysis methodologies.

TABLE VII.C–1.—ECONOMIC IMPACT ANALYSIS RESULTS AND COST-EFFECTIVENESS FOR THE SAND FILTER OPTION

Subcategory	Number of facilities operating in the baseline	Incremental closures	Incremental moderate impacts	Incremental before-tax compliance costs (million $1981)	Increment. removals (lbs-eq)	Cost-effect. ratio ($1981/lb-eq) [a]
All Dischargers with Metal-Bearing Dischargers						
General Metals	11,435	1,025	1,323	1,615.19	3,612,966	NA
Metal Finishing Job Shops	1,139	565	47	46.27	94,586	NA
Non-Chromium Anodizing	148	91	0	26.91	2,445,414	NA
Printed Wiring Boards	605	80	56	85.94	161,618	NA
Steel Forming & Finishing	148	19	15	29.12	180,814	NA
Zinc Platers [b]	435	93	0	52.97	164,137	NA
Total	13,910	1,872	1,442	1,856.40	6,659,535	NA
All Indirect Dischargers with Metal-Bearing Dischargers						
General Metals	11,316	1,028	1,498	1,072.14	1,985,066	540
Metal Finishing Job Shops	1,115	577	36	44.65	92,575	482
Non-Chromium Anodizing	113	91	0	6.07	5,622	1,081
Printed Wiring Boards	600	84	60	85.66	161,586	530
Steel Forming & Finishing	106	17	11	13.83	64,136	216

TABLE VII.C–1.—ECONOMIC IMPACT ANALYSIS RESULTS AND COST-EFFECTIVENESS FOR THE SAND FILTER OPTION—Continued

Subcategory	Number of facilities operating in the baseline	Incremental closures	Incremental moderate impacts	Incremental before-tax compliance costs (million $1981)	Increment. removals (lbs-eq)	Cost-effect. ratio ($1981/lb-eq) [a]
Zinc Platers [b]	414	93	12	49.90	163,200	306
Total	13,664	1,889	1,616	1,272.26	2,472,185	515

[a] Cost-Effectiveness is applicable to indirect dischargers only.
[b] Assuming no flow cutoff.

D. Revised National Estimates of Monetized Benefits

EPA is providing preliminary environmental assessment and benefits analysis results based on revised pollutant loadings. All analyses presented in this section incorporate changes to technical inputs including pollutant loadings, sample weights, a larger number of sample MP&M facilities, and reclassification of some facilities into different discharge categories as described in section III.G of today's document. To separate the effects of the revised pollutant loadings and sample weights from benefits analysis changes, EPA first presents a version of the analysis that applies the same benefit analysis methodologies used at proposal. The proposal EEBA describes all aspects of the environmental assessment and benefits analysis methodologies. The second analysis presents benefits results using the revised methodologies and data discussed in section V of today's document but does not incorporate changes in the environmental assessment and benefits analysis methodologies. The third benefits results reflect all changes documented in today's document (e.g., changes in loadings, environmental assessment, and benefits analysis methodologies).

Like the revised estimates of economic impacts, the benefits results presented here use 1999 dollars to enable comparison with the results of the proposed rule analysis. The benefit analysis EPA prepares to accompany the final rule will be presented in 2001 dollars. Benefits results apply to the NODA option only (i.e., benefits were only estimated for Options 2, 6, and 10 with the proposed flow cut-offs and exclusions). The NODA option includes the same exclusions and flow cutoffs as the proposed option thus benefits were not estimated for the basic and advanced treatment options without flow cutoffs.

1. Human Health Benefits

EPA used revised pollutant loading estimates to analyze the following measures of health-related benefits: reduced cancer risk from fish and water consumption; reduced risk of non-cancer toxic effects from fish and water consumption; lead-related health effects to children and adults; and reduced occurrence of in-waterway pollutant concentrations in excess of levels of concern.

1.a Reduced incidence of cancer cases

Table VII.D–1 presents revised total benefits from reduced incidence of cancer cases, including both drinking water and fish exposures.

TABLE VII.D–1.—ESTIMATED ANNUAL BENEFITS FROM AVOIDED CANCER CASES FROM FISH AND DRINKING WATER CONSUMPTION

Regulatory status	Drinking water		Fish consumption		Total	
	Annual cancer cases	Benefit value (million 1999$)	Annual cancer cases	Benefit value (million 1999$)	Annual cancer cases	Benefit value (million 1999$)
Proposed Rule						
Baseline	5.10	N/A[1]	0.13	N/A	5.23	N/A
# Cases/Value	2.86	$13.01	0.08	$0.26	2.94	$13.27
Percent Reduction	43.9	N/A	35.7	N/A	43.9	N/A
NODA Option (Includes Changes to Technical Inputs Only)[2]						
Baseline	0.45	N/A	0.53	N/A	0.98	N/A
# Cases/Value	0.22	$1.34	0.17	$2.10	0.39	$3.45
Percent Reduction	51.5	N/A	67.8	N/A	60.4	N/A
NODA Option With All Changes in Today's Document						
Baseline	4.82	N/A	0.69	N/A	5.51	N/A
# Cases/Value	1.87	$18.00	0.21	$2.96	2.08	$20.95
Percent Reduction	61.2	N/A	69.9	N/A	62.3	N/A

[1] Not Applicable.
[2] The NODA Option analysis (including the NODA option with technical input changes only (*e.g.,* changes in loadings methodology) and the NODA option with all changes in today's Document) does not include cancer effects associated with exposure to lead.
Source: U.S. Environmental Protection Agency.

EPA introduced two methodology changes that affect the estimated incidence of cancer cases. First, EPA corrected the POTW flow assigned to small receiving POTWs with missing flow information. Second, EPA updated the list of drinking water intake sites used for estimating cancer cases from drinking water. These changes are discussed in section V of this document.

EPA estimates that cancer cases under the NODA option with all changes in today's Notice and revised pollutant loadings will decrease from annual baseline levels of 4.82 to 1.87 for drinking water cancer cases and from 0.69 to 0.21 for fish consumption cancer cases, and will result in monetary benefits of $18.00 million and $2.96 million (1999$), respectively, for drinking water and fish consumption cancer cases.

Total benefits from reduced exposure to carcinogens are $20.95 million (1999$) annually under the NODA option with all changes in today's document.

1.b Reductions in Systemic Health Effects

The change in exposure to pollutants through fish and water consumption results in improvements in human health and well-being. One way of measuring these effects is to compare the reduction in pollutant exposure to pollutant-specific health effects thresholds. The Agency used the revised pollutant loading estimates to calculate in-stream pollutant concentrations for 77 pollutants that are toxic to body systems. EPA then compared estimated in-stream pollutant concentrations with risk reference doses to calculate a hazard score. The Agency calculated the distribution of hazard scores for drinking water and fish consumption populations for baseline and post-compliance exposures. The results for the proposed rule showed a movement in populations from higher risk values to lower risk values for both the fish and drinking water analyses. Both analyses show substantial increases in the percentage of the exposed populations that would be exposed to ''no risk of systemic health hazards.'' Results for all options show similar movements in populations from higher risk values to lower risk values for both drinking water and fish consumption populations (*see* section 17.7.1, DCN 35561 and section 17.7.2, DCN 35611).

1.c Benefits From Reduced Exposure to Lead

Table VII.D–2 presents revised benefit estimates associated with reduced exposure to lead. The analysis assessed benefits of reduced lead exposure from consumption of contaminated fish tissue to three sensitive populations: (1) Preschool age children, (2) pregnant women, and (3) adult men and women.

TABLE VII.D–2: NATIONAL LEAD-RELATED BENEFITS

[Millions of 1999 $ per year]

Benefits Category	Children		Adult Men		Adult Women		Total	
	Reduced Cases	Monetary Value	Reduced Cases	Monetary Value	Reduced Cases	Monetary Value	Reduced Cases	Monetary Value
Proposed Rule								
Neonatal Mortality	1.6	$9.33	...	...	...	...	1.6	$9.33
Avoided IQ loss	489.1	$4.93	...	...	...	...	489.1	$4.93
Reduced IQ<70	1.7	$0.13	...	...	...	...	1.7	$0.13
Reduced Pb>20 mg/L	0.1	$0.00	...	...	...	...	0.1	$0.00
Hypertension	...	...	959.8	$1.01	N/A	N/A	959.8	$1.01
CHD	...	...	1.2	$0.09	0.4	$0.03	1.6	$0.11
CBA	...	...	0.5	$0.14	0.2	$0.03	0.7	$0.17
BI	...	...	0.3	$0.08	0.1	$0.02	0.4	$0.10
Mortality	...	...	1.7	$9.85	0.4	$2.38	2.1	$12.23
NODA Option (Includes Changes to Technical Inputs Only)								
Neonatal Mortality	0.8	$4.48	...	...	...	...	0.8	$4.48
Avoided IQ loss	229.4	$2.31	...	...	...	...	229.4	$2.31
Reduced IQ<70	0.8	$0.06	...	...	...	...	0.8	$0.06
Reduced Pb>20 mg/L	0.0	$0.00	...	...	...	...	0.0	$0.00
Hypertension	...	...	468.0	$0.49	N/A	N/A	468.0	$0.49
CHD	...	...	0.6	$0.04	0.2	$0.01	0.8	$0.06
CBA	...	...	0.3	$0.07	0.1	$0.02	0.3	$0.08
BI	...	...	0.1	$0.04	0.1	$0.01	0.2	$0.05
Mortality	...	...	0.8	$4.88	0.2	$1.17	1.0	$6.05
NODA Option With all Changes in Today's Document								
Neonatal Mortality	0.8	$5.10	...	...	...	...	0.8	$5.10
Avoided IQ loss	3,345.6	$33.71	...	...	...	...	3,345.6	$33.71
Reduced IQ<70	11.4	$0.83	...	...	...	...	11.4	$0.83
Reduced Pb>20 mg/L	0.9	$0.02	...	...	...	...	0.9	$0.02
Hypertension	...	...	507.9	$0.53	N/A	N/A	507.9	$0.53
CHD	...	...	0.7	$0.05	0.2	$0.01	0.9	$0.06
CBA	...	...	0.3	$0.07	0.1	$0.02	0.4	$0.09
BI	...	...	0.2	$0.04	0.1	$0.01	0.2	$0.05
Mortality	...	...	0.9	$5.59	0.2	$1.34	1.1	$6.93

Source: U.S. Environmental Protection Agency

EPA estimates that the NODA option with all changes in today's document, including the changes in methodology for estimating lead benefits for children discussed in section V of this document, results in an avoided IQ loss of 3,346 points and an accompanying monetary benefit of $33.71 million (1999$) across all children. In addition, EPA estimates that reduced occurrences of extremely low IQ scores (<70) and reduced incidence of blood-lead levels above 20 mg/dL will reduce the annual cost of compensatory education for children with learning disabilities by $0.85 million (1999$). EPA also estimates a reduced incidence of neonatal mortality by 0.8 case annually. The estimated monetary value of benefits from reduced neonatal mortality is $5.10 million (1999$).

Quantified adult health effects include increased incidence of hypertension (estimated for males only), initial coronary heart disease (CHD), strokes (cerebrovascular accidents (CBA) and atherothrombotic brain infarctions (BI)), and premature mortality.

EPA estimates that the NODA option with all changes in today's document reduces hypertension by an estimated 508 cases annually among males, resulting in benefits of approximately $0.53 million (1999$). Reducing the incidence of initial CHD, strokes, and premature mortality results in estimated benefits of $0.06, $0.14, and $6.93 million (1999$), respectively. Overall, adult lead-related benefits are $7.67 million annually (1999$).

Total benefits from reduced exposure to lead, including both children and adults, are $47.33 million (1999$) annually under the NODA option with all changes in today's document. 1.d Exceedances of Human Health-Based AWQC for Consumption of Water and Organisms

EPA also estimated the effect of MP&M facility discharges by comparing pollutant concentrations in affected waterways to ambient water criteria for the protection of human health. Table VII.D–3 presents results of this analysis.

TABLE VII.D–3.—ESTIMATED MP&M DISCHARGE REACHES WITH MP&M POLLUTANT CONCENTRATIONS IN EXCESS OF AWQC LIMITS FOR PROTECTION OF HUMAN HEALTH OR AQUATIC SPECIES

Regulatory Status	Number of Reaches With MP&M Pollutant Concentrations Exceeding Human Health-based AWQC Limits		Number of Benefitting Reaches			
			All AWQC Exceedances Eliminated		Number of AWQC Exceedances Reduced	
	For Consumption of Water and Organisms	For Consumption of Organisms Only	For Consumption of Water and Organisms	For Consumption of Organisms Only	For Consumption of Water and Organisms	For Consumption of Organisms Only
Proposed Rule						
Baseline	10,310	192	N/A	N/A	N/A	N/A
Proposed Option	9,205	71	1,105	121	382	8
NODA Option (Includes Changes to Technical Inputs Only)						
Baseline	4,611	185	N/A	N/A	N/A	N/A
NODA Option	3,667	119	944	66	196	15
NODA Option With all Changes in Today's Document						
Baseline	5,994	209	N/A	N/A	N/A	N/A
NODA Option	4,827	124	1,167	85	233	19

Source: U.S. Environmental Protection Agency

EPA estimates that the NODA option with all changes in today's document eliminates the occurrence of concentrations in excess of human health criteria for consumption of water and organisms on 1,167 of the 5,994 reaches on which baseline discharges are estimated to cause concentrations in excess of AWQC values. Likewise, EPA estimates that under this option the rule eliminates the occurrence of concentrations in excess of human health criteria for consumption of only organisms on 85 of the 209 reaches on which baseline discharges are estimated to cause concentrations in excess of AWQC limits. In addition, EPA expects that partial water quality improvements from reduced occurrence of some pollutant concentrations in excess of AWQC limits will occur at 233 and 19 receiving reaches, respectively, for consumption of water and organisms and for consumption of organisms only.

2. Ecological, Recreational, and Nonuser Benefits

This analysis combines the findings from the aquatic life benefits analysis and the human health AWQC exceedance analysis described previously. Table VII.D–4 presents estimated changes in occurrences of pollutant concentrations exceeding aquatic life and/or human health AWQC values based on the pollutant loading estimates used for the proposed rule analysis and the revised pollutant loading estimates. EPA expects that 6,051 stream reaches will exceed chronic or acute aquatic life AWQC and/or human health AWQC values at the baseline discharge levels based on the NODA analysis. The NODA option with all changes in today's document is expected to eliminate AWQC exceedances on 1,179 of these reaches. Of the remaining 4,872 reaches with concentrations of one or more pollutants that exceed AWQC limits in the baseline, EPA expects that 592 of these reaches will experience partial water quality improvements from reduced occurrence of some pollutant

concentrations in excess of AWQC limits.

TABLE VII.D–4.—ESTIMATED MP&M DISCHARGE REACHES WITH MP&M POLLUTANT CONCENTRATIONS IN EXCESS OF AWQC LIMITS FOR PROTECTION OF HUMAN HEALTH OR AQUATIC SPECIES

Regulatory Status	Number of Reaches With MP&M Pollutant Concentrations Exceeding AWQC Limits	Number of Benefitting Reaches	
		All AWQC Exceedances Eliminated	Number of AWQC Exceedances Reduced
Proposed Rule			
Baseline	10, 443	N/A	N/A
Post Compliance	9,258	1,185	1,837
NODA Option (Includes Changes to Technical Inputs Only)			
Baseline	4,663	N/A	N/A
Post Compliance	3,702	960	555
NODA Option With all Changes in Today's Document			
Baseline	6,051	N/A	N/A
Post Compliance	4,872	1,179	592

Source: U.S. Environmental Protection Agency

EPA attached a monetary value to these reduced exceedances based on increased values for recreational fishing. The NODA analysis excludes monetized estimates for additional benefits categories, specifically recreational boating and near-water recreation, and higher estimates for non-use benefits based on these additional benefits categories. EPA was unable to update boating and near-water analysis for the NODA option because valuation of these additional benefits categories is partially based on results from the Ohio case study analysis. As noted in the preceding sections of this document, because of the timing of the NODA, new pollutant loading estimates have not been estimated for the MP&M facilities that completed the Ohio case study questionnaire. The Agency will estimate these additional benefits categories in the final rule analysis. A detailed discussion of the recreational benefits analysis methodology appears in the proposal EEBA. Table VII.D–5 presents the estimated national recreational benefits of the proposed rule, the NODA option with the technical inputs, and the NODA option with all changes in today's document.

EPA estimated recreational fishing benefits of $365.36 million (1999$) for the proposed rule. Based on the revised pollutant loadings, the increased number of MP&M sample facility locations (i.e., use of additional questionnaires), and corrections in POTW flows. EPA estimates recreational fishing benefits of $346.11 million (1999$) for the NODA option with all changes in today's document.

5. Productivity Changes: Cleaner Sewage Sludge (Biosolids)

Under the proposed rule, EPA estimated that 62 POTWs would be able to select the land application disposal based on estimated reductions in sludge contamination. An estimated 1.17 million dry metric tons (DMT) of sewage sludge would newly qualify for land application annually. EPA also estimated that 21 POTWs that previously met only the land application pollutant limit would, as a result of regulation, meet the more stringent land application concentration limits. EPA estimated $61.3 million (1999$) in annual cost savings for the POTWs expected to upgrade their sludge disposal practices.

Based on the revised loadings and changes in the estimated flow for small POTW facilities, EPA estimates that 39 POTWs would be able to select the lower-cost land application disposal method under the NODA option with all changes in today's document. Only 0.11 million dry metric tons (DMT) of sewage sludge is expected to newly qualify for land application annually under the NODA option with all changes in today's Notice. The annual estimated cost savings for the POTWs expected to upgrade their sludge disposal practices decreases to $5.59 million (1999$) under the NODA option with all changes in today's document. EPA estimates that an additional 28 POTWs that previously met only the land application pollutant limit will be able to meet the more stringent land application concentration limits under the NODA option with all changes in today's document. Commenters raised concerns with EPA's analysis of POTW cost savings and the ability of some POTWs to upgrade their sludge disposal practices. As noted earlier, AMSA recently surveyed the same POTWs as EPA did for the 1997 POTW survey, including asking about disposal practices. EPA is in the process of evaluating this new information. For the final rule, the Agency will consider changes to the POTW benefits analysis based on the new data.

6. Total Estimated Benefits of the Proposed MP&M Rule

EPA estimated that partial benefits under the NODA option for the four categories for which monetary estimates were possible at this time (Categories 1–4 in Table VII.D–5). The benefits for these four categories are $419.97 million (1999$) annually. Enhanced boating and viewing benefits will be estimated for the final rule based on the changes in technical inputs and the methodology changes discussed earlier. Nonuse benefits will be estimated based on ½ recreational benefits.

Estimates detailed in the NODA omit three categories of benefits (Categories 5–7 in Table VII.D–5) that will be

estimated for the final rule, and therefore underestimate the total benefits of the rule. As in the proposal, the NODA results also omit additional benefits to society that may result from reduced MP&M effluent discharges such as swimming; non-cancer health benefits (other than benefits from reduced exposure to lead); and the reduced cost of drinking water treatment for the pollutants with drinking water criteria.

TABLE VII.D–5.—ESTIMATED BENEFITS FROM REDUCED MP&M DISCHARGES (ANNUAL BENEFITS—MILLION $ 1999) [1]

Benefit category	NODA option (changes to technical inputs only)	NODA option with all changes in today's document
1. Reduced Cancer Risk:.		
Fish Consumption	$2.10	$2.96
Water Consumption	$1.34	$18.00
2. Reduced Risk from Exposure to Lead:.		
Children	$6.85	$39.66
Adults	$6.73	$7.67
3. Avoided Sewage Sludge Disposal Costs	$7.68	$5.59
4. Enhanced Fishing	$328.33	$346.11
5. Enhanced Boating	Not Estimated	To Be Estimated
6. Enhanced Viewing	Not Estimated	To Be Estimated
7. Nonuse benefits (½ of Recreational Use	Not Estimated	To Be Estimated
Total Monetized Benefits [1]	Not Estimated	To Be Estimated

[1] See also Chapter 19 of the proposal EEBA (U.S. Environmental Protection Agency).

VIII. Preliminary Revised Limitations and Standards

A. Technology Option 2

Technology Option 2 includes in-process flow control and pollution prevention, segregation of wastewater streams, preliminary treatment steps as necessary (including oils removal using oil-water separation by chemical emulsion breaking), chemical precipitation using lime or sodium hydroxide, and sedimentation using a clarifier.

At proposal EPA based the BPT, BCT, and BAT proposed effluent limitations guidelines on Option 2 for existing direct dischargers in the General Metals, Metal Finishing Job Shops, Non-Chromium Anodizing, Printed Wiring Board, and Steel Forming and Finishing Subcategories. EPA also based the proposed pretreatment standards for existing sources (PSES) on Option 2 for the General Metals, Metal Finishing Job Shops, Printed Wiring Boards, and Steel Forming & Finishing Subcategories.

EPA did not propose PSES nor pretreatment standards for new sources (PSNS) for the Non-Chromium Anodizing Subcategory. EPA proposed new source performance standards (NSPS) for new direct dischargers in the Non-Chromium Anodizing Subcategory based on Option 2. Additionally, at proposal, EPA did not calculate new BPT limitations for TSS or oil and grease for the Non-Chromium Anodizing, Metal Finishing Job Shops, and Printed Wiring Board subcategories. Instead, EPA set them at the same level as in the Metal Finishing effluent guidelines (*see* 40 CFR 433.13). EPA is again not calculating new BPT limitations for TSS or oil and grease in today's document for these subcategories.

Table VIII.A–1 presents the concentration-based preliminary revised limitations and standards for Option 2. However, in the final rule, EPA intends to promulgate limitations and standards in terms of pounds per 1000 pounds of production for the different types of operations in this subcategory. EPA has converted the concentration-based preliminary revised limitations and standards to mass units using the production values in Table 14–7 of the proposal TDD. These Mass based limits for the Steel Forming & Finishing based on Option 2 are presented in the record (*see* section 19.2, DCNs 36056 and 36059).

TABLE VIII.A–1.—PRELIMINARY REVISED LIMITATIONS AND STANDARDS (MG/L) FOR TECHNOLOGY OPTION 2

Analyte	GENL Daily	GENL Monthly	MFJ Daily	MFJ Monthly	PWB Daily	PWB Monthly	ANO Daily	ANO Monthly	SFF Daily	SFF Monthly	ZINC Daily	ZINC Monthly
ALUMINUM	.....	.....	.....	.....	.....	.....	8.20	4.00	.....	.....	.....	.....
AMENABLE CYANIDE	0.140	0.0700	0.140	0.0700	0.140	0.0700	.....	.....	0.140	0.0700	.....	.....
CADMIUM	0.140	0.0900	0.210	0.0900	.....	.....	.....	.....	0.0447	0.0274	.....	.....
CHROMIUM	0.250	0.140	2.80	0.905	0.0795	0.0330	.....	.....	0.0315	0.0151	1.44	0.492
COPPER	0.550	0.280	1.30	0.570	2.15	1.01	.....	.....	0.111	0.0463	.....	.....
CYANIDE	0.362	0.170	0.362	0.170	0.362	0.170	.....	.....	0.362	0.170	.....	.....
LEAD	0.189	0.0853	0.156	0.0945	0.432	0.208	.....	.....	0.803	0.273	.....	.....
MANGANESE	0.475	0.255	0.250	0.100	1.30	0.640	0.475	0.255	0.305	0.216	.....	.....
MOLYBDENUM	0.790	0.490	0.100	0.0829	.....	.....	.....	.....	0.0687	0.0590	.....	.....
NICKEL	0.636	0.339	1.50	0.640	0.411	0.187	0.636	0.339	0.0983	0.0658	.....	.....
OIL AND GREASE (AS HEM) †	23.3	14.4	23.3	14.4	23.3	14.4	23.3	14.4	12.4	7.7	.....	.....
SILVER	0.220	0.0900	0.252	0.0845	.....	.....	.....	.....	0.111	0.0443	.....	.....
TIN	1.40	0.670	1.80	1.40	0.310	0.140	.....	.....	0.0838	0.0444	.....	.....
TOTAL ORGANIC CARBON (TOC)	87.0	50.0	78.0	59.0	101.0	67.0	.....	.....	47.0	37.7	.....	.....
TOTAL ORGANICS PARAMETER	6.65	3.24	6.65	3.24	6.65	3.24	.....	.....	6.65	3.24		
TOTAL SULFIDE	0.676	0.475	0.676	0.475	6.52	4.58	.....	.....	0.676	0.475	.....	.....
TOTAL SUSPENDED SOLIDS †	42.2	21.2	33.2	16.9	83.1	35.9	56.0	23.3	37.4	24.0	.....	.....
ZINC	0.748	0.352	0.677	0.323	0.0364	0.0269	0.748	0.352	1.45	0.582	2.52	1.34

Note: GENL = General Metals, MFJ = Metal Finishing Job Shops, PWB = Printed Wiring Board, ANO = non-chromium anodizing, SFF = Steel Forming & Finishing, Zinc = Zinc Platers

† The values for Oil and Grease (as HEM) were calculated from the NODA episodes. See discussion on BPT limitations and NSPS for these pollutants in section VI.C.12.

B. Technology Option 4

Technology Option 4 includes in-process flow control and pollution prevention, segregation of wastewater streams, preliminary treatment steps as necessary (including oils removal by ultrafiltration), chemical precipitation using lime or sodium hydroxide, and solids separation using a microfilter.

At proposal EPA based the NSPS and PSNS (new source standards) on Option 4 for the General Metals, Metal Finishing Job Shops, Printed Wiring Boards, and Steel Forming and Finishing Subcategories. EPA is currently reviewing whether to promulgate final limits based on the proposed technology option (Option 4) for new sources in the metal-bearing subcategories (*see* section IX.A) or whether Option 2 is sufficient. EPA is not presenting preliminary revised limitations and standards for Option 4 in today's document.

C. Technology Option 6

Technology Option 6 includes in-process flow control, pollution prevention, and oil-water separation by chemical emulsion breaking. At proposal EPA based the BPT, BCT, BAT, PSES, NSPS, and PSNS effluent limitations guidelines and pretreatment standards on Option 6 for the Oily Wastes Subcategory. Option 6 includes in-process flow control, pollution prevention, and oil-water separation by chemical emulsion breaking. Table VIII.C–1 presents the preliminary revised limitations and standards for Option 6.

TABLE VIII.C–1.—PRELIMINARY REVISED LIMITATIONS AND STANDARDS (MG/L) FOR TECHNOLOGY OPTION 6

Analyte	OILY daily	OILY monthly
OIL AND GREASE (AS HEM)	45.9	26.0
TOTAL ORGANIC CARBON (TOC)	633.0	378.0
TOTAL ORGANICS PARAMETER	6.65	3.24
TOTAL SULFIDE	31.3	13.3
TOTAL SUSPENDED SOLIDS	63.0	31.0

Note: OILY = Oily Wastes

D. Technology Option 10

Technology Option 10 includes in-process flow control, pollution prevention, and oil-water separation by dissolved air flotation. At proposal EPA based the BPT, BCT, BAT, and NSPS effluent limitations guidelines and pretreatment standards for the Shipbuilding Dry Dock and Railroad Line Maintenance Subcategories on Option 10. EPA did not propose pretreatment standards for new or existing sources in the Shipbuilding Dry Dock and Railroad Line Maintenance Subcategories. Table VIII.D–1 presents the preliminary revised limitations and standards for Option 10.

EPA proposed limitations and standards for biochemical oxygen demand measured as 5-day biochemical oxygen demand (BOD_5). In examining its data, EPA determined that it had used biochemical oxygen demand data measured as 5-day carbonaceous biochemical oxygen demand ($CBOD_5$). In some cases, BOD_5 will have higher concentration values than $CBOD_5$. Thus, in today's document, EPA is clarifying which form of biochemical oxygen demand it proposed to regulated (i.e., $CBOD_5$).

TABLE VIII.D–1.—PRELIMINARY REVISED LIMITATIONS AND STANDARDS (MG/L) FOR TECHNOLOGY OPTION 10

Analyte	DRYD daily	DRYD monthly	RRL daily	RRL monthly
BOD 5–DAY (CARBONACEOUS)	.....	.....	7.20	5.83
OIL AND GREASE (AS HEM)	34.3	17.5	8.4	6.9
TOTAL SUSPENDED SOLIDS	81.0	44.0	20.5	13.7

Note: DRYD = Shipbuilding Dry Dock, RRL = Railroad Line Maintenance

IX. Consideration of Alternative Options

Based on the data received with comments, data corrections, and changes to certain methodologies for the proposed rule, EPA is presenting cost, pollutant reduction, and economic impact estimates (see section VII of today's document). EPA will consider these revised results in its decisions for the final rule. In the sections below, EPA discusses in detail the options for the General Metals, Metal Finishing Job Shop, Printed Wiring Board, Oily Wastes, Railroad Line Maintenance, and Steel Forming & Finishing.

Commenters requested that EPA consider alternatives to the preferred options selected for the proposal for certain subcategories. As a result of additional data and comments, EPA is reconsidering: (1) the options for BPT/BAT limitations for specified subcategories; and (2) the proposed option for new sources for the metal-bearing subcategories. EPA is also considering: (1) the use of an Environmental Management System for the General Metals Subcategory; (2) a variety of options to reduce economic impacts in several subcategories; and (3) a change in the proposed technology option for the Railroad Line Maintenance Subcategory. These alternatives are discussed in more detail below. In addition, as recommended by the Small Business Advocacy Review Panel for the proposed rule (66 FR 524), EPA may consider a ''no regulation'' option or change in the low wastewater flow exclusions in the final rule for several subcategories ''to reduce any significant economic impacts that are not justified by environmental improvements and to improve the cost-effectiveness of the regulation.'' EPA is also considering the ''no further regulation'' option in the final rule for several subcategories.

A. Consideration of Change in New Source Technology Option for Metal-Bearing Subcategories

EPA is reviewing whether to promulgate final limits based on the proposed technology option for new sources in the metal-bearing subcategories. EPA proposed new source standards for the General Metals, Metal Finishing Job Shops, Printed Wiring Board, and Steel Forming & Finishing subcategories. EPA proposed standards based on the following treatment technology: segregation of chelated wastes, hexavalent chromium reduction (when necessary), cyanide destruction (when necessary), ultrafiltration for oils removals,

incorporation of pollution prevention and water conservation practices, chemical precipitation (by sodium hydroxide), and solids separation by a microfilter (''Option 4''). EPA proposed existing source limits based on ''Option 2''—a similar treatment train except chemical emulsion breaking is used for preliminary treatment of oily wastes and the microfilter is replaced by a lamella slant plate clarifier. EPA notes that it proposed setting new source limits equal to existing source limits for Non-Chromium Anodizing, the other metal-bearing subcategory.

EPA solicited comment and data on two alternative options for new sources in those metal-bearing subcategories (66 FR 534, solicitation 26; 66 FR 536, solicitation 39). The first alternative would establish new source limits for these subcategories based on Option 2 technology with an ultrafilter substituting for chemical emulsion breaking and oil/water separator. The second alternative would establish new source limits completely based on Option 2 with the corresponding new source limits equal to the existing source limits.

EPA received many comments requesting that EPA not set new sources limits based on Option 4 technology. Commenters stated that EPA had under-costed Option 4 technology and that it would be a barrier to entry for new facilities. In addition, commenters questioned the completeness of EPA's database on microfiltration. Commenters noted that EPA transferred limits for several pollutants from Option 2 technology, based on lack of data. EPA did not receive additional sampling data for microfiltration. Therefore, EPA is considering for the final rule, as discussed in the proposal, setting new source limitations and pretreatment standards based on Option 2 technology. This means the final limits would be equal for existing sources and new sources in the subcategories discussed in this section. EPA again solicits comment on basing the new source technology option on Option 2.

B. General Metals Subcategory

In the proposed rule EPA proposed numerical limitations and pretreatment standards for the General Metals Subcategory based on Option 2 technology (see section IX.A above for description of Option 2). EPA selected Option 2 technology based on the national estimates of costs, pollutant removals, economic impacts, and environmental benefits as determined at the time of the proposal. These estimates have changed based on public comments as described in previous sections of today's document. Therefore, EPA is reconsidering alternative options to reduce the economic impact, and solicits comment on potential approaches. EPA is also considering promulgating pretreatment standards for new and existing sources as equivalent to 40 CFR part 433 for the General Metals Subcategory.

EPA notes that zinc platers in the General Metals Subcategory are not considered in the following analyses but are analyzed separately (see section 17.5, DCN 17761). EPA is considering the same General Metals Subcategory options for this potential new zinc plater subcategory (see section III.A.1).

1. Consideration of an Environmental Management System Based Alternative for the General Metals Subcategory

In the preamble for the proposal (66 FR 513), EPA solicited comment on offering a pollution prevention alternative with an environmental management system (EMS) component to the Metal Finishing Job Shops Subcategory as well as other subcategories, including the General Metals Subcategory. In response to the solicitation, EPA received a suggestion for an EMS-based alternative for the General Metals subcategory from an industry group formed by several facilities and industry trade associations representing the General Metals Subcategory. The following explains what an EMS is and explains the suggested alternative.

EMSs provide organizations of all types with a structured approach for managing environmental and regulatory responsibilities to improve overall environmental performance, including areas not subject to regulation. EMSs can also help organizations better integrate the full scope of environmental considerations and get better results, by establishing a continuous process of checking to make sure environmental goals are met. EMS implementation ensures that procedures are in place for taking remedial action if problems occur. From a business perspective, benefits may include cost savings, increased operational efficiency and competitiveness, risk reduction, improved internal communication, and improved relations with external parties. EMSs typically incorporate a feedback mechanism that supports measurement of performance against a set of measurable objectives and provides a mechanism for correction or preventive action. EMSs do not replace the need for regulatory and enforcement programs, but they can complement them.

A strong EMS does not just set rules for employees: it tracks performance, fosters proactive identification and correction of problems, and provides a mechanism to prevent problems from recurring. Many organizations are adopting EMSs as a management tool. EPA encourages the use of EMSs because these tools have the potential to improve compliance rates and environmental performance.

In its comments to EPA, an industry group suggested that EPA consider an EMS-based alternative to the final part 438 (MP&M) effluent limits for facilities in the General Metals subcategory (see section 16.4, DCN 17793). The alternative would authorize certain facilities to continue to be subject to part 433 under the circumstances discussed below. Table IX.B–1 provides the conditions for the EMS-based alternative proposed by an industry group.

TABLE IX.B–1.—EMS-BASED ALTERNATIVE PROPOSED BY AN INDUSTRY GROUP

The facility has BAT technology (or its equivalent) in place and shall certify at the time of each permit renewal that it has installed and operates, at a minimum, the equivalent of Best Available Technology used to set BAT/PSES limitations in 40 CFR part 438 Rule and implementation of the following practices:

- Ensure that the wastewater treatment system has established pH set points to optimize metal removal efficiencies and a pH monitoring system;
- Have a system to monitor tank levels or wastewater flow;
- As requested, provide documentation of applicable preventive maintenance of the treatment systems and calibration schedules;
- Maintain for a period of one year and, as requested, provide wastewater treatment system operations logs;
- Maintain for a period of one year and, as requested, provide documentation of wastewater treatment system procedures or protocols;
- Compliance with part 433 monthly average PSNS or NSPS limitations, as appropriate; and
- ISO 14001 Certification or Employment of an Environmental Management System (EMS).

The industry group also suggest the following forfeiture criteria:

A facility would forfeit the right to participate in this EMS-based alternative, if:

TABLE IX.B–1.—EMS-BASED ALTERNATIVE PROPOSED BY AN INDUSTRY GROUP—Continued

• BAT is removed, not operational, or not operated in accordance with the procedures noted above; • monthly average PSNS or NSPS part 433 limitations are exceeded; or • ISO 14001Certification is withdrawn and an EMS program is demonstrated to be inadequate. The industry group suggested that if any of the forfeiture criteria is met, then the permitting authority may find that the facility has forfeited the right to employ the EMS-based alternative, and require that such facility come into compliance with 40 CFR part 438 BAT or PSES limitations no later than six months after such right is withdrawn, with the exception that a longer period of time may be provided to facilities at which construction beyond BAT is required to meet the 40 CFR part 438 BAT or PSES limitations.

Source: Section 16.4, DCN 17793 of the public record.

If EPA were to include such an EMS-based alternative in the final rule, the Agency would consider making the following changes to the industry's suggested plan. First, EPA would consider amending the condition that reads ''ISO 14001 Certification or Employment of an Environmental Management System (EMS)'' to read ''ISO 14001 Certification.'' EPA has some concerns that ''third-party certification'' without some form of accreditation, as required by ISO, may not provide the level of assurance EPA, state, and local agencies would need to allow for this alternative. Second, EPA would consider amending the forfeiture criteria to read as follows:

''A facility would forfeit the right to participate in this EMS-based alternative, if:

• BAT is removed, not operational, or not operated in accordance with the procedures noted above; or

• monthly average PSNS or NSPS Part 433 limitations are exceeded.''

EPA is also considering and solicits comments on the following amendments to the industry plan (*see* Table IX.B–1).

(1) Requiring the permitting authority to determine whether the facility has installed and is operating the equivalent of BAT;

(2) Requiring compliance with the industry plan through the facility's permit;

(3) Requiring facilities to maintain records for a period of at least three years and, as requested, provide documentation of applicable preventive maintenance of the treatment systems and calibration schedules;

(4) Requiring facilities to certify that they have implemented and will continue to comply with the industry plan; and

(5) Requiring facilities to monitor tank levels, in accordance with a system approved by the permitting authority, in addition to having a system to do so.

Additionally, under the industry proposal, the permitting authority would be authorized to find that a facility had forfeited the right to participate in the EMS-based alternative, in one of three circumstances (*e.g.,* ''monthly average PSNS or NSPS part 433 limitations are exceeded). If the permitting authority find that a facility has forfeited the right to participate, the facility would have up to 6 months to come into compliance with 40 CFR part 438 BAT or PSES limitations, with the possibility of an extension. As drafted, this alternative may place an unreasonable resource burden on the permitting authority to make a forfeiture determination before the facility is required to meet the part 438 limitations. In addition, the facility will not have certainty as to the consequences of its failure to meet the EMS-based requirements. To address these concerns, EPA seeks comment on requiring, as part of a permit, that a facility come into compliance with 40 CFR part 438 BAT or PSES limitation within 6 months of failing to meet one or more of three forfeiture conditions identified by industry (*see* Table IX.B–1) or as otherwise determined by the permitting agency. In the absence of such a provision, the facility may be out of compliance for an extended period.

EPA also seeks comment on the extent to which exceedances of monthly average PSNS or NSPS part 433 limitations should require that the facility come into compliance with 40 CFR part 438. In the absence of a clear standard, there will be no firm basis upon which to require that the facility meet 40 CFR part 438.

EPA also seeks comment on the following issues:

• Requiring facilities that forfeit the right to participate in this EMS-based alternative to comply with the new source limits of the Metal Finishing (40 CFR part 433) regulations instead of limits established under 40 CFR part 438.

• Ways in which EPA can ensure compliance with the part 433 limits and standards, as well as compliance with a facility's EMS, if this option were chosen for the final rule.

• What is the frequency of self and third-party auditing? Also, should the regulation requires that the results of all third-party audits must be submitted to the regulatory authority in a timely manner and available to the public upon request?

• What qualifications and certification should the regulation require for the use of third-party auditors?

• To what extent should data on the facility's environmental performance be communicated to the public?

• Should the participating facility provide an opportunity for the public to comment on its environmental aspects, impacts, objectives and targets when developing the EMS?

• Beyond EPA's amendment to the industry-based plan what specific circumstances of noncompliance would trigger a return to 40 CFR part 438?

EPA recognizes that developing an EMS would cause a facility to incur certain costs. Therefore, in addition to soliciting overall comments on this EMS-based alternative, EPA would like to receive any information on the existing costs of EMS implementation for General Metals operations, both on a per-facility and firm basis. Types of costs that could be relevant include staff and consultant costs, certification, documentation and recordkeeping, and costs of upgrading operations to make them conform to the EMS elements (*i.e.,* statement of environmental compliance policy, monitoring and measurement targets, corrective action plan, self-assessment procedure, and personnel trained in accordance with EMS).

EPA is concerned that such an option may only be achievable by larger facilities that currently have or are working toward ISO 14001 Certification. EPA solicits comment on whether small and medium size facilities can or would use an EMS alternative as described above, and whether formal guidance and assistance from the Agency would be necessary to utilize this alternative. EPA also solicits comment from state and local regulators on their need for formal guidance from the Agency to implement this alternative and on the implementation burden, cost, and enforceability of this alternative. EPA also solicits comment on what modifications to a formal ISO 14001 process would be needed to

accommodate small and medium size businesses.

2. No Regulation or No Further Regulation

EPA estimated at proposal that 26 percent of the facilities in the General Metals Subcategory are regulated by existing ELGs. EPA received many comments from industry and Publicly Owned Treatment Works (POTWs) that these facilities are adequately regulated under the current ELGs or that local limits can address water quality concerns in sensitive water bodies. Commenters concluded that the environmental impacts and pollutant loading reductions that would be achieved by the MP&M rule, once corrected for errors, would clearly demonstrate that the costs and impacts associated with the MP&M regulation would not be justified.

Section VII of today's document reports the revised estimates of costs, pollutant reductions, and economic impacts. Briefly, EPA estimates that compliance with the revised limitations and standards would result in facility closures for 91 of 2,055 (4.4%) indirect dischargers. The revised estimates of cost-effectiveness for indirect dischargers increased to $440/pound-equivalent removed. Based on EPA's revised estimates of costs, pollutant removals, economic impacts and benefits discussed in section VII of today's document, EPA is again considering an option of no regulation or no further regulation for indirect dischargers in this subcategory for the final rule. EPA solicits comment on this option.

3. Changes Considered in Regulatory Thresholds

EPA is considering an increase in the 1 million gallon per year (MGY) low flow cutoff used at proposal for indirectly discharging General Metals facilities. As discussed in section VII of today's document, EPA's current estimates of costs, pollutant reductions, and economic impacts differ from those calculated for the proposal. Therefore, EPA is considering increasing the low flow cutoff at various levels or other regulatory thresholds (*e.g.,* based on facility size such as employment, production, or revenue) to provide relief to indirect dischargers in this subcategory from significant economic impacts.

Table IX.B–2 below shows the national estimates of compliance costs (1999$), pollutant reductions (in pound-equivalents per year), economic impacts, and cost-effectiveness (1981$/pound-equivalent removed) for varying levels of flow cutoff for indirect discharge facilities in the General Metals Subcategory.

TABLE IX.B–2.—SUMMARY FOR LOW FLOW CUTOFF FOR THE INDIRECT DISCHARGERS IN THE GENERAL METALS SUBCATEGORY (ZINC PLATERS NOT INCLUDED)

Flow cutoff	Number of sites	Industry compliance cost (1999$) (millions)	Pollutant reductions (lb-eq.)	Severe economic impacts (facility closures, %)	Cost-effectiveness (1991$/lb.eq.)
1 MGY	2,055	636	1,240,219	91 (4%)	440
2 MGY	1,455	549	1,066,154	91 (6%)	436
3 MGY	1,187	505	1,016,616	79 (7%)	441
6.25 MGY	725	397	634,312	55 (8%)	893

Note: Cost-Effectiveness estimates are not incremental and do not include costs or removals for facilities that close in the baseline and use all NODA changes in economic methodologies.

4. 413 to 433 Upgrade Option

As recommended by the Small Business Advocacy Review Panel for the proposed rule (66 FR 524), EPA is considering regulatory alternatives which reduce significant economic impacts. EPA considers the ''413 to 433 Upgrade Option'' to be an alternative regulatory option. The 413 to 433 Upgrade Option would bring into alignment those facilities currently required to meet the standards of the Electroplating effluent limitations guidelines (ELGs) (40 CFR part 413) with those required to meet the limitations and standards of the Metal Finishing ELGs (40 CFR part 433), rather than promulgating the MP&M limitations and standards provided in today's document. EPA expects such an option (''413 to 433 Upgrade Option'') would significantly reduce EPA's estimate of economic impacts while achieving some environmental improvements over current conditions.

Currently, the only facilities that are still completely covered by the Electroplating ELGs are indirect discharging facilities that were in existence prior to 1982 and have not significantly upgraded their operations. If a facility modified its operations significantly, this would trigger new source standards and the facility would be subject to the Metal Finishing ELGs, which are more stringent than the Electroplating ELGs. In EPA's view most facilities are likely to either be completely covered by the Metal Finishing ELGs or by a combination of the two ELGs to account for new operations in their permit (*see* Table III.E–1 for national estimates).

In the 413 to 433 Upgrade Option, EPA would set limits for all facilities in the General Metals Subcategory that are currently regulated under part 413 equivalent to those in the Metal Finishing ELGs (40 CFR part 433). If EPA determines that the revised MP&M numeric limitations and standards, based on best available control technology, are not economically achievable, EPA may determine that the technology in-place at facilities currently complying with the Metal Finishing ELGs is the best available technology economically achievable. In that case, the limits and standards developed using the technology basis used for the Metal Finishing regulations (*i.e.,* the limits in part 433) would be based on the best available technology economically achievable. In addition, this option may reduce burden on POTWs by clarifying several points of confusion relating to the Metal Finishing regulations that have required significant review over the past 20 years (*e.g.,* when is an operation acid etching versus acid cleaning).

EPA estimates a total annual compliance cost of $7.2 million (1999$) for the 286 indirect General Metals facilities currently covered only by the Electroplating regulations (*see* Table III.E–1 for national estimates) to comply with the 413 to 433 Upgrade Option (*see* section 17.1.7, DCN 35080). Of the 286 General Metals facilities regulated by part 413, EPA estimates that there

would be 18 baseline closures and 31 regulatory closures due to the 413 to 433 Upgrade Option (*see* section 17.1.7, DCN 35080). These compliance costs are on average less than $31,000/year for each General Metals facility that will upgrade from part 413 to 433. EPA also estimates annual reduction in pollutants discharged to POTWs of approximately 35,000 pound-equivalents (approximately 148 PE-removed/facility-year). This would result in an approximate cost-effectiveness number of $120/pound-equivalent removed (1981$). EPA solicits comment on this option, including the difficulty in interpreting part 413 and 433 applicability, cost of upgrading treatment systems, facility space constraints, possible POTW burden, improvements to sludge quality, and economic impacts.

EPA also notes that there was a group of facilities identified in the original Electroplating effluent guidelines that received a reduced set of limitations (*i.e.,* fewer parameters and different controls on cyanide) based on economic impacts (these facilities discharge less than 10,000 gallons per day). EPA will assess the economic impact on these facilities to determine if there is a need to reduce the economic burden associated with this option, if chosen for the final regulation. Table IX.B–3 provides EPA's national estimate of facilities that are currently covered under the Electroplating regulations (40 CFR part 413) that discharge less than 10,000 gallons per day.

TABLE IX.B–3.—NATIONAL ESTIMATE OF FACILITIES DISCHARGING LESS THAN 10,000 GALLONS PER DAY THAT ARE CURRENTLY COVERED UNDER THE ELECTROPLATING ELGS (40 CFR PART 413)[a]

MP&M subcategory	Assuming facility operation 250 days/year		Assuming facility operation 360 days/year	
	Direct discharges	Indirect discharges	Direct discharges	Indirect discharges
General Metals	50[b] (None are Zinc Platers)	363[c] (29 are Zinc Platers)	78[b] (None are Zinc Platers)	384[c] (29 are Zinc Platers)
Metal Finishing Job Shops	0	148[c] (None are Zinc Platers)	0	217[c] (12 are Zinc Platers)
Printed Wiring Board	0	524	0	531
Oily Waste	0	7	0	0

[a] These national estimates include facilities that are regulated under 40 CFR part 413, 40 CFR parts 413 and 433, and 40 CFR parts 413, 433, and other ELGs.
[b] These sites have both direct and indirect discharges but indicated coverage under Part 413 in their survey response.
[c] These national estimates also include ''Zinc Platers'' (*see* section III.A.1).

EPA solicits comment on these national estimates of facilities and their economic condition.

C. Metal Finishing Job Shops Subcategory

In the proposed rule EPA proposed numerical limitations and pretreatment standards for the Metal Finishing Job Shops Subcategory based on Option 2 technology (*see* section IX.A above for description of Option 2). EPA selected Option 2 technology based on the national estimates of costs, pollutant removals, economic impacts, and environmental benefits as determined at the time of the proposal. These estimates have changed based on public comments as described in previous sections of today's document. Therefore, EPA solicits comment on the following alternative options. In addition, EPA will continue to consider the Pollution Prevention Alternative described in the proposal (66 FR 512).

EPA notes that zinc platers in the Metal Finishing Job Shops Subcategory are not considered in the following analyses but are analyzed separately (*see* section 17.5, DCN 17761). EPA is considering the same Metal Finishing Job Shops Subcategory options for this potential new zinc plater subcategory (*see* section III.A.1).

1. No Further Regulation

One option considered in the proposed rule was no further regulation for the Metal Finishing Job Shops Subcategory. All facilities in this subcategory are currently regulated under the Electroplating (40 CFR part 413) or Metal Finishing (40 CFR part 433) regulations. EPA received many comments from industry and Publicly Owned Treatment Works (POTWs) that metal finishing job shops are adequately regulated under the current regulations and that local limitations can address water quality concerns in sensitive water bodies, including monitoring for pollutants not covered by federal standards. Commenters concluded that the environmental impacts and pollutant loading reductions that would be achieved by the MP&M rule, once corrected for errors, would clearly demonstrate that the costs and impacts associated with the MP&M regulation would not be justified.

As discussed in section VII of today's document, EPA's current estimates of costs, pollutant reductions, and economic impacts differ from those calculated for the proposal. Briefly, EPA estimates that compliance with the revised limitations and standards would result in facility closures for 12 of 24 (50%) direct dischargers and for 508 of 1165 (44%) indirect dischargers. In addition, EPA performed a sensitivity analysis to determine the economic effects of the proposal if facilities could pass zero percent of compliance costs to customers. This would increase closures for indirect dischargers in this subcategory by 15%. The revised estimates of cost-effectiveness for indirect dischargers increased to $500/pound-equivalent removed.

Based on EPA's revised estimates of costs, pollutant removals, economic impacts and benefits discussed in section VII of today's document, EPA is again considering an option of no further regulation for this subcategory for the final rule. An EPA decision not to promulgate further regulations would based on a determination that the regulations were not economically achievable. EPA solicits comment on this option.

2. 413 to 433 Upgrade Option

As described in section IX.B.4, EPA is considering an upgrade option (''413 to 433 Upgrade Option'') which would bring into alignment those facilities

currently required to meet the standards of the Electroplating effluent limitations guidelines (ELGs) (40 CFR part 413) with those required to meet the limitations and standards of the Metal Finishing ELGs (40 CFR part 433), rather than promulgating the MP&M limitations and standards provided in today's document. EPA expects the 413 to 433 Upgrade Option would significantly reduce EPA's estimate of economic impacts while achieving some environmental improvements over current conditions.

EPA estimates a total annual compliance cost of $1.4 million (1999$) for the 278 indirect Metal Finishing Job Shop facilities currently covered only by the Electroplating regulations (*see* Table III.E–1 for national estimates) to comply with the 413 to 433 Upgrade Option (*see* section 17.1.7, DCN 35080). Of the 278 Metal Finishing Job Shop facilities regulated by part 413, EPA estimates that there would be no baseline closures and 24 regulatory closures due to the 413 to 433 Upgrade Option (*see* section 17.1.7, DCN 35080). These compliance costs are on average less than $5,600/year for each Metal Finishing Job Shop facility that will upgrade from part 413 to 433. EPA also estimates annual reduction in pollutants discharged to POTWs of approximately 35,000 pound-equivalents (approximately 138 PE-removed/facility-year). This would result in an approximate cost-effectiveness number of $23/pound-equivalent removed (1981$). EPA solicits comment on this option, including the difficulty in interpreting parts 413 and 433 applicability, cost of upgrading treatment systems, facility space constraints, possible POTW burden, improvements to sludge quality, and economic impacts.

EPA also notes that there was a group of facilities identified in the original Electroplating effluent guidelines that received a reduced set of limitations (*i.e.,* fewer parameters and different controls on cyanide) based on economic impacts (these facilities discharge less than 10,000 gallons per day). EPA will assess the economic impact on these facilities to determine if there is a need to reduce the economic burden associated with this option, if chosen for the final regulation. Table IX.B–3 provides EPA's national estimate of facilities that are currently covered under the Electroplating regulations (40 CFR part 413) that discharge less than 10,000 gallons per day. EPA solicits comment on these national estimates of facilities and their economic condition.

3. Changes Considered in Regulatory Thresholds

EPA is reconsidering the use of a low flow cutoff for indirectly discharging Metal Finishing Job Shops. In the proposal, EPA discussed the use of a 1 million gallon per year low flow exclusion for these sites (66 FR 466). However, at the time of proposal EPA did not select this alternative because, based on the cost, pollutant reductions, and economic impact estimates at the time, ''the Agency concluded that the pollutant reductions associated with Option 2 were feasible and achievable and the economic impacts were not substantially mitigated under the 1 MGY flow cutoff.'' As discussed in section VII of today's document, EPA's current estimates of costs, pollutant reductions, and economic impacts differ from those calculated for the proposal. Therefore, EPA is reconsidering the use of a low flow cutoff at various levels or other regulatory threshold (*e.g.,* based on facility size such as employment, production, or revenue) to provide relief to facilities in this subcategory from significant economic impacts.

Table IX.C–1 below shows the national estimates of compliance costs (1999$), pollutant reductions (in pound-equivalents per year), economic impacts, and cost-effectiveness (1981$/pound-equivalent removed) for varying levels of flow cutoff for indirect discharge facilities in the Metal Finishing Job Shops Subcategory.

TABLE IX.C–1.—SUMMARY FOR LOW FLOW CUTOFF FOR THE INDIRECT DISCHARGERS IN THE METAL FINISHING JOB SHOPS SUBCATEGORY (NOT INCLUDING ZINC PLATERS)

Flow cutoff	Number of sites	Industry compliance cost (1999$) (millions)	Pollution reductions (lb-eq)	Severe economic impacts (facility closurs, %)	Cost-effectiveness (1981$/lb.eq.)
No Cutoff	1,165	151	93,190	508 (44%)	500
1 MGY	547	94	77,644	278 (51%)	383
2 MGY	421	80	73,324	176 (42%)	316
3 MGY	235	56	50,090	176 (75%)	282
6.25 MGY	142	43	47,953	117	186

Note: Cost-Effectiveness estimates are not incremental and do not include costs or removals for facilities that close in the baseline and use all NODA changes in economic methodologies.

D. Printed Wiring Board Subcategory

In the proposed rule, EPA set numerical limits and pretreatment standards for the Printed Wiring Board Subcategory based on Option 2 technology (*see* section IX.A above for description of Option 2). EPA selected Option 2 based on the national estimates of costs, pollutant removals, economic impacts, and environmental benefits as estimated at the time of the proposal. These estimates have changed based on public comments as described in previous sections of today's document. Therefore, EPA is considering alternative options to reduce the economic impact, and solicits comment on potential approaches.

1. No Further Regulation

EPA is considering the same types of alternative options for the Printed Wiring Board Subcategory as it is for the Metal Finishing Job Shops Subcategory. That is, EPA is considering a ''No Further Regulation'' option and an option that would include the use of a low flow cutoff (or other regulatory threshold) to reduce the economic impacts estimated for this subcategory. EPA is also considering clarifying the part 433 regulations to reduce the burden on permit writers and upgrading all sites to meet the part 433 regulations.

EPA received many comments from industry and Publicly Owned Treatment Works (POTWs) that indirect discharging printed wiring board sites are adequately regulated under the current regulations and that local limitations can address water quality concerns in sensitive water bodies. Commenters concluded that the environmental impacts and pollutant

loading reductions that would be achieved by the MP&M rule, once corrected for errors, would clearly demonstrate that the costs and impacts associated with the MP&M regulation would not be justified.

As shown in section VII of today's document, EPA estimates severe economic impacts (facility closures) for 62 of 840 (7%) indirect dischargers (or when baseline closures are included, EPA estimates 10% closures). EPA notes that the revised estimates of cost-effectiveness for indirect dischargers are high as well ($455/pound-equivalent removed). Based on EPA's revised estimates of costs, pollutant removals, economic impacts and benefits discussed in section VII of today's document, EPA is considering an option of no further regulation for indirect dischargers in this subcategory for the final rule. EPA solicits comment on this option.

2. 413 to 433 Upgrade Option

As described in Section IX.B.4, EPA is considering an upgrade option (''413 to 433 Upgrade Option'') which would bring into alignment those facilities currently required to meet the standards of the Electroplating effluent limitations guidelines (ELGs) (40 CFR part 413) with those required to meet the limitations and standards of the Metal Finishing ELGs (40 CFR part 433), rather than promulgating the MP&M limitations and standards provided in today's document. EPA expects the 413 to 433 Upgrade Option would significantly reduce EPA's estimate of economic impacts while achieving some environmental improvements over current conditions.

EPA estimates a total annual compliance cost of $0.33 million (1999$) for the 354 indirect Printed Wiring Board facilities currently covered only by the Electroplating regulations (*see* Table III.E–1 for national estimates) to comply with the 413 to 433 Upgrade Option (*see* section 17.1.7, DCN 35080). Of the 354 Printed Wiring Board facilities regulated by Part 413, EPA estimates that there would be three baseline closures and 18 regulatory closures due to the 413 to 433 Upgrade Option (*see* section 17.1.7, DCN 35080). These compliance costs are on average less than $1,000/year for each Printed Wiring Board facility that will upgrade from Part 413 to 433. EPA also estimates annual reduction in pollutants discharged to POTWs of approximately 35,000 pound-equivalents (approximately 105 PE-removed/facility-year). This would result in an approximate cost-effectiveness number of $6/pound-equivalent removed (1981$). EPA solicits comment on this option, including the difficulty in interpreting parts 413 and 433 applicability, cost of upgrading treatment systems, facility space constraints, possible POTW burden, improvements to sludge quality, and economic impacts.

EPA also notes that there was a group of facilities identified in the original Electroplating effluent guidelines that received a reduced set of limitations (*i.e.,* fewer parameters and different controls on cyanide) based on economic impacts (these facilities discharge less than 10,000 gallons per day). EPA will assess the economic impact on these facilities to determine if there is a need to reduce the economic burden associated with this option, if chosen for the final regulation. Table IX.B–3 provides EPA's national estimate of facilities that are currently covered under the Electroplating regulations (40 CFR part 413) that discharge less than 10,000 gallons per day. EPA solicits comment on these national estimates of facilities and their economic condition.

3. Printed Wiring Board Direct Dischargers

In addition, EPA estimates no facility closures for direct dischargers in this subcategory associated with estimated MP&M compliance costs, however, based on today's revised analysis EPA currently estimates only four direct discharge printed wiring board facilities nationwide. Based on this revised estimate and the low level of estimated pollutant removals for these sites (*i.e.,* approximately 536 pounds of O&G and TSS, 12,000 pounds of COD, and 39 pounds of toxics and non-conventional pollutants), EPA is considering whether or not revised nationally-applicable regulations are necessary at this time because of the small number of facilities in this subcategory. The Agency concluded that the current limitations and the addition of water-quality based local limits established for individual NPDES permits may more appropriately address individual conventional, toxic and nonconventional pollutants that may be present at these four facilities.

4. Changes Considered in Regulatory Thresholds

As discussed in section IX.C above, EPA may also consider the use of a low flow exclusion or other regulatory threshold to reduce significant economic impacts; however, the Agency notes that based on the analyses presented in today's document, the low flow cutoff does not reduce the economic impacts to these sites. Table IX.D–1 below summarizes the national estimates of compliance costs (1999$), pollutant reductions (in pound-equivalents per year), economic impacts, and cost-effectiveness (1981 $/pound-equivalent removed) for varying levels of low flow cutoff for indirect discharge facilities in the Printed Wiring Board Subcategory.

TABLE IX.D–1.—SUMMARY FOR LOW FLOW CUTOFF FOR THE INDIRECT DISCHARGERS IN THE PRINTED WIRING BOARD SUBCATEGORY

Flow cutoff	Number of sites	Industry compliance cost (1999$) (millions)	Pollution reductions (lb-eq.)	Severe economic impacts (facility closures, %)	Cost-effectiveness (1981$/lb.eq)
No Cutoff	840	175	153,653	62 (7%)	455
1 MGY	352	123	152,163	62 (18%)	447
2 MGY	263	111	143,464	62 (24%)	439
3 MGY	213	103	138,152	37 (17%)	364
6.25 MGY	173	94	129,813	31 (18%)	337

Note: Cost-Effectiveness estimates are not incremental and do not include costs or removals for facilities that close in the baseline and use all NODA changes in economic methodologies.

E. Oily Wastes Subcategory

In the proposed rule, EPA set numerical limits and pretreatment standards for the Oily Wastes Subcategory based on Option 6 technology, including a low flow exclusion of 2 million gallons per year (MGY) or less for indirect discharging facilities. EPA based Option 6 on in-process flow control, pollution prevention, and oil-water separation by chemical emulsion breaking followed by gravity separation and oil skimming. EPA selected Option 6 limitations and standards based on the national estimates of costs, pollutant removals, economic impacts, and environmental benefits estimated at the time of the proposal. These estimates have changed based on public comments as described in previous sections of today's document. In addition, as discussed in section III.A.1 of today's document, the number of Oily Wastes facilities, prior to a low flow exclusion, has increased from approximately 29,000 facilities to nearly 44,000 facilities due to the change in EPA's subcategorization scheme and the change to the definition of ''oily operations'' (*see* section IV.A for the revised definition). EPA is considering alternative options to reduce the burden on POTWs. EPA solicits comment on the following potential approaches.

1. No Regulation or No Further Regulation

EPA estimated at proposal that less than 1 percent of the facilities in the Oily Wastes Subcategory are regulated by existing ELGs. EPA received many comments from industry and Publicly Owned Treatment Works (POTWs) that these facilities are adequately regulated under the current ELGs or that local limits can address water quality concerns in sensitive water bodies. Commenters concluded that the environmental impacts and pollutant loading reductions that would be achieved by the MP&M rule, once corrected for errors, would clearly demonstrate that the costs and impacts associated with the MP&M regulation would not be justified.

As discussed in section VII of today's document, EPA's current estimates of costs, pollutant reductions, and economic impacts differ from those calculated for the proposal. Briefly, EPA estimates that compliance with the revised limitations and standards would result in facility closures for 1 of 288 (0.3%) indirect dischargers. The revised estimates cost-effectiveness for indirect dischargers increased to $2,963/pound-equivalent removed. Based on EPA's revised estimates of costs, pollutant removals, economic impacts and benefits discussed in section VII of today's document, EPA is again considering an option of no regulation or no further regulation for indirect dischargers in this subcategory for the final rule. EPA solicits comment on this option.

2. Changes Considered in Regulatory Thresholds

EPA proposed a low flow exclusion for indirect discharge facilities in the Oily Wastes Subcategory based on the large burden to permit writers and the small number of pound-equivalents that would be removed by facilities with annual wastewater flows of less than or equal to 2 MGY (66 FR 470). For the final rule, based on these same considerations, EPA is considering whether it either should not establish pretreatment standards for indirect dischargers or limit the applicability of the standard by increasing the flow cutoff. EPA notes that for all levels of low flow exclusions presented in today's document for these sites, the pollutant reductions (in pound-equivalents) per facility per year are low. Specifically, the 6.25 MGY flow cut-off results in 13 pound-equivalents/facility-yr, which is lower than those projected for the Industrial Laundries ELG and the Landfills ELG, for which EPA determined national regulations were not warranted. These low pollutant reductions per facility per year may not justify the additional permitting burden associated with these facilities. POTWs commenting on the proposed rule have stated that even with a low flow exclusion they would still incur increased burden when trying to identify those facilities above and below the low flow cutoff. In addition, POTWs can set local limits to control the small quantity of pollutants being discharged from the oily wastes facilities in their jurisdiction. EPA solicits comment on this option.

Table IX.E–1 below summarizes the national estimates of compliance costs (1999$), pollutant reductions (in pound-equivalents per year), economic impacts, and cost-effectiveness (1981 $/pound-equivalent removed) for varying levels of low flow cutoff for indirect discharge facilities in the Oily Wastes Subcategory.

TABLE IX.E–1.—SUMMARY FOR LOW FLOW CUTOFF FOR INDIRECT DISCHARGERS IN THE OILY WASTES SUBCATEGORY

Flow cutoff	Number of sites	Industry compliance cost (1999$) (millions)	Pollutant reductions (lb-eq.)	Severe economic impacts (facility closures)	Cost-effectiveness (1981 $/lb.eq.)
2 MGY	288	85	14,385	1	2,963
3 MGY	233	45	7,941	0	2,781
6.25 MGY	146	23	1,903	0	2,037

Note: Cost-Effectiveness estimates are not incremental and do not include costs or removals for facilities that close in the baseline and use all NODA changes in economic methodologies.

F. Railroad Line Maintenance Subcategory

In the proposed rule, EPA set numerical limitations and standards for the Railroad Line Maintenance Subcategory based on Option 10 technology. EPA based Option 10 on the end-of-pipe treatment technologies included in Option 9 (chemical emulsion breaking followed by DAF) plus in-process flow control and pollution prevention technologies, which allow for recovery and reuse of materials along with water conservation. EPA selected Option 10 limitations and standards based on the national estimates of costs, pollutant removals, economic impacts, and environmental benefits estimated at the time of the proposal. These estimates have changed based on public comments as described in previous sections of today's document. Therefore, EPA is considering alternative options to reduce the burden on POTWs. EPA solicits comment on the following potential approaches.

1. Options for Changing BPT and BAT Technologies

As discussed in section II.B of today's document, EPA received comment and data from the American Association of

Railroads (AAR) on the direct discharge railroad line maintenance facilities (*see* section 15.1 of the public record for the AAR surveys). EPA is reviewing alternative options for these facilities in the Railroad Line Maintenance Subcategory based on this data. In the proposal (66 FR 458), EPA estimated that 91 percent of the estimated 34 direct discharge railroad line maintenance facilities utilized Dissolved Air Flotation (DAF) at their sites. Therefore, EPA based the BPT and BAT limitations on DAF technology plus in-process pollution prevention techniques. However, commentors provided data confirming 28 direct discharging railroad line maintenance sites (27 sites from the AAR survey and one site from EPA's sampling program (Episode 6179)), of which only five are currently employing DAF technology. According to this data, the prevalent technology at these sites is oil-water separation. Therefore, in light of this new data, EPA is considering changing the basis of the BPT and BAT limitations to oil-water separation technology such as chemical emulsion breaking followed by oil skimming (i.e., proposed technology Option 6). This is the technology that EPA proposed for the Oily Wastes Subcategory.

EPA intends to analyze Option 6 for the direct discharge facilities in the Railroad Line Maintenance Subcategory for the final rule. Once EPA has estimated costs of compliance, pollutant reductions achieved, economic impacts, cost-effectiveness, and environmental benefits associated with this option for the final rule, the Agency will then determine if this option is economically achievable and if the costs are justified by the environmental improvements.

2. Railroad Overhaul/Rebuilding Operations Facilities

EPA noted in the proposal that the Railroad Line Maintenance Subcategory does not include railroad manufacturing operations or railroad overhaul/rebuilding facilities (66 FR 442). EPA identified 5 facilities in the General Metals Subcategory and 11 facilities in the Oily Waste Subcategory as definitely performing railroad overhaul/rebuilding operations. EPA also identified 111 other facilities that may be performing railroad overhaul/rebuilding operations (*see* section 16.1, DCN 17755). EPA solicits comment on EPA's estimate of facilities performing railroad overhaul/rebuilding operations and an appropriate definition for ''railroad overhaul/rebuilding operations.'' AAR concluded that there are fewer than 10 of these facilities performing railroad overhaul/rebuilding operations in the United States and that all are indirect dischargers. AAR further states that these facilities are already sufficiently regulated by their respective POTWs (*see* section 15.1, DCN 30300.A3; section 12.4.3, DCN 17785).

If in the final rule EPA were to agree with the AAR estimate of facilities performing railroad overhaul/rebuilding operations, EPA may consider whether or not revised nationally-applicable regulations are necessary at this time for facilities performing railroad overhaul/rebuilding operations because of the small number of these facilities (i.e., AAR estimate is less than 10). EPA solicits comment on whether current limitations, standards, and POTW local controls with the addition of water-quality based local limits established for individual NPDES permits (either for the POTWs accepting indirect discharges from these facilities or for any direct dischargers) may more appropriately address individual conventional, toxic and nonconventional pollutants that may be present at these facilities.

G. Steel Forming & Finishing Subcategory

In the proposed rule EPA proposed numerical limitations and pretreatment standards for the Steel Forming & Finishing Subcategory based on Option 2 technology (*see* section IX.A above for description of Option 2). EPA selected Option 2 technology based on the national estimates of costs, pollutant removals, economic impacts, and environmental benefits as determined at the time of the proposal. These estimates have changed based on public comments and additional data collection as described in previous sections of today's document. Therefore, EPA is considering alternative options to reduce the economic impact, and solicits comment on potential approaches.

1. No Further Regulation

EPA estimated at proposal that all facilities in this subcategory have permits or other control mechanisms under the existing Iron and Steel Manufacturing regulation (40 CFR part 420). EPA received many comments from industry and Publicly Owned Treatment Works (POTWs) that these facilities are adequately regulated under the current ELGs or that local limits can address water quality concerns in sensitive water bodies. Commenters concluded that the environmental impacts and pollutant loading reductions that would be achieved by the MP&M rule, once based on data from sampling SFF sites, would clearly demonstrate that the costs and impacts associated with the MP&M regulation would not be justified.

As discussed in section VII of today's document, EPA's current estimates of costs, pollutant reductions, and economic impacts differ from those calculated for the proposal. Briefly, EPA estimates that compliance with the revised limitations and standards would result in facility closures for 7 of 41 (17%) direct dischargers and for 10 of 112 (9%) indirect dischargers. The revised estimates of cost-effectiveness for indirect dischargers increased to $153/pound-equivalent removed. The estimate of cost-reasonableness for direct dischargers is $28/pound-conventional pollutants (O&G + TSS). Based on EPA's revised estimates of costs, pollutant removals, economic impacts and benefits discussed in section VII of today's document, EPA is again considering an option of no further regulation for direct and indirect dischargers in this subcategory for the final rule. An EPA decision not to promulgate further regulations would be based on a determination that the regulations were not economically achievable. If EPA were to select the ''no further regulation'' option, the facilities in this subcategory would continue to be regulated by the Iron and Steel ELGs (40 CFR part 420). EPA solicits comment on this option.

3. Changes Considered in Regulatory Thresholds

EPA is reconsidering the use of a low flow cutoff used for indirectly discharging Steel Forming & Finishing facilities. As discussed in section VII of today's document, EPA's current estimates of costs, pollutant reductions, and economic impacts differ from those calculated for the proposal. Therefore, EPA is reconsidering the use of a low flow cutoff at various levels or other regulatory threshold (e.g., based on facility size such as employment, production, or revenue) to provide relief to indirect dischargers in this subcategory from significant economic impacts.

Table IX.G–1 below shows the national estimates of compliance costs (1999$), pollutant reductions (in pound-equivalents per year), economic impacts, and cost-effectiveness (1981$/pound-equivalent removed) for varying levels of flow cutoff for indirect discharge facilities in the Steel Forming & Finishing Subcategory.

TABLE IX.G–1.—SUMMARY FOR LOW FLOW CUTOFF FOR THE INDIRECT DISCHARGERS IN THE STEEL FORMING & FINISHING SUBCATEGORY

Flow cutoff	Number of sites	Industry compliance cost (1999$) (millions)	Pollutant reductions (lb-eq.)	Severe economic impacts (facility closures, %)	Cost-effectiveness (1981$/lb.eq.)
No Cutoff	112	22.1	61,015	10 (9%)	153
1 MGY	90	20.9	60,733	10 (11%)	141
2 MGY	77	19.1	59,418	10 (13%)	131
3 MGY	74	19.0	59,383	7 (9%)	126
6.25 MGY	54	16.0	47,671	7 (13%)	117

Note: Cost-Effectiveness estimates are not incremental and do not include costs or removals for facilities that close in the baseline and use all NODA changes in economic methodologies.

X. Solicitation of Comment

The following discussion summarizes those issues raised by new information and comments on the proposal for which EPA is requesting comment.

1. Zinc Platers. EPA solicits comment on whether EPA should: (1) Establish a separate subcategory for zinc platers; (2) further subcategorize the proposed subcategories to provide a segment for zinc platers; or (3) retain the proposed subcategorization scheme but establish a zinc limitation based on data specific to zinc platers. EPA also solicits comment on the burden to permit writers and control authorities associated with each approach.

2. Subcategorization of Unit Operations. EPA solicits comment on the methodology for subcategorization of unit operation concentrations used for today's document.

3. Boron Removals. EPA solicits comment on the approach used to estimate boron removals.

4. Molybdenum Removals. EPA received comments regarding the selection of molybdenum as a regulated pollutant. Similar to the comments on tin, the comments revolved around whether or not molybdenum can be precipitated using hydroxide precipitation as is used in EPA's proposed BAT technology. EPA has reviewed literature to find out whether or not molybdenum will precipitate using either hydroxide or sulfide precipitation, and has found that molybdenum does not form metal hydroxide precipitates (*see* memorandum titled ''Molybdenum,'' section 16.2, DCN 17754). The sampled hydroxide precipitation treatment systems did not show a consistent ability to remove molybdenum from waste water. Molybdenum is, however, present in waste waters as described above and is removed incidentally in waste treatment systems. EPA is reviewing the removal mechanisms for molybdenum. EPA is considering not regulating molybdenum in the final rule but is considering taking credit for incidental removals. EPA solicits comment on this change.

5. EPA solicits comment on EPA's current method for imputing missing flow and production.

6. EPA Sensitivity Analyses. EPA is soliciting comment on the sensitivity analyses described in Section III.E. These sensitivity analysis examine baseline pollutant loadings and facilities that do not report treatment-in-place and may have low concentration raw wastewater characteristics.

7. Numbers of facilities currently regulated. EPA solicits comment on its estimates of the numbers of facilities currently regulated by the part 413, part 433, or both regulations (*see* Table III.E–1).

8. Low Concentration Facilities. EPA is soliciting data at the unit operation level from ''low concentration'' facilities that do not currently have treatment for metal-bearing wastewaters on-site. In addition, EPA is soliciting comment on how to address these facilities in the analysis of pollutant loadings and reductions.

9. Monitoring Costs. EPA is using a cost of $13,400 per facility to incorporate monitoring costs for the pollutants not already regulated under the Metal Finishing regulations. EPA solicits comment on the Agency's cost estimates for compliance monitoring used in today's document.

10. Addition of a Sand Filter for Metal-Bearing Subcategories. EPA solicits comment on the addition of a sand filter to the BAT proposed technology option for metal-bearing subcategories and on the sand filter cost module and national cost estimates for Option 2 + Sand Filter. EPA also solicits comments on whether the addition of a sand filter is necessary for facilities to achieve the revised limits consistently and the economic achievability of this option.

11. Oily Operations Definition. EPA solicits comment on the intended additions to the definition of oily operations. Also, EPA did not include paint stripping due to the elevated levels of metal constituents from these sources that are contained in EPA's sampling data. However, EPA solicits comment on whether paint stripping for non-lead based paints should be included in the definition of oily operations. EPA also solicits comment on the definition for iron phosphate conversion coating and on the need for a definition for ''wet air pollution control for organic constituents'' to distinguish it from wet air pollution control for metals or particulates.

12. Printed Wiring Board Subcategory—Changes to Applicability. EPA solicits comment on these intended revisions to the codified applicability language used to include printed wiring board job shops and whether EPA should include a definition to identify printed wiring assembly facilities in the General Metals Subcategory applicability statement.

13. Treatability of Tin, Molybdenum, Manganese. EPA solicits comment and data on the removal of tin, molybdenum, and manganese through chemical precipitation and other possible removal mechanisms. EPA also solicits on EPA's intention to possibly exclude these pollutants from regulation.

14. Total Sulfide. EPA solicits comment on the intention to not regulate total sulfide for the metal-bearing subcategories. EPA also solicits comment on the most appropriate analytical method for total sulfide.

15. Steel Forming & Finishing Subcategory. EPA solicits comment on the pollutants selected for regulation for the Steel Forming & Finishing Subcategory. EPA also solicits comment on the inclusion of the continuous electroplating operations on steel sheet and strip into the MP&M regulation.

16. Calculation of the Total Organics Parameter. EPA solicits comment on alternative approaches the Agency is considering for calculating the Total Organics Parameter (TOP). EPA also

solicits comment from facilities as to when they would choose to monitor for the TOP list of pollutants rather than design and implement a best management plan for their organic chemicals. Finally, EPA solicits comment, especially from permit writers and control authorities, on whether the Agency should provide guidance to permit writers on how to develop a facility-specific TOP limit for facilities that choose the TOP limit as their method for complying (as opposed to meeting a limit for total organic carbon or implementing the best management plan).

17. Validation Study for Seven Organic Pollutants. EPA is soliciting comment on the validation studies for six semivolatile organic pollutants (aniline, 3,6-dimethylphenanthrene, 2-isopropylnaphthalene, 1-methylfluorene, 2-methylnaphthalene, and 1-methylphenanthrene) and one volatile organic pollutant (carbon disulfide) to EPA Methods 624 and 1624B and EPA Methods 625 and 1625.

18. New Source Limits Set Equal to Existing Source Limits. EPA solicits comment on basing the new source standards (NSPS and PSNS) for the metal-bearing subcategories for the final rule on the same technology option as used for the existing source limits and standards (i.e., Option 2). EPA notes that after the compliance deadline has passed, having new source limitations equal to existing source limitations will reduce the need for new source determinations by permit writers and control authorities.

19. EMS Alternative for General Metals Facilities. EPA solicits comment on the industry suggested EMS Alternative and EPA's amendments (*see* section IX.B).

20. No Regulation Options. EPA solicits comment on the ''no further regulation'' option considered for indirect discharge Metal Finishing Job Shops, Printed Wiring Board, General Metals, Zinc Platers, and Steel Forming & Finishing subcategories. EPA solicits comment on the option that would bring into alignment those facilities in the previously mentioned subcategories (including General Metals), direct or indirect, which are currently unregulated or required to meet the standards of the Electroplating effluent limitations guidelines (ELGs) (40 CFR part 413) with those required to meet the limitations and standards of the Metal Finishing ELGs (40 CFR part 433), without requiring the MP&M limitations and standards provided in today's document. EPA also solicits comment on whether this would better clarify implementation issues for control authorities. EPA solicits comment on the estimate of sites currently regulated under the part 413 regulations with less than 10,000 gallons per day of process wastewater flow and the economic condition of these facilities. In addition, EPA solicits comment on a ''no regulation'' option for indirect discharge sites in the Oily Wastes Subcategory.

21. Inclusion or Change to the Low Flow Cutoff. EPA solicits comment on the possible changes discussed to include a low flow cutoff for indirect discharge sites in the Metal Finishing Job Shops, Printed Wiring Board, and Steel Forming & Finishing subcategories and to change the level of the proposed low flow cutoff for the indirect discharge sites in the General Metals and Oily Wastes subcategories. EPA is also requesting comment on other possible types of regulatory threshold that could be used to reduce economic impacts on these facilities and on the ability of permit writers and control authorities to implement other thresholds.

22. Commentors on the MP&M proposal stated that many source water suppliers have recently begun adding chemicals to the water to reduce corrosion and leaching of metals from piping into the water, which may increase concentrations of other metals in the raw water. For example, many water suppliers now add zinc phosphate compounds to reduce leaching of copper and lead from piping. If the comments were correct in their assertions that more concentrated influent is associated with higher effluent levels, EPA would expect to see upward trends for both the influent and effluent long-term averages. In general, EPA did not find any evidence of such trends or any patterns in the influent. Rather, EPA noted that the lowest and highest influent values were associated with the lowest effluent values. EPA modeling currently predicts that a slightly higher metal influent concentrations should not affect effluent metal concentrations for properly operated BAT metals treatment systems. EPA solicits comment on whether or not EPA needs to account for elevated metals concentrations in source water and possible ways to account for this source water concentrations in its analysis. EPA also solicits comment on its proposal to allow MP&M indirect discharge facilities to apply for a waiver that would allow them to reduce their monitoring burden (*see* 66 FR 509). EPA proposed that in order for a facility to receive a monitoring waiver, the facility would need to certify in writing to the control authority (e.g., POTW) that the facility does not use, nor generate in any way, a pollutant (or pollutants) at its site and that the pollutant (or pollutants) is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger.

23. EPA is considering a revised methodology that will take into account both the hexavalent chromium converted in chrome reduction treatment and the trivalent chromium removed end-of-pipe in future estimates of chromium toxic pound-equivalents removed. For this methodology, the hexavalent chromium toxic weighting factor (TWF), not the trivalent chromium TWF, will be applied to the amount of hexavalent chromium that is converted to trivalent chromium in chrome reduction treatment. The toxic pound-equivalents removed by the chrome reduction treatment system will be equal to the toxic pound-equivalents of hexavalent chromium converted, minus the toxic-pound equivalents of trivalent chromium formed. The toxic pound-equivalents removed by the end-of-pipe treatment system will be equal to the toxic pound-equivalents of trivalent chromium removed in the end-of pipe treatment system. The total toxic-pound equivalents of chromium removed in treatment will be equal to the toxic-pound equivalents converted by chrome reduction treatment plus the toxic-pound equivalents removed by the end-of pipe treatment system. EPA is considering similar methodology changes in cyanide treatment for total and amenable cyanide. EPA solicits comments on these possible changes in methodologies for the final rule.

24. EPA solicits comment on the revised number of direct dischargers in the Non-Chromium Anodizing subcategory. At proposal EPA estimated no direct dischargers in the Non-Chromium Anodizing subcategory. After re-analysis of the wastewater disposal methods reported in survey questionnaires, EPA now estimates 35 direct dischargers in the Non-Chromium Anodizing subcategory.

25. EPA solicits comment on how it enumerates direct and indirect discharging facilities. Currently, EPA labels facilities as direct dischargers if any of their wastewater effluent is discharged directly to surface waters of the United States. In particular, EPA solicits comments on how to handle facilities that are both indirect and direct dischargers.

26. EPA solicits comment on EPA's approach for the development of preliminary revised limitations and standards presented in section VIII of today's document.

Dated: May 24, 2002.

Diane C. Regas,

Acting Assistant Administrator.

[FR Doc. 02–13808 Filed 6–4–02; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Wednesday,
June 5, 2002

Part IV

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–7221–7]

RIN 2060–AH69

National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendments.

SUMMARY: On January 25, 1995, the EPA issued national emission standards under section 112 of the Clean Air Act (CAA) for Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks. We are proposing new requirements that accommodate the use of fume suppressants for controlling chromium emissions from hard chromium electroplating tanks, and an alternative standard to the existing concentration emission limit for hard chromium electroplating tanks equipped with enclosing hoods. We are proposing to change the definition of chromium electroplating and anodizing tank to include all ancillary equipment necessary to accomplish electroplating or anodizing so that existing electroplaters and anodizers do not become subject to new source standards due to unintended reconstruction determinations. We are proposing to amend the monitoring requirements for composite mesh pads by expanding the acceptable pressure drop range and proposing revisions to several definitions to improve clarity and consistency.

DATES: *Comments.* Submit comments on or before August 5, 2002.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by June 25, 2002, a public hearing will be held on July 5, 2002.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–88–02, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–88–02, Room M–1500, U.S. EPA, 401 M Street, SW, Washington, DC 20460. The EPA requests a separate copy also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing. If a public hearing is held, it will be held at the new EPA facility complex in Research Triangle Park, North Carolina beginning at 10 a.m.

Docket. Docket No. A–88–02 contains supporting information used in developing the standards. The docket is located at the U.S. EPA, 401 M Street SW, Washington, DC 20460 in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Phil Mulrine, Metals Group, Emission Standards Division (C439–02), U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–5289, electronic mail address: *mulrine.phil@epa.gov.*

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by electronic mail (e-mail) to: *a-and-r-docket@epa.gov.* Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect® format. All comments and data submitted in electronic form must note the docket number: A–88–02. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: U.S. EPA, OAQPS Document Control Officer (C404–02), Attention: Phil Mulrine, Metals Group, Emission Standards Division (C439–02), U.S. EPA, Research Triangle Park, NC 27711. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Cassie Posey, Metals Group, Emission Standards Division, (C439–02), U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–0069 in advance of the public hearing. Persons interested in attending the public hearing should also call Ms. Cassie Posey to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed amendments.

Docket. The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of the proposed amendments will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the proposed rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. Entities potentially regulated by this action include facilities engaged in chromium electroplating, hard and decorative, or chromium anodizing of metal or plastic parts either as a primary activity or as an activity incidental to a larger fabricating or manufacturing establishment. Regulated categories and entities include sources listed under the North American Information Classification System (NAICS) U.S. Industries code 332813, as well as sources listed under numerous industry codes within the industry subsector titled ''Fabricated Metal Product Manufacturing.''

This description is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.340 of the current standard promulgated on January 25, 1995 (60 FR 4963). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Outline. The information presented in this preamble is organized as follows:

I. Background
A. What are the requirements of the current rule?
B. Do the proposed amendments apply to me?
II. Summary of the Proposed Amendments
III. Rationale for the Proposed Amendments
A. The Use of Fume Suppressants for Controlling Chromium Emissions from Hard Chromium Electroplating Tanks
B. Revised Surface Tension Limit When Measuring Surface Tension with a Tensiometer
C. Hard Chromium Electroplating Facilities Which Operate Tanks Equipped with Enclosing Hoods
D. Chromium Electroplating and Chromium Anodizing Tank Definitions
E. Pressure Drop Monitoring Requirement for Composite Mesh Pads
IV. Administrative Requirements
A. Executive Order 12866, Regulatory Planning and Review
B. Executive Order 13132, Federalism
C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
E. Unfunded Mandates Reform Act of 1995
F. Regulatory Flexibility Act (RFA), as Amended by Small Business Regulatory Enforcement Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
G. Paperwork Reduction Act
H. National Technology Transfer and Advancement Act of 1995
I. Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution or Use

I. Background

A. What Are the Requirements of the Current Rule?

The current national emission standards for chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks were promulgated on January 25, 1995 (60 FR 4963). In that rule, EPA established different standards for small and large facilities which operate hard chromium electroplating tanks. The standard for existing hard chromium electroplating tanks at small facilities limits the concentration of chromium air emissions discharged to the atmosphere to 0.03 milligrams of total chromium per dry standard cubic meter (mg/dscm). A hard chromium electroplating facility is considered small if its maximum rectifier capacity is less than 60 million ampere-hours per year (amp-hr/yr). The standard for new sources and existing hard chromium electroplating tanks at large facilities is 0.015 mg/dscm. A performance test must be conducted to demonstrate compliance. In addition, the rule includes operation, maintenance, and monitoring requirements for the control devices.

The standard for new and existing decorative chromium electroplating tanks and new and existing chromium anodizing tanks is 0.01 mg/dscm. Decorative chromium electroplating and chromium anodizing tanks using a fume suppressant for controlling emissions can elect to maintain the surface tension of the plating solution at 45 dynes per centimeter (dynes/cm) or less as an alternative standard. Sources can choose to monitor the surface tension of the plating solution instead of conducting a performance test.

B. Do the Proposed Amendments Apply to Me?

The amendments contained in today's proposed rule may apply to you if your facility meets any of the following criteria:

- Your facility operates a hard chromium electroplating tank and uses fume suppressants for emission control.
- Your facility operates an enclosed hard chromium electroplating tank.
- Your facility is considering replacing a chromium electroplating or anodizing tank and is concerned about triggering a reconstruction determination.
- Your facility operates a composite mesh pad control system for emission control.
- Your facility operates a decorative chromium electroplating tank or chromium anodizing tank that uses fume suppressants for emission control and uses a tensiometer to measure surface tension.

II. Summary of the Proposed Amendments

The proposed amendments would allow hard chromium electroplating facilities using fume suppressants for emission control to meet a surface tension limit similar to the requirements for decorative chromium electroplating and chromium anodizing facilities instead of the present requirement to meet an emission limit. Facilities choosing to use fume suppressants for emission control would be required to monitor the surface tension at the same frequency currently required for decorative chromium and chromium anodizing tanks and demonstrate compliance with either one of two surface tension operating limits: 45 dynes/cm if measured with a stalagmometer, or 35 dynes/cm if measured with a tensiometer.

The proposed amendments would allow affected facilities which operate hard chromium electroplating tanks equipped with enclosing hoods the option of meeting an alternative and equivalent, site specific mass rate emission limit instead of the present concentration limit. An affected facility would have the option of meeting the alternative standard if the affected tank is equipped with an enclosing hood, and the ventilation is no more than half the rate of a comparable open surface tank of the same surface area equipped with conventional hooding and ventilation.

The proposed amendments would change the chromium electroplating or anodizing tank definition to include all the ancillary components necessary to accomplish electroplating or anodizing. Specifically, the definition of tank would be expanded to include ancillary components such as rectifiers, anodes, heat exchanger equipment, circulation pumps and air agitation systems. These components would then be included in the 50 percent fixed capital cost calculation for determining reconstruction.

The proposed amendments would change the operating limit for pressure drop across composite mesh pad control devices. The current standard requires composite mesh pad devices to be operated at all times within ±1 inch of water column of the pressure drop value established during an initial or subsequent performance test. We are proposing to change this operating limit from ±1 inch to ±2 inches.

III. Rationale for the Proposed Amendments

A. The Use of Fume Suppressants for Controlling Chromium Emissions From Hard Chromium Electroplating Tanks

This change is being proposed in response to recommendations made by the Common Sense Initiative (CSI) metal finishing subcommittee and research conducted by EPA's Office of Research and Development (ORD). The CSI was established to bring together a broad spectrum of stakeholders to advise, consult with and make

recommendations on matters pertaining to improving the Nation's pollution prevention and control programs. Metal finishing was one of six industry sectors for which CSI subcommittees were convened. Participants included independent experts selected from among the national and local environmental interest groups, industry, State and local governments, and other stakeholders such as labor organizations, environmental justice organizations, and the Federal government.

The CSI metal finishing subcommittee has overseen several studies designed to identify cleaner, cheaper, and smarter ways for the metal finishing industry to achieve environmental compliance. Among these were studies performed by EPA's ORD to demonstrate that new generation fume suppressants applied to hard chromium electroplating operations are a viable alternative to tank ventilation and air pollution control devices. The first study evaluated using fume suppressants in conjunction with air pollution control devices. The dramatic results in terms of emission reduction led to a second study which examined the effectiveness of fume suppressants independent of air pollution control devices. The study results clearly demonstrate that these commercially available fume suppressants are very effective in suppressing misting and, thus, limiting chromium emissions from hard chromium electroplating tanks. In addition, the studies demonstrate that fume suppressants can be used without adverse impact on plating quality, which historically has been a major concern for this industry and an impediment to their use.

The use of fume suppressants is a highly cost-effective pollution prevention approach which enables hard chromium electroplaters to meet the standards with little or no additional capital investment. Like decorative chromium electroplating and chromium anodizing facilities, hard chromium electroplating facilities would now be allowed to monitor surface tension to demonstrate compliance in lieu of performance testing. The surface tension would be limited to 45 dynes/cm when measured by a stalagmometer or 35 dynes/cm when measured by a tensiometer.

B. Revised Surface Tension Limit When Measuring Surface Tension With a Tensiometer

The 35 dynes/cm limit when measured by a tensiometer is a new requirement we are proposing which would apply to any affected facility, whether it be a decorative chromium electroplating facility, a hard chromium electroplating facility, or a chromium anodizing facility that elects to measure surface tension using a tensiometer. The current standard has a surface tension limit of 45 dynes/cm regardless of the instrument used to make the measurement. During the development of the 45 dynes/cm standard, all surface tension measurements were made with a stalagmometer. Since the promulgation of the standards, we have become aware of differences in the surface tension measurement depending on whether the measurement is made using a stalagmometer or a tensiometer. The aforementioned study performed by EPA's ORD observed that surface tension measurements made with a tensiometer were typically about 20 percent lower than measurements of the same plating bath with a stalagmometer. Measurements made with both a tensiometer and stalagmometer over a range of different surface tension levels showed that the two devices measurements varied at different surface tension values. We believe that the proposed new limit for the tensiometer is comparable to the existing limit when measured with a stalagmometer. Therefore, we are proposing to add a new alternative requirement of 35 dynes/cm to the 45 dyne/cm standard for hard chromium electroplating, decorative chromium electroplating and chromium anodizing facilities that measure surface tension using a tensiometer.

C. Hard Chromium Electroplating Facilities Which Operate Tanks Equipped With Enclosing Hoods

Since the promulgation of the standards, we have become aware of several sources that are experiencing difficulty in complying with the concentration emission limit for new sources, even though they have installed and are operating composite mesh pad scrubbers similar or identical to those used as the basis for the concentration limit. These sources operate new state-of-the-art plating tanks not encountered during rule development which feature enclosing hoods that completely cover the surface of the plating tank. The covered tank design allows for effective capture and ventilation at substantially lower ventilation rates than otherwise encountered with more conventional hooding. Tanks with conventional hooding typically require 250 cubic feet of ventilation air per minute per square foot of plating tank surface area, while tanks equipped with enclosing hoods typically require less than 100 cubic feet per minute per square foot of plating tank surface area. Consequently, although these sources often exceed the concentration limit of 0.015 mg/dscm, actual mass rate (pounds per hour) emissions are typically half or less than the mass rate which would otherwise be achieved by a complying source with the same size tank and workload with conventional hooding and ventilation rates. To address this problem, we are proposing procedures for demonstrating equivalent performance by establishing an alternative mass rate emission limit for these sources.

D. Chromium Electroplating and Chromium Anodizing Tank Definitions

At least in one instance, the existing regulations have led to the determination that tank replacement was considered a reconstruction. The final rule was interpreted to mean that a facility replacing an electroplating tank (*i.e.,* the receptacle or container in which chromium electroplating occurs) would qualify as a reconstructed source and, therefore, must comply with new source standards according to the provisions for reconstructed sources prescribed in § 63.5 of the General Provisions to 40 CFR part 63. This is an unintended and unforeseen outcome. Furthermore, tank replacements are considered routine preventive maintenance. If sources were subject to change from existing to new source standards due to tank replacement, there would be a disincentive to replacements of tanks until a failure occurred which obviously would be more detrimental to the environment.

Reconstruction means the replacement of components of an affected source to such an extent that the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable new source. Upon reconstruction, an existing affected source becomes subject to relevant standards for new sources irrespective of any change in emissions of hazardous air pollutants from that source. The chromium electroplating standards designate each electroplating or anodizing tank as an affected source. Furthermore, chromium electroplating or chromium anodizing tanks are defined as the receptacle or container in which hard or decorative chromium electroplating or chromium anodizing occurs.

It has come to our attention that the designation of source coupled with the definition of ''chromium electroplating or chromium anodizing tank'' as currently written may lead to an unintended determination that tank replacement alone qualifies as

reconstruction, causing the new tank to be subject to new source standards. The intent of the standards is to limit chromium emissions from chromium electroplating and anodizing processes. A hard chromium electroplating facility needs many other components and ancillary equipment in addition to the plating tank. The minimum equipment needed for even a small hard chromium electroplating process would include the following: an electroplating tank, rectifiers, anodes, heat exchanger equipment, circulation pumps and air agitation systems. Similarly, decorative chromium electroplating and chromium anodizing facilities include many other components in addition to the tank. Therefore, the 50 percent fixed capital cost trigger for determining reconstruction should be measured against all equipment components needed to achieve plating or anodizing. In most cases, similar tank replacement should be considered routine preventive maintenance and not trigger a reconstruction determination in and of itself. We are, therefore, proposing revisions to the definitions to clarify this intent.

E. Pressure Drop Monitoring Requirement for Composite Mesh Pads

Since the promulgation of the standards, we have been informed of many sources that are experiencing difficulty in complying with the standards' pressure drop operating limit for composite mesh pad control devices. The current operating limit requires composite mesh pad devices to be operated at all times within ±1 inch of water column of the pressure drop value established during the initial performance test. The most common problem encountered occurs when a pad is cleaned or replaced. The cleaner or newer pad often operates at a pressure drop outside of the allowed range causing the source to be out of compliance with the operating limit. We have obtained results of numerous performance tests conducted at several different facilities that clearly demonstrate that sources can meet the emission limit even though the pressure drop is outside the ±1 inch allowable range. We solicited and received information from a manufacturer and major supplier of composite mesh pad devices indicating that a more appropriate value for the pressure drop operating limit would be ±1.5 or ±2 inches of water column. Consequently, we are proposing to change the current operating limit from ±1 inch to ±2 inches.

IV. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is ''significant'' and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this regulatory action is not a ''significant regulatory action'' because none of the listed criteria apply to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

The proposed amendments do not have federalism implications. None of the affected facilities are owned or operated by State governments, and the proposed amendments would not preempt any State laws that are more stringent. Therefore, it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. In addition, the amendments if implemented as proposed, will not impose any substantial direct compliance costs. Thus, Executive Order 13132 does not apply to this proposal. Although section 6 of Executive Order 13132 does not apply, we consulted with State and local officials in developing this proposal, as noted above in section III A. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comments on this proposed rule amendment from State and local officials.

C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

The 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. Thus, Executive Order 13175 does not apply to the proposed rule.

In the spirit of Executive Order 13175 and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on the proposed rule from tribal officials.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant,'' as defined under Executive Order 12866, and (2) concerns an

environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA 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.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The proposed amendments are not subject to Executive Order 13045 because they are technology based and not based on health or safety risks. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost. Further, the proposed amendments have been determined not to be ''economically significant'' as defined under Executive Order 12866.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the proposed amendments do not contain 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 in any 1 year. Thus, today's proposed amendments are not subject to sections 202 and 205 of the UMRA. In addition, the EPA has determined that the proposed amendments contain no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's proposed amendments are not subject to the requirements of section 203 of the UMRA.

F. Regulatory Flexibility Act (RFA), as Amended by Small Business Regulatory Enforcement Act of 1996 (SBREFA) 5 U.S.C. 601 et seq.

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

After considering the economic impacts of today's proposed rule amendments on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule amendments on small entities'' (5 U.S.C. 603 and 604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive effect on the small entities subject to the rule. The amendments proposed in today's action only provide options designed to provide facilities with increased flexibility. The proposed amendments will not impose any additional requirements on any small entities and is expected to relieve burden for some small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

G. Paperwork Reduction Act

This action does not impose any new information collection burden. The proposed amendments provide owners and operators alternatives to existing requirements. The existing alternatives will still be available for those owners and operators that choose to use them. The 26 amendments we are proposing will increase the flexibility of compliance with the current regulations without imposing any additional recordkeeping requirements. The OMB has previously approved the information collection requirements contained in the final chromium electroplating rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and assigned the OMB control number 2060–0327.

A copy of the information collection request (ICR) support document prepared by EPA for the approved information collection requirements (ICR No. 1611.02) may be obtained from Sandy Farmer by mail at the Office of Environmental Information, Collection Strategies Division (2822), U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by e-mail at farmer.sandy@epa.gov, or by calling (202) 260–2740. A copy also may be downloaded off the Internet at *http://www.epa.gov/icr.* Include the ICR and/or OMB number in any correspondence.

These recordkeeping and reporting requirements are specifically authorized by section 112 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency procedures set forth in 40 CFR part 2, subpart B.

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.

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.

H. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rulemaking does not involve technical standards other than those already specified in the final rule. Therefore, EPA is not considering the use of any voluntary consensus standards.

I. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

The proposed rule amendments are not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not a significant regulatory action under Executive Order 12866.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 23, 2002.

Christine Todd Whitman,

Administrator.

For reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

Subpart N—[AMENDED]

2. Section 63.341 is amended by removing the definition *Chromium electroplating or chromium anodizing tank,* adding definitions for *Chromium anodizing tank, Chromium electroplating tank, Enclosed hard chromium electroplating tank, Open surface hard chromium electroplating tank,* and by revising the definitions for *Stalagmometer* and *Tensiometer,* to read as follows:

§ 63.341 Definitions and nomenclature.

(a) * * *

Chromium anodizing tank means the receptacle or container along with the following accompanying internal and external components needed for chromium anodizing: rectifiers fitted with controls to allow for voltage adjustments, heat exchanger equipment, circulation pumps and air agitation systems.

Chromium electroplating tank means the receptacle or container along with the following internal and external components needed for chromium electroplating: rectifiers, anodes, heat exchanger equipment, circulation pumps and air agitation systems.

* * * * *

Enclosed hard chromium electroplating tank means a chromium electroplating tank that is equipped with an enclosing hood and ventilated at half the rate or less that of an open surface tank of the same surface area.

* * * * *

Open surface hard chromium electroplating tank means a chromium electroplating tank that is ventilated at a rate consistent with good ventilation practices for open tanks.

* * * * *

Stalagmometer means an instrument used to measure the surface tension of a solution by determining the mass of a drop of liquid by weighing a known number of drops or by counting the number of drops obtained from a given volume of liquid.

* * * * *

Tensiometer means an instrument used to measure the surface tension of a solution by determining the amount of force needed to pull a ring from the liquid surface. The amount of force is proportional to the surface tension.

* * * * *

3. Section 63.342 is amended by:

a. Revising paragraph (b),

b. Revising paragraph (c),

c. Revising paragraph (d)(2), and

d. Revising paragraph (f)(2)(ii)(B).

The revisions read as follows:

§ 63.342 Standards.

* * * * *

(b) *Applicability of emission limitations.* (1) The emission limitations in this section apply during tank operation as defined in § 63.341, and during periods of startup and shutdown as these are routine occurrences for affected sources subject to this subpart. The emission limitations do not apply during periods of malfunction, but the work practice standards that address operation and maintenance and that are required by paragraph (f) of this section must be followed during malfunctions.

* * * * *

(c)(1) *Standards for open surface hard chromium electroplating tanks.* During tank operation, each owner or operator of an existing, new, or reconstructed affected source shall control chromium emissions discharged to the atmosphere from that affected source by either:

(i) Not allowing the concentration of total chromium in the exhaust gas stream discharged to the atmosphere to exceed 0.015 milligrams of total chromium per dry standard cubic meter (mg/dscm) of ventilation air (6.6×10^{-6} grains per dry standard cubic foot (gr/dscf)) for all open surface hard chromium electroplating tanks that are affected sources other than those that are existing affected sources located at small hard chromium electroplating facilities; or

(ii) Not allowing the concentration of total chromium in the exhaust gas stream discharged to the atmosphere to exceed 0.03 mg/dscm (1.3×10^{-5} gr/dscf) if the open surface hard chromium electroplating tank is an existing affected source and is located at a small, hard chromium electroplating facility; or

(iii) If a chemical fume suppressant containing a wetting agent is used, by not allowing the surface tension of the electroplating or anodizing bath contained within the affected tank to exceed 45 dynes per centimeter (dynes/cm) (3.1×10^{-3} pound-force per foot (lb_f/ft)) as measured by a stalagmometer or 35 dynes/cm (2.4×10^{-3} lb_f/ft) as measured by a tensiometer at any time during tank operation.

(2) *Standards for enclosed hard chromium electroplating tanks.* During tank operation, each owner or operator of an existing, new, or reconstructed affected source shall control chromium emissions discharged to the atmosphere from that affected source by either:

(i) Not allowing the concentration of total chromium in the exhaust gas stream discharged to the atmosphere to exceed 0.015 mg/dscm (6.6×10^{-6} gr/dscf) for all enclosed hard chromium electroplating tanks that are affected sources other than those that are existing affected sources located at small hard chromium electroplating facilities; or

(ii) Not allowing the concentration of total chromium in the exhaust gas stream discharged to the atmosphere to exceed 0.03 mg/dscm (1.3×10^{-5} gr/dscf) if the enclosed hard chromium electroplating tank is an existing affected source and is located at a small, hard chromium electroplating facility; or

(iii) If a chemical fume suppressant containing a wetting agent is used, by not allowing the surface tension of the electroplating or anodizing bath contained within the affected tank to exceed 45 dynes/cm (3.1×10^{-3} lb_f/ft) as measured by a stalagmometer or 35 dynes/cm (2.4×10^{-3} lb_f/ft) as measured by a tensiometer at any time during tank operation; or

(iv) Not allowing the mass rate of total chromium in the exhaust gas stream discharged to the atmosphere to exceed the maximum allowable mass emission rate determined by using the calculation procedure in § 63.344(f)(1)(i) for all enclosed hard chromium electroplating tanks that are affected sources other than those that are existing affected sources located at small hard chromium electroplating facilities; or

(v) Not allowing the mass rate of total chromium in the exhaust gas stream discharged to the atmosphere to exceed the maximum allowable mass emission rate determined by using the calculation procedure in § 63.344(f)(1)(ii) if the enclosed hard chromium electroplating tank is an existing affected source and is located at a small, hard chromium electroplating facility.

(3)(i) An owner or operator may demonstrate the size of a hard chromium electroplating facility through the definitions in § 63.341(a). Alternatively, an owner or operator of a facility with a maximum cumulative potential rectifier capacity of 60 million amp-hr/yr or more may be considered small if the actual cumulative rectifier capacity is less than 60 million amp-hr/yr as demonstrated using the following procedures:

(A) If records show that the facility's previous annual actual rectifier capacity was less than 60 million amp-hr/yr, by using nonresettable ampere-hr meters and keeping monthly records of actual ampere-hr usage for each 12-month rolling period following the compliance date in accordance with § 63.346(b)(12). The actual cumulative rectifier capacity for the previous 12-month rolling period shall be tabulated monthly by adding the capacity for the current month to the capacities for the previous 11 months; or

(B) By accepting a federally-enforceable limit on the maximum cumulative potential rectifier capacity of a hard chromium electroplating facility and by maintaining monthly records in accordance with § 63.346(b)(12) to demonstrate that the limit has not been exceeded. The actual cumulative rectifier capacity for the previous 12-month rolling period shall be tabulated monthly by adding the capacity for the current month to the capacities for the previous 11 months.

(ii) Once the monthly records required to be kept by § 63.346(b)(12) and by this paragraph (c)(3)(ii) show that the actual cumulative rectifier capacity over the previous 12-month rolling period corresponds to the large designation, the owner or operator is subject to the emission limitation identified in paragraph (c)(1)(i), (iii), (c)(2)(i), (iii), or (iv) of this section, in accordance with the compliance schedule of § 63.343(a)(5).

* * * * *

(d) * * *

(2) If a chemical fume suppressant containing a wetting agent is used, by not allowing the surface tension of the electroplating or anodizing bath contained within the affected source to exceed 45 dynes/cm (3.1×10^{-3} lb_f/ft) as measured by a stalagmometer or 35 dynes/cm (2.4×10^{-3} lb_f/ft) as measured by a tensiometer at any time during operation of the tank.

* * * * *

(f) * * *

(2) * * *

(ii) * * *

(B) Fails to provide for the proper operation of the affected source, the air pollution control techniques, or the control system and process monitoring equipment during a malfunction in a manner consistent with good air pollution control practices; or

* * * * *

4. Section 63.343 is amended by:

a. Revising paragraph (b)(2),

b. Revising paragraph (c)(1),

c. Revising paragraphs (c)(5)(i) and (ii).

The revisions read as follows:

§ 63.343 Compliance provisions.

* * * * *

(b) * * *

(2) If the owner or operator of an affected source meets all of the following criteria, an initial performance test is not required to be conducted under this subpart:

(i) The affected source is a hard chromium electroplating tank, a decorative chromium electroplating tank or a chromium anodizing tank; and

(ii) A wetting agent is used in the plating or anodizing bath to inhibit chromium emissions from the affected source; and

(iii) The owner or operator complies with the applicable surface tension limit of paragraph (c)(1)(iii), (c)(2)(iii), or (d)(2) of § 63.342 as demonstrated through the continuous compliance monitoring required by paragraph (c)(5)(ii) of this section.

* * * * *

(c) * * *

(1) *Composite mesh-pad systems.* (i) During the initial performance test, the owner or operator of an affected source, or a group of affected sources under common control, complying with the emission limitations in § 63.342 through the use of a composite mesh-pad system shall determine the outlet chromium concentration using the test methods and procedures in § 63.344(c), and shall establish as a site-specific operating parameter the pressure drop across the system, setting the value that corresponds to compliance with the applicable emission limitation, using the procedures in § 63.344(d)(5). An owner or operator may conduct multiple performance tests to establish a range of compliant pressure drop values, or may set as the compliant value the average pressure drop measured over the three test runs of one performance test and accept ±2 inches of water column from this value as the compliant range.

(ii) On and after the date on which the initial performance test is required to be completed under § 63.7, except for hard chromium electroplaters and chromium anodizing operations in California which have until January 25, 1998, the owner or operator of an affected source, or group of affected sources under common control, shall monitor and record the pressure drop across the composite mesh-pad system once each day that any affected source is operating. To be in compliance with the standards, the composite mesh-pad system shall be operated within ±2 inches of water column of the pressure drop value established during the initial performance test, or shall be operated

within the range of compliant values for pressure drop established during multiple performance tests.

* * * * *

(5) *Wetting agent-type or combination wetting agent-type/foam blanket fume suppressants.* (i) During the initial performance test, the owner or operator of an affected source complying with the emission limitations in § 63.342 through the use of a wetting agent in the electroplating or anodizing bath shall determine the outlet chromium concentration using the procedures in § 63.344(c). The owner or operator shall establish as the site-specific operating parameter the surface tension of the bath using Method 306B, appendix A of this part, setting the maximum value that corresponds to compliance with the applicable emission limitation. In lieu of establishing the maximum surface tension during the performance test, the owner or operator may accept 45 dynes/cm as measured by a stalagmometer or 35 dynes/cm as measured by a tensiometer as the maximum surface tension value that corresponds to compliance with the applicable emission limitation. However, the owner or operator is exempt from conducting a performance test only if the criteria of paragraph (b)(2) of this section are met.

(ii) On and after the date on which the initial performance test is required to be completed under § 63.7, except for hard chromium electroplaters and chromium anodizing operations in California which have until January 25, 1998, the owner or operator of an affected source shall monitor the surface tension of the electroplating or anodizing bath. Operation of the affected source at a surface tension greater than the value established during the performance test, or greater than 45 dynes/cm as measured by a stalagmometer or 35 dynes/cm as measured by a tensiometer if the owner or operator is using this value in accordance with paragraph (c)(5)(i) of this section, shall constitute noncompliance with the standards. The surface tension shall be monitored according to the following schedule:

(A) The surface tension shall be measured once every 4 hours during operation of the tank with a stalagmometer or a tensiometer as specified in Method 306B, appendix A of this part.

(B) The time between monitoring can be increased if there have been no exceedances. The surface tension shall be measured once every 4 hours of tank operation for the first 40 hours of tank operation after the compliance date. Once there are no exceedances during 40 hours of tank operation, surface tension measurement may be conducted once every 8 hours of tank operation. Once there are no exceedances during 40 hours of tank operation, surface tension measurement may be conducted once every 40 hours of tank operation on an ongoing basis, until an exceedance occurs. The minimum frequency of monitoring allowed by this subpart is once every 40 hours of tank operation.

(C) Once an exceedance occurs as indicated through surface tension monitoring, the original monitoring schedule of once every 4 hours must be resumed. A subsequent decrease in frequency shall follow the schedule laid out in paragraph (c)(5)(ii)(B) of this section. For example, if an owner or operator had been monitoring an affected source once every 40 hours and an exceedance occurs, subsequent monitoring would take place once every 4 hours of tank operation. Once an exceedance does not occur for 40 hours of tank operation, monitoring can occur once every 8 hours of tank operation. Once an exceedance does not occur for 40 hours of tank operation on this schedule, monitoring can occur once every 40 hours of tank operation.

* * * * *

5. Section 63.344 is amended by adding paragraph (f) as follows:

§ 63.344 Performance test requirements and test methods.

* * * * *

(f) *Compliance provisions for the mass rate emission standard for enclosed hard chromium electroplating tanks.* (1) This section identifies procedures for calculating the maximum allowable mass emission rate for owners or operators of affected sources who choose to meet the mass emission rate standard in § 63.342(c)(2)(iv) or (v).

(i)(A) The owner or operator of an enclosed hard chromium electroplating tank that is an affected source other than an existing affected source located at a small hard chromium electroplating facility who chooses to meet the mass emission rate standard in § 63.342(c)(2)(iv) shall determine compliance by not allowing the mass rate of total chromium in the exhaust gas stream discharged to the atmosphere to exceed the maximum allowable mass emission rate calculated using equation 9:

$$MAMER = ETSA \times K \times 0.015 \text{ mg/dscm} \quad (9)$$

Where:

MAMER=the alternative emission rate for enclosed hard chromium electroplating tanks in mg/hr.

ETSA=the hard chromium electroplating tank surface area in square feet(ft^2).

K=a conversion factor, 425 dscm/($ft^2 \times$ hr).

(B) Compliance with the alternative mass emission limit is demonstrated if the three-run average mass emission rate determined from Method 306 testing is less than or equal to the maximum allowable mass emission rate calculated from equation 9.

(ii)(A) The owner or operator of an enclosed hard chromium electroplating tank that is an existing affected source located at a small hard chromium electroplating facility who chooses to meet the mass emission rate standard in § 63.342(c)(2)(v) shall determine compliance by not allowing the mass rate of total chromium in the exhaust gas stream discharged to the atmosphere to exceed the maximum allowable mass emission rate calculated using equation 10:

$$MAMER = ETSA \times K \times 0.03 \text{ mg/dscm} \quad (10).$$

(B) Compliance with the alternative mass emission limit is demonstrated if the three-run average mass emission rate determined from testing using Method 306 of appendix A to part 63 is less than or equal to the maximum allowable mass emission rate calculated from equation 10.

* * * * *

6. Section 63.347 is amended by revising paragraph (c)(1)(viii) to read as follows:

§ 63.347 Reporting requirements.

* * * * *

(c) * * *

(1) * * *

(viii) For sources performing hard chromium electroplating, a statement of whether the owner or operator of an affected source(s) will limit the maximum potential cumulative rectifier capacity in accordance with § 63.342(c)(2) such that the hard chromium electroplating facility is considered small; and

* * *

[FR Doc. 02–13805 Filed 6–4–02; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Wednesday,
June 5, 2002

Part V

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Final Program Plan for Fiscal Year 2002; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP)–1337F]

Final Program Plan for Fiscal Year 2002

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Justice.

ACTION: Notice of Final Program Plan for fiscal year 2002.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention is publishing this notice of its Final Program Plan for fiscal year (FY) 2002.

FOR FURTHER INFORMATION CONTACT: The Office of Juvenile Justice and Delinquency Prevention at 202–307–5911. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is a component of the Office of Justice Programs in the U.S. Department of Justice. Pursuant to the provisions of Section 204 (b)(5)(A) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. 5601 *et seq.* (JJDP Act), the Acting Administrator of OJJDP published for public comment a Proposed Plan describing the program activities that OJJDP proposed to carry out during fiscal year (FY) 2002 under Parts C and D of Title II of the JJDP Act, codified at 42 U.S.C. 5651–5665a, 5667, 5667a. The public was invited to comment on OJJDP's Proposed Program Plan for fiscal year 2002, which was published in the **Federal Register** on October 23, 2001 (66 FR 53692–710). The deadline for submitting comments on the Proposed Plan was December 7, 2001.

During that time period, however, mail delivery to OJJDP was temporarily halted as a result of the extraordinary circumstances arising from the September 11 terrorist acts and subsequent anthrax attacks involving the U.S. mail.

All incoming U.S. Department of Justice mail was quarantined until the threat could be analyzed and screening and safety precautions could be instituted. Consequently, in order to properly review, consider, and respond to any comments submitted by the public on its Proposed Plan, OJJDP temporarily delayed publication of the FY 2002 Final Program Plan. OJJDP has only recently begun to receive its backlogged mail. However, in order to move ahead with publication of the Final Program Plan, OJJDP determined to publicly respond to those comments received by March 1, 2002.

The Acting Administrator analyzed the public comments received, and the comments and OJJDP's responses are provided later in this document. The Acting Administrator took these comments into consideration in developing this Final Plan, which describes the particular program activities that OJJDP intends to fund during FY 2002, using in whole or in part funds appropriated under Parts C and D of Title II of the JJDP Act.

Notice of the official solicitation of grant or cooperative agreement applications for competitive programs to be funded under the Final Plan will be published at a later date in the **Federal Register**. No proposals, concept papers, or other forms of application should be submitted at this time.

Background

In 1974, the JJDP Act established OJJDP as the Federal agency responsible for providing national leadership, coordination, and resources to develop and implement effective methods to prevent and reduce juvenile delinquency and improve the quality of juvenile justice in the United States. OJJDP performs its role of national leadership in juvenile justice and delinquency prevention through a cycle of activities. These include the following:

- Collecting data and statistics to determine the extent and nature of issues affecting juveniles.
- Supporting research studies that can lead to program demonstrations; testing and evaluating demonstration projects; and sharing lessons learned from the field with practitioners through a range of information dissemination vehicles.
- Providing seed money to States and local governments through formula and block grants to implement programs, projects, or reform efforts.
- Providing training and technical assistance to assist States and local governments to implement programs effectively and to maintain the integrity of model programs as they are being replicated.

OJJDP administers State Formula Grants under Part B of Title II, State Challenge Grants under Part E of Title II, and Community Prevention Grants under Title V of the JJDP Act to assist States and territories to fund a range of delinquency prevention, control, and juvenile justice system improvement activities. OJJDP provides support activities for these programs under statutory set-asides that are used to provide related research, evaluation, statistics, demonstration, and training and technical assistance services.

Under Part C of Title II of the JJDP Act, OJJDP funds Special Emphasis programs and—through its National Institute for Juvenile Justice and Delinquency Prevention—numerous research, evaluation, statistics, demonstration, training and technical assistance, and information dissemination activities. OJJDP funds school- and community-based gang prevention, intervention, and suppression programs under Part D and funds mentoring programs under Part G of Title II of the JJDP Act. OJJDP also coordinates Federal activities related to juvenile justice and delinquency prevention through the Concentration of Federal Efforts Program and serves as the staff agency for the Coordinating Council on Juvenile Justice and Delinquency Prevention. Both of these activities are authorized in Part A of Title II of the JJDP Act. Under Title IV, OJJDP administers the Missing and Exploited Children's Program.

Other programs administered by OJJDP include the following:

- Drug Prevention Program.
- Enforcing Underage Drinking Laws Program.
- Safe Schools Initiative.
- Tribal Youth Program.
- Safe Start: Children Exposed to Violence Initiative.
- Juvenile Accountability Incentive Block Grants program.
- Programs under the Victims of Child Abuse Act of 1990, as amended, 42 U.S.C. 13001 *et seq.*

In this Final Plan, OJJDP describes its priorities for funding activities authorized under Part C (National Programs) and Part D (Gang-Free Schools and Communities; Community-Based Gang Intervention) of Title II of the Juvenile Justice and Delinquency Prevention (JJDP) Act. The only projects described in this Final Program Plan are those that are eligible to receive Part C or Part D FY 2002 continuation funding under project period or discretionary continuation assistance awards.

Fiscal Year 2002 Program Planning Activities

The OJJDP program planning process for FY 2002 was coordinated with the Assistant Attorney General, Office of Justice Programs, and all OJP components. The program planning process involved the following steps:

- Internal review of existing programs by OJJDP staff.
- Internal review of proposed programs by OJP bureaus and Department of Justice components.

• Review of information and data from OJJDP grantees and contractors.
• Review of information contained in State comprehensive plans.
• Review of comments from youth service providers, juvenile justice practitioners, and researchers who provide input in proposed new program areas.
• Consideration of suggestions made by juvenile justice policymakers concerning State and local needs.
• Consideration of all comments received during the period of public comment on the Proposed Plan.

FY 2002 Program Priorities

During FY 2002, OJJDP will focus its efforts on programs that help prevent or intervene in delinquent behavior by funding activities that provide youth with the skills and values necessary to make choices that lead to positive outcomes. OJJDP also will focus on programs that hold youth accountable for their delinquent actions and on initiatives that prepare serious and violent juvenile offenders to successfully return home to their communities after they leave correctional institutions and training schools.

In response to statutory reforms (most notably the Government Performance and Results Act of 1993, Publ. L. 103–62), OJP has implemented the concepts of performance-based management, which allow OJP to focus on mission, agree on goals, and report on key results that improve government performance and public accountability. As part of OJP's overall efforts, OJJDP is formulating strategic and annual performance plans, setting annual performance targets, and requiring its applicants to provide performance measures based on individual grant program objectives and anticipated results and outcomes.

OJJDP program priorities in FY 2002 include the following:

• *Youth reentry programs.* OJJDP is participating in the Serious and Violent Offender Reentry Initiative ''Going Home'', which was developed by the Office of Justice Programs (OJP), in conjunction with other Federal agencies, including the National Institute of Corrections and Federal partners (the U.S. Departments of Education, Health and Human Services, Housing and Urban Development, and Labor). The Reentry Initiative is a comprehensive effort that addresses both juvenile and adult populations of serious, high-risk offenders. It will provide funding to develop, implement, enhance, and evaluate reentry strategies to ensure the safety of the community and the reduction of serious, violent crime. The initiative seeks to assist targeted offenders in successfully returning to their communities after having served a significant period of secure confinement in a State training school, juvenile or adult correctional facility, or other secure institution. (The ''Going Home'' initiative was announced January 31, 2002, and applications are due May 15, 2002. For more information, see OJP's Web site at www.ojp.usdoj.gov/reentry.)

• *Capacity building in community- and faith-based organizations.* The White House Office of Faith-Based and Community Initiatives and OJP/OJJDP will seek to establish a public/private partnership that will leverage the financial and human resources of faith-based and community-based organizations to meet the human services needs of their surrounding neighborhoods. The value of building such partnerships is exemplified by OJJDP's Juvenile Mentoring Program (JUMP), which supports one-to-one mentoring projects for youth at risk of failing in school, dropping out of school, or becoming involved in delinquent behavior, including gang activity and substance abuse. Since 1994, Congress has appropriated more than $56 million to support one-to-one mentoring programs and OJJDP has funded 203 JUMP sites in 47 States and 2 territories. More than 9,200 youth have received one-to-one mentoring, and mentors have been recruited from both the public and private sectors, including faith-based institutions (churches, church-operated charitable organizations and outreach programs, and tribal groups), community-based organizations, American Indian communities and Alaska Native villages, schools, police and fire departments, hospitals, and banks and local businesses. (A notice about the most recent JUMP program announcement was published in the **Federal Register** on February 8, 2002 [67 FR 6053]. Applications were due March 25, 2002.)

• *Juvenile drug use prevention programs.* Recognizing the importance of breaking the cycle of juvenile drug abuse and the serious delinquent behavior that often results, OJJDP will develop a demonstration program to help communities select and replicate promising and model drug prevention programs. The initiative also will include a national evaluation.

• *School violence prevention programs.* OJJDP's efforts in this area include a program to help communities address youth gang problems both in schools and in the community and a program that provides intensive training and technical assistance and collects data to strengthen state and local safe school initiatives.

Primary Program Goals

In addition to the above priorities, the discretionary programs OJJDP administers under Parts C and D of Title II typically address one or more of the four goals that OJJDP has identified as necessary to ensure public safety and security while establishing effective juvenile justice and delinquency prevention programs. Achieving these goals, which are discussed below, is vital to protecting the long-term safety of the public from juvenile delinquency and violence.

• OJJDP promotes delinquency prevention and early intervention efforts that reduce the flow of juvenile offenders into the juvenile justice system, the numbers of serious and violent offenders, and the development of chronic delinquent careers. Although removing serious and violent juvenile offenders from the street serves to protect the public, the real goal is to take aggressive steps to stop delinquency before it starts or becomes a pattern of behavior.
• OJJDP seeks to improve the juvenile justice system and the response of the system to juvenile delinquents, status offenders, and dependent, neglected, and abused children.
• OJJDP supports corrections, detention, and community- and faith-based alternatives which protect the public, incorporate appropriate secure detention and corrections options, and foster the use of community-based programs for juvenile offenders.
• OJJDP supports law enforcement, public safety, and other justice agency efforts to prevent juvenile delinquency, intervene in the development of chronic delinquent careers, and collaborate with the juvenile justice system to meet the needs of dependent, neglected, and abused children.

Fiscal Year 2002 Programs

OJJDP has organized its programs under four broad categories that reflect these four program goals. These categories are Public Safety and Law Enforcement, Delinquency Prevention and Intervention, Strengthening the Juvenile Justice System, and Child Abuse and Neglect and Dependency Cases. An Overarching fifth category contains programs with significant elements common to more than one of the other four categories. The programs that OJJDP expects to support in FY 2002 with Parts C and D funds (based on funding availability, grantee

performance, and other factors) are listed alphabetically and summarized later in this document.

As part of the FY 2002 appropriations process, Congress also identified a number of programs for funding consideration with regard to the grantee(s), the amount of funds, or both.

Continuation Discretionary Grants

The continuation projects listed in this program plan are those currently funded in whole or in part with Part C and Part D funds and eligible for continuation funding in FY 2002, either as part of an existing project period or through an extension for an additional project or budget period. A grantee's eligibility for continued funding for an additional budget period within an existing project period depends on the grantee's compliance with funding eligibility requirements and achievement of the prior year's objectives. The amount of award is based on prior projections, demonstrated need, and the availability of funds.

OJJDP will base consideration for continuation funding for an additional project period for previously funded discretionary grant programs on several factors, including the following:

- The extent to which the project meets the applicable requirements of the JJDP Act.
- Responsiveness to OJJDP and Department of Justice FY 2002 program priorities and goals.
- Compliance with performance requirements of prior grant years.
- Compliance with fiscal and regulatory requirements.
- Compliance with any special conditions of the award.
- Availability of funds (based on appropriations and program priority determinations).

In accordance with Section 262 (d)(1)(B) of the JJDP Act, as amended, 42 U.S.C. 5665a, the competitive process for the award of Part C funds is not required if the (Acting) Administrator makes a written determination waiving the competitive process:

''(i). With respect to programs to be carried out in areas with respect to which the President declares under the Robert T. Stafford Disaster Relief and Emergency Assistance Act codified at 42 U.S.C. 5121 *et seq.* that a major disaster or emergency exists, or

(ii). With respect to a particular program described in Part C that is uniquely qualified.''

Summary of Public Comments on the Proposed Program Plan for Fiscal Year 2002

OJJDP published its Proposed Program Plan for FY 2002 in the **Federal Register** (Vol. 66, No. 205) on October 23, 2001, for a 45-day public comment period. OJJDP received 21 letters commenting on the Proposed Plan. All comments have been considered in the development of OJJDP's Final Program Plan for Fiscal Year 2002.

The comments received are summarized below together with OJJDP's responses. To avoid needless repetition, all comments on a particular program or area of programming are summarized in one comment paragraph and followed by a single OJJDP response, which applies to all the comments on that topic.

Comment: Six letters from five public interest and civil rights groups and a private citizen suggested that OJJDP should include the Building Blocks for Youth Initiative in its Final Program Plan. By creating an alliance of children's advocates, researchers, law enforcement professionals, and community organizers, the Building Blocks for Youth Initiative seeks to protect minority youth in the justice system and promote rational and effective justice policies.

Response: OJJDP recognizes the great contributions the Building Blocks for Youth initiative has offered in the past. However, competing priorities and fiscal realities have precluded continued funding at this time. Although the juvenile justice system has traditionally maintained responsibility for providing services to juvenile offenders, it is clear that existing resources in communities often go unused. It is these unused resources that OJJDP desires to tap.

Comment: Two writers, an official with a State Juvenile Rehabilitation Administration and an official with the National Mental Health Association (NMHA), commented on the issue of mental health as it pertains to OJJDP's Proposed Plan. The first writer also emphasized the important role OJJDP plays in providing that State with the tools to identify, plan, and train staff to implement best practices programs for juvenile offenders. In recent years, the author wrote, these programs have shown significant evidence of reducing repetitive criminal behavior. However, the writer pointed out, the existence of such programs is currently limited. The writer suggested that a continued opportunity for flexible grant funding (i.e., funding that encourages careful evaluation of outcomes) would lead to a greater number of effective services and programs, which could then be replicated across juvenile justice systems. After remarking that the involvement of faith-based organizations in the Proposed Plan presents an exciting opportunity to expand the State's existing mentoring programs, the writer concluded by discussing that State's unresolved needs (both in terms of staff training and development monies) regarding the growing population of mentally ill youth involved in the juvenile justice system.

Writing in support of the five priorities of the Proposed Plan, the second writer stated that ''each of these areas is of interest to NMHA.'' The writer, however, suggested revisions to four of the five program priorities. The NMHA recommendations include: (1) The list of services to be offered under the initiative to build capacity in community- and faith-based organizations should be amended to read ''mentoring and counseling at-risk youth and children of prisoners, and shelter and counseling for abused and neglected children.'' NMHA also recommended that ''national funding be available to support technical assistance to community and faith-based partners, to assist them in more effectively participating in and initiating faith-based partnerships in communities.'' (2) Regarding the Reentry Initiative, NMHA was ''pleased to see substance abuse and mental health intervention and treatment included among the array of services to which the reentry programs will direct sources.'' (3) * * * ''mental health intervention and treatment [should] be specifically included among promising and model drug prevention programs to be replicated.'' (4) NMHA took ''serious exception'' to programs designed to prevent school violence that are ''limited in scope to 'zero tolerance' of seriously disruptive students and recommend[ed] that a mental health component be specifically included in the program plan and that a specific reference be provided to the provision of alternative education for any disruptive students who may be removed from class as a result of programs funded by OJJDP under this priority area.'' In addition, NMHA recommended that OJJDP make national technical assistance available to schools that ''focus on mental health as part of the formula for creating safe schools and healthy students.''

In addition to commenting on four of the program priorities, NMHA also proposed a supplement to OJJDP's FY 2002 Proposed Plan. NMHA suggested that OJJDP include in its Final Plan a

new priority and demonstration program that would expand the use of professional mental health screening and indepth assessment for all juveniles upon their entry into the juvenile justice system. The writer added that implementing such a program would address each of the areas set out under the FY 2002 Primary Program Goals. NMHA also suggested modifications to some of the programs eligible for continuation discretionary grants in FY 2002. NMHA's recommended program modifications include: (1) The National Resource Center and the Safe Schools/Healthy Students Action Center should be required to collaborate to help the Resource Center in the area of school mental health and to provide appropriate training, technical assistance, and data collection. (2) ''OJJDP [should] specifically require in FY 2002 that products and trainings provided by the project include those that help law enforcement personnel recognize juveniles with mental health problems and disorders.'' (3) The Multisite, Multimodal Treatment Study of Children With Attention Deficit/Hyperactivity Disorder should be made ''a specific area of investigation * * * [and should] address how to help law enforcement, court, detention, and corrections personnel recognize and provide appropriate treatment for juveniles with mental health problems and disorders.'' (4) OJJDP should provide technical assistance to the National Juvenile Detention Association (or order it to secure through contract) that emphasizes mental health to help shape its suicide prevention and management curriculum.

Response: For the past 10 years, OJJDP has been committed to addressing the mental health needs of youth involved with the juvenile justice system. The agency recognizes that at the State and local level, juvenile justice agencies, facilities, and professionals struggle to meet the needs of increasing numbers of mentally ill youth. As the writer points out, staff training is a critical part of the system's response to these youth, as is the development and implementation of appropriate assessment and treatment services.

Although this year's Program Plan contains no new funding in the area of mental health, the agency continues to sponsor a number of ongoing research projects in this area. Last year, OJJDP began funding a large, multifaceted research project related to mental health and juvenile justice. The ultimate goal of the project is to develop a model for meeting the mental health needs of youth at every point in the juvenile justice system, from arrest to aftercare. As part of this effort, researchers are collecting data on the prevalence of mental illness in different correctional settings and on the availability of appropriate services in those settings.

The first writer notes that there is an ongoing lack of program development dollars for diversion and treatment programs for mentally ill youth. Although OJJDP may not be dedicating discretionary dollars to mental health programming at this time, States may still use the funding they receive from OJJDP through Formula Grants and State Challenge Grants for this purpose. OJJDP encourages the writer to work with the appropriate State Advisory Group to ensure that a portion of these grant funds are used to meet the needs of mentally ill youth in the juvenile justice system or who are at risk of entering it.

In response to the second writer's recommendation that OJJDP focus on screening and assessing juveniles upon their first entry into the juvenile justice system (i.e., prior to confinement), OJJDP would like to point out two ongoing efforts that address this issue. OJJDP-funded Community Assessment Centers (CACs) provide a 24-hour centralized point of intake and assessment for juveniles entering the juvenile justice system. As the writer points out, early identification of mental health and substance abuse disorders can enhance placement and treatment decisions for youth at the ''front end'' of the juvenile justice system. In addition, the OJJDP project *Screening and Assessment: Instruments and Models* is designed to help juvenile justice professionals identify and understand the kinds of mental health screening and assessment tools and protocols available for use with youth in the juvenile justice system. The project, when completed, will provide recommendations regarding how these instruments and protocols can be used to better identify and respond to the treatment needs of youth in the juvenile justice system.

OJJDP appreciates the writers' suggestions and comments on the proposed program areas, the supplement to the Proposed Plan, and program modifications. OJJDP will consider these suggestions as it continues to develop and implement its FY 2002 activities.

Comment: Two writers, the president and the director of research of a company that produces educational and training products for at-risk youth, wrote to describe the unique opportunities that advances in Web-based technologies offer local juvenile justice and other youth service providers of youth training. They noted that such Web-based approaches to distance learning could be high quality, cost-effective, and easily customized. They also emphasized the benefits of the interactive nature of this medium.

Response: Although local providers are in the best position to determine the most cost-effective and efficient mix of media used to train youth in their communities, such decisions should be subject to ongoing review. As the information provided by the writers evidences, Web-based technologies should be included among the media explored in such analyses.

Comment: One writer, the director of a State Department of Juvenile Justice, wrote to support OJJDP's five broad program priorities for FY 2002. The writer stated that the proposed involvement of community- and faith-based organizations in the juvenile justice system will be well received and has great potential to tap resources that have been historically underutilized. Regarding reentry, the writer commented that virtually every practitioner agrees that reentry is a long-neglected area, with the result being that some of the most high-risk youth return to the community with inadequate planning, resources, and supervision for the transition. The writer also suggested that, should funding become available, the Proposed Plan or subsequent planning processes include two areas previously mentioned in the FY 2001 Proposed Plan: (1) Advocacy for families involved in the juvenile justice system and (2) increasing the capacity and effectiveness of juvenile probation.

Response: Although the juvenile justice system has traditionally provided services to juvenile offenders, it is clear that there are resources available in local communities that go unused. It is these unused resources, such as those in community- and faith-based organizations, that OJJDP desires to leverage for prevention, intervention, and reentry programs.

Comment: One writer, an official with the Council of Juvenile Correctional Administrators (CJCA), provided a series of comments and recommendations concerning OJJDP's Reentry Initiative. The comments and recommendations were the result of CJCA members' responses to 16 questions based on past OJJDP conferences and meetings. In crafting their responses, CJCA members addressed such topics as the overall purpose of the initiative, the principles that should be incorporated into the initiative, the ways in which OJJDP should define the target population of reentry programs, and the key

components that should be included in such programs.

Response: In developing the core components of the Serious and Violent Juvenile Offender Reentry Initiative, OJJDP has made great efforts to elicit input from professionals across the juvenile justice field. In doing so, it is clear that the Reentry Initiative must be comprehensive to meet the needs of the returning offender, while maintaining public safety. The CJCA comments are consistent with the seven essential elements of OJJDP's comprehensive approach. This approach includes:

- Establishment of a clear and present authority from immediate return throughout the entire transition process.
- Implementation of a detailed assessment process (forensic, educational, vocational, mental health, and substance abuse).
- Development of a reintegration plan that clearly addresses all issues identified in the assessment phase and becomes the guide by which offenders must manage their reentry into the community.
- Use of existing community resources to implement the plan, which will afford continuity and availability of service delivery and ensure familiarity by the offender with the service system and will also increase the potential for sustaining the program and the offender in the community.
- Application of graduated levels of supervision and sanctions to offenders, including highly structured housing, electronic monitoring, team supervision, and consistent and equitable responses to a lack of compliance and reoffending.
- Involvement of local law enforcement, probation, parole, and the community in tracking the activities and behaviors of offenders.
- Use of faith- and community-based service systems to mentor and provide services to the offenders.

Comment: One writer, commenting on behalf of a nonprofit organization that promotes government accountability and citizen participation in public issues, supported the proposal to build the capacity of community- and faith-based organization to address the needs of at-risk youth. However, the writer stressed the importance of having adequate safeguards in place to protect against proselytizing directed at program participants and their families. As an example of this concern, the writer explains that if a grant program favors religious organizations over secular ones, or if some religions benefit more from the program than others, this bias may divide a community rather than unite it. The writer suggests several ways that OJJDP could involve faith-based organizations in its programs without subsidizing religious activity. In addition, the writer notes that OJJDP must do more than ''discourage'' proselytizing; it must prohibit it. Finally, the writer expresses hope that the Final Program Plan will provide more specific details about what grant programs can do to involve all organizations in a community without subsidizing religious activity of proselytizing participating youth. That way, the writer affirms, ''the Centers will be a real asset for communities with high levels of juvenile crime.''

Response: OJJDP is committed to ensuring that any faith-based program will comply with constitutional and statutory protections. In designing and implementing the faith-based program, OJJDP will ensure that federal funds are not used for religious services, proselytization, or indoctrination.

Comment: One writer, an official with the Juvenile Justice Coalition of Ohio, wrote to support the general focus of the Proposed Plan but stated that ''we believe the focus and the program priorities are too narrowly defined to have the positive impact all of us hope that [OJJDP's] activities will have on juvenile delinquency.'' Based on this perception, the writer offered three modifications to the Proposed Plan: (1) Including the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders as an OJJDP priority, (2) prioritizing efforts to reduce disproportionate confinement or overrepresentation of minorities in the juvenile justice system, and (3) broadening the scope of prevention priorities.

Response: OJJDP's State and Tribal Assistance Division (STAD), through its administration of formula and block grant programs, supported the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders to help communities identify and prioritize their delinquency prevention and juvenile justice needs. Based on STAD's experiences and the information gathered during the national evaluation of the Comprehensive Strategy Training and Technical Assistance Initiative, STAD has streamlined the community planning process. This abbreviated, results-oriented approach (the Targeted Community Action Planning [TCAP] program) will allow OJJDP to support more local communities interested in developing targeted responses to their most pressing juvenile justice needs.

In response to the writer's comment that ''efforts to reduce disproportionate confinement or overrepresentation of minorities in the juvenile justice system should be a priority,'' OJJDP recognizes that addressing disproportionate minority confinement (DMC) requires long-term coordinated efforts at the Federal, State, and local levels. OJJDP plans to continue Federal research and targeted training and technical assistance to States and local communities to help them meet these challenges. OJJDP is committed to assisting States in their adoption of a comprehensive approach to reduce DMC and ensuring fair and equal treatment for every youth involved in the juvenile justice system.

In response to the writer's comment that ''the scope of prevention priorities should be broadened,'' OJJDP agrees that prevention models, such as the one prescribed by OJJDP's Title V Community Prevention Grants Program, provide guidance for communities' risk- and protective-focused prevention efforts. OJJDP strives to improve and broaden the delinquency prevention efforts of both States and communities, particularly those efforts that (1) emphasize promising or effective programs and (2) provide proactive assistance to help communities access additional funding sources to implement their comprehensive community delinquency plans.

Comment: One writer, the director of corrections for a faith-based organization, wrote in support of the FY 2002 Proposed Plan and offered to assist with future implementation efforts regarding the Proposed Plan.

Response: OJJDP is pleased to know that the Faith- and Community-based and Reentry Initiatives have generated so much support. We welcome and will encourage participation in the implementation of these initiatives as we continue to develop them.

Comment: One writer, the family services director for a nonprofit community action agency, asserted that OJJDP should ''prioritize earlier intervention for effective prevention.'' The writer emphasized that prevention should play a larger part in the Proposed Plan and stated that ''holding youth accountable and preparing offenders to return home after leaving institutions is not delinquency prevention.''

Response: OJJDP agrees that early intervention and prevention efforts are critical to addressing potential risk factors that may lead to juvenile delinquency. Over the years, OJJDP has supported many intervention and prevention programs, such as the Drug-Free Communities Support Program and the Juvenile Mentoring Program. OJJDP's commitment to developing and sustaining such programs remains strong. Nonetheless, the success of

intervention and prevention programs should not forestall the development of new approaches to curtailing delinquency. By focusing on programs that hold youth accountable for their delinquent actions and on initiatives that prepare serious and violent juvenile offenders to successfully return home to their communities after they leave correctional institutions and training schools, OJJDP is building its capacity to meet the needs of both our Nation's youth and the communities in which they live.

Comment: One writer, a member of the Gender Specific Services Work Group for Ohio, commented that the Proposed Plan should prioritize and fund (1) the mandate to reduce disproportionate minority confinement of juveniles; (2) the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders; and (3) gender-specific services. In addition, the writer stated disappointment that OJJDP ''has dropped the National Girls Institute from program funding.''

Response: OJJDP is committed to preventing and reducing juvenile delinquency. In addition, OJJDP's commitment to addressing the mandate to reduce disproportionate minority confinement of juveniles and gender-specific programs for girls remains strong. We are currently reviewing our efforts in these areas and evaluating the effectiveness of the Comprehensive Strategy program. As we move forward, we will do so in a manner that focuses on outcome measures and builds on lessons we have already learned in all of these areas.

Comment: Two writers, an official with the National Sheriff's Association (NSA) and an official with the American Correctional Association (ACA), commended OJJDP's efforts in helping to improve the future of America's youth. Commenting on behalf of NSA, one writer suggested promoting a program that would assist ''rural law enforcement in dealing with and assisting juveniles in trouble.'' Commenting on behalf of ACA, the second writer expressed an interest in ''ensuring that when and if juveniles are placed in incarceration situations, proper training, resources, and assistance is afforded to the facilities and their officers.'' Both writers stated an interest in promoting proper reentry strategies and partnerships to ensure that all youth receive the assistance they need.

Response: It is often difficult to address issues regarding the lack of resources and services in remote, very rural areas. However, OJJDP is aware of these difficulties and has taken steps to assist sparsely populated jurisdictions that do not have some essential services. OJJDP has directed the National Juvenile Detention Association (NJDA) to address the issue of detention services in rural areas. NJDA, along with the Annie E. Casey Foundation, is looking at what can be done to provide alternatives to incarceration that still provide a degree of security and protection to both the delinquent youth and the community.

In addition, OJJDP is sponsoring a Juvenile Sanctions Project, through the National Council of Juvenile and Family Court Judges, to assist jurisdictions that want to develop new, or enhance existing, accountability-based juvenile sanctions programs. Such a system of graduated sanctions would help communities develop alternatives to secure detention, identify needed services for juveniles, and help implement services in rural communities.

Comment: One writer, a juvenile justice specialist from a State Division of Criminal Justice, offered three comments. First, OJJDP should solicit input from juvenile justice specialists and State Advisory Groups who oversee and administer the funds available through the State and Tribal Assistance Division of OJJDP. Soliciting this input prior to and during the implementation process of the proposed programs will, according to the writer, broaden the working knowledge of the needs and existing State programs and initiatives. OJJDP should also solicit input from other Federal agencies and foundations that share a similar focus. Second, the current grantee of the Juvenile Justice Telecommunications Assistance Project should continue to develop ways to include more participants in the Internet videoconferences. Third, the Building Blocks initiative and the Disproportionate Minority Confinement initiative should be ''supported at a level to provide assistance to States in their efforts to address minority overrepresentation through the Formula Grant Program.''

Response: The Juvenile Justice Telecommunications Assistance Project (JJTAP) continues to recognize the importance of using the Internet to disseminate information to the field. Since 1999, JJTAP has used the evolving technology of streaming video and has seen it become more watchable and viewer-friendly with each passing year. In FY 2002, JJTAP committed to cybercast all OJJDP videoconferences and has proposed to do the same in FY 2003. All past videoconferences are available for viewing online at *www.juvenilenet.org/jjtap/archives.* As for the writer's comment about providing assistance to states to address disproportionate minority confinement issues, training and technical assistance are available through OJJDP to all states to help them address this issue.

Comment: One writer, an official of Americans United for Separation of Church and State, wrote to express concern that OJJDP's plan for implementing community- and faith-based initiatives ''may have the deleterious effect of eroding the civil rights of the beneficiaries and others.'' The writer advised that the Final Plan explicitly mention a commitment to the Constitutional protections regarding the separation of church and State. In addition, the writer urged that OJJDP ''ensure the availability of secular alternatives for the beneficiary youth in each location [where] funds are used to assist faith-based organizations.''

Response: OJJDP is committed to ensuring that any faith-based initiative will comply with constitutional and statutory protections. In designing and implementing the faith-based program, OJJDP will seek to ensure that federal funds are not used for worship services, proselytization, or indoctrination.

Comment: One writer, the executive director of an educational technology network that serves juvenile and youthful offenders, wrote to recommend that the guidelines for all OJJDP grants include the use of technology, as appropriate. The writer asked that OJJDP consider designating some portion of reentry program funds for the development of multimedia products that can be used nationwide to help youthful offenders establish a plan for success. The writer also suggested that OJJDP use something like the following language in its guidelines for reentry program applications:

''Funding will be made available, on a competitive basis, for the development of multimedia products that prepare juveniles and youthful offenders for reentry into the community, prior to their release date.''

Response: The ability to share information across agencies in an efficient and effective manner is a critical component to many justice programs. OJJDP encourages juvenile justice agencies to develop and implement management information systems that can collect data and analyze and disseminate information. Sites participating in OJJDP's Serious and Violent Offender Reentry Initiative may choose to enhance their programs through the use of technology, both with multimedia products and the above-mentioned information systems.

Comment: One writer, commenting on behalf of the Research Triangle Institute,

recommended that OJJDP implement a new area of investigation for developing effective interventions for at-risk juveniles. The writer suggested that a new approach should advance a more comprehensive understanding of the many factors that influence behavioral outcomes. To this end, the writer asserted that interventions should target the precursors that affect behavioral outcomes (*e.g.,* drug abuse or violence) rather than the behavioral outcomes alone.

Response: Over the past several years, OJJDP has become aware of research that indicates a link between learning disabilities and higher risk for delinquency. This research indicates that neurological conditions can impact a child's cognitive and emotional regulatory functions. Children with these functional impairments may be more likely to engage in behavior that can have negative outcomes. For example, they may be more vulnerable to the influences of negative peers or may be less likely to achieve academically and therefore start to skip classes. Without appropriate intervention, these children may engage in delinquent behavior, such as drug use and violence, and end up in juvenile court or incarcerated.

As the writer indicates, very few prevention studies take into account precursors, such as functional impairments, when studying the effectiveness of any given program or curriculum. Yet, since children with these functional impairments are less likely to benefit from traditional prevention program delivery methods (i.e., a classroom setting), research needs to consider these factors if we are to develop programs that truly respond to the needs of at-risk youth.

In recent years, OJJDP has worked to increase collaboration with other federal agencies that support research in this field. The purpose of these collaborations has been two-fold: first, to learn more about the precursors that may make youth more vulnerable to delinquent behavior, and second, to encourage researchers to measure predelinquent and delinquent behavior as part of the outcomes they use in measuring the impact of different interventions. The Multisite, Multimodal Treatment Study of Children With Attention Deficit/Hyperactivity Disorder is one current collaborative effort. This study, funded primarily by the National Institute of Mental Health (NIMH), is examining the long-term efficacy of stimulant medication and intensive behavioral and educational treatment for children with attention deficit/hyperactivity disorder (ADHD).

Another project for which OJJDP has provided support (through an Interagency Agreement with NIMH) is Risk Reduction Via Promotion of Youth Development. This project (also known as Early Alliance) is a large-scale prevention study involving hundreds of children in several elementary schools in lower socioeconomic neighborhoods of Columbia, SC. The project is designed to promote coping competence and reduce risk for conduct problems, aggression, substance use, delinquency and violence, and school failure beginning in early elementary school.

In addition to these studies, OJJDP participates in the Interagency Coordinating Committee on Fetal Alcohol Syndrome (ICCFAS) group. Fetal Alcohol Syndrome and Fetal Alcohol Effects (FAS/FAE) are associated with a specific set of neurobehavioral deficits that predispose affected individuals to delinquent and other high-risk behaviors. A primary objective of the ICCFAS is to promote and facilitate the development of collaborative projects and cooperative programs among member agencies. This includes improving communication among basic research, clinical research, education, and service-provider communities, and facilitating evaluation of FAS intervention programs. The ICCFAS group is coordinated by the National Institute on Alcohol Abuse and Alcoholism and includes members from several federal agencies and national organizations. OJJDP has served on the group since 1999.

Although these efforts are an important step, they are just the beginning. OJJDP will continue to seek opportunities to collaborate with other agencies in supporting research in this field and to share the results with juvenile justice practitioners nationwide.

Fiscal Year 2002 Program Listing

Overarching

American Statistical Association Crime and Justice Committee
Coalition for Juvenile Justice
Insular Area Support
Juvenile Justice Clearinghouse
Juvenile Justice Telecommunications Assistance Project
National Reporting System for Formula Grants Program
National Resource Center for Safe Schools
National Training and Technical Assistance Center
OJJDP Management Evaluation Contract
OJJDP Technical Assistance Support Contract—Juvenile Justice Resource Center
Program of Research on the Causes and Correlates of Delinquency
Technical Assistance for State Legislatures
Understanding and Monitoring the ''Whys'' Behind Juvenile Crime Trends

Public Safety and Law Enforcement

Evaluation of the Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression Program
Evaluation of the Comprehensive Gang Model: An Enhanced School Approach
Gang-Free Schools and Communities Initiative
Gang Prevention Through Targeted Outreach (Boys & Girls Clubs)
Law Enforcement Training and Technical Assistance Program
National Youth Gang Center
Technical Assistance to the Gang-Free Schools and Communities Initiative

Delinquency Prevention and Intervention

Assessing Alcohol, Drug, and Mental Disorders Among Juvenile Detainees
Comprehensive Children and Families Mental Health Training and Technical Assistance
Evaluation of the Truancy Reduction Demonstration Program
Integrated Information Sharing To Prevent Juvenile Delinquency: A Training and Technical Assistance Approach
Intergenerational Transmission of Antisocial Behavior
Juvenile Defender Training, Technical Assistance, and Resource Center
Multisite, Multimodal Treatment Study of Children With Attention Deficit/Hyperactivity Disorder
National Youth Court Center
Pathways to Desistance: A Prospective Study of Serious Adolescent Offenders
Technical Assistance for the Title V Community Prevention Programs
Truancy Reduction Demonstration Program

Strengthening the Juvenile Justice System

Accountability-Based Training for Staff in Juvenile Confinement Facilities
Balanced and Restorative Justice
Census of Juveniles in Residential Placement
Center for Students With Disabilities in the Juvenile Justice System
Improving Juvenile Sanctioning: An Intensive Training and Technical Assistance Delivery Program

Intensive Community-Based Juvenile Aftercare Dissemination and Technical Assistance Program
James E. Gould Memorial Program for Training and Technical Assistance for Juvenile Corrections and Detention
Juvenile Justice Prosecution Unit
Juvenile Residential Facility Census
Longitudinal Study To Examine the Development of Conduct Disorder in Girls
Meta-Analysis Project
National Census and Survey of Juvenile Probation
National Evaluation of the Performance-based Standards Project
National Juvenile Justice Data Analysis Project
National Juvenile Justice Program Directory
National Juvenile Sex Offenders Training Project
National Longitudinal Survey of Youth
National Training and Technical Assistance for Effective Juvenile Detention and Corrections Practices
Performance-based Standards Project
Survey of Youth in Residential Placement
Systems Improvement Training and Technical Assistance
Training Programs for Juvenile Justice Professionals in Corrections and Detention
Training and Technical Assistance for National Innovations To Reduce Disproportionate Minority Confinement
Tribal Youth Training and Technical Assistance Program

Child Abuse and Neglect and Dependency Courts

Evaluation of the Parents Anonymous' Program
National Evaluation of the Safe Kids/Safe Streets Program
Research on Child Neglect
Safe Kids/Safe Streets: Community Approaches to Reducing Abuse and Neglect and Preventing Delinquency

Overarching

American Statistical Association Crime and Justice Committee

In 2001, OJJDP, through an intra-agency agreement with the Bureau of Justice Statistics (BJS), began funding the American Statistical Association (ASA) Committee on Crime and Justice Statistics to support the committee's work and to sponsor a methodology and statistics grant program. ASA-sponsored grants and activities seek to improve the quality and utility of juvenile-related Federal Bureau of Investigation (FBI) data, in particular county-level arrest and homicide data. A specific research agenda for these funds will be developed jointly by OJJDP, BJS, the FBI, and the ASA Law and Justice Statistics Committee. This joint OJJDP and BJS activity should improve the processing of these files and make the two offices' public presentation of the final data more consistent. Funds in FY 2002 will support the further development of the research agenda and the continued improvement of the juvenile justice data.

This project will be implemented by the current grantee, the American Statistical Association. No additional applications will be solicited in FY 2002.

Coalition for Juvenile Justice

This project supports the Coalition for Juvenile Justice, an organization composed of member representatives of State Advisory Groups appointed by State Governors under section 223(a)(3) of the JJDP Act. Pursuant to statutory requirements, the Coalition will conduct an annual conference of member representatives; disseminate information on data, standards, advanced techniques, and program models developed and funded by OJJDP; and review Federal policies regarding juvenile justice and delinquency prevention. The Coalition also advises the OJJDP Administrator with respect to the work of OJJDP and advises the President and Congress with regard to State perspectives on the operation of OJJDP and on Federal legislation pertaining to juvenile justice and delinquency prevention.

This project will be implemented by the current grantee, the Coalition for Juvenile Justice. No additional applications will be solicited in FY 2002.

Insular Area Support

The purpose of this statutorily required program is to provide support to the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. Funds are available to address the special needs and problems of juvenile delinquency in these insular areas, as specified by section 261(e) of the JJDP Act of 1974, as amended, 42 U.S.C. 5665(e).

Juvenile Justice Clearinghouse

A component of the National Criminal Justice Reference Service (NCJRS), the Juvenile Justice Clearinghouse (JJC) collects, synthesizes, and disseminates information on all aspects of juvenile justice. OJJDP established the Clearinghouse in 1979 to serve the information needs of the juvenile justice community, policymakers, the media, and the public. JJC offers toll-free telephone access to information; prepares specialized responses to information requests; produces, warehouses, and distributes OJJDP publications; exhibits at national conferences; maintains a comprehensive juvenile justice library and database; and operates several electronic information resources, including OJJDP's Web site. NCJRS is administered by the National Institute of Justice (NIJ) under a competitively awarded contract to Aspen Systems Corporation. FY 2002 is the fourth year of a 4-year project period.

This project will be implemented by the current contractor, Aspen Systems Corporation. No additional applications will be solicited in FY 2002.

Juvenile Justice Telecommunications Assistance Project

The Juvenile Justice Telecommunications Assistance Project (JJTAP) has been funded by OJJDP since 1995. The grantee, Eastern Kentucky University (EKU), provides OJJDP with the technical expertise and necessary equipment to conduct national satellite videoconferences and technical assistance for training and information dissemination purposes. Through the use of live videoconferences and Internet technology, OJJDP has reached thousands of juvenile justice professionals simultaneously to inform the field of the latest developments in research, best practices, and promising programs in an expeditious and relatively inexpensive manner. These videoconferences are designed to address specific issues and allow interaction between experts and the viewing audience during call-in segments.

In addition to satellite technology, this project has used the Internet since 1999 to reach an even greater audience. Five of the videoconferences have been Webcast live on the Internet, and all past videoconferences are available for viewing, in their entirety, on the project's Web site archive. Written materials accompanying each broadcast are sent to each downlink site and are available to anyone to download from the Internet. Videotapes and associated written materials for all past videoconferences are available for purchase through the Juvenile Justice Clearinghouse. JJTAP has provided technical assistance on satellite videoconferencing to a large number of organizations and has published the *Satellite Teleconferencing Resource Manual,* a resource document for

agencies interested in delivering training via satellite.

In FY 2002, all videoconferences will be available via satellite and the Internet. Four new videoconferences will be developed and marketed through the National Criminal Justice Reference Service. EKU also will continue providing limited technical assistance in the use of telecommunications technology to other juvenile justice agencies.

This project will be implemented by the current grantee, Eastern Kentucky University. No additional applications will be solicited in FY 2002.

National Performance Reporting System for Formula Grants Program

The National Performance Reporting System will allow OJJDP to continue assisting States in reporting program information as required for participation in the Title II, Part B State Formula Grants Program. Under this project, States gain the capacity to efficiently submit program information to OJJDP. In this second year of the cooperative agreement, a new data collection tool will be piloted and subsequently refined. The data obtained using this new collection tool will provide a comprehensive picture of the implementation of the Formula Grants Program in the States.

This project will be implemented by the current grantee, the Justice Research and Statistics Association. No additional applications will be solicited in FY 2002.

National Resource Center for Safe Schools

OJJDP established the National Resource Center for Safe Schools (NRCSS) in 1998 by funding, along with the U.S. Department of Education's Safe and Drug-Free Schools Program, the Northwest Regional Educational Laboratory (NWREL) to provide intensive training, technical assistance, and data collection to strengthen statewide and local safe school initiatives. The mission of NRCSS is to implement a training and technical assistance program that helps schools and communities create and maintain safe learning environments that are free of crime and violence. NRCSS's approach assumes that the development of a safe school environment cannot be isolated from an overall school improvement plan that includes community services agencies. This approach provides safe schools programs with a solid foundation that embraces diversity, builds resiliency, and provides educational programming such as anger management, peer mediation, and conflict resolution. (However, such programming is not appropriate in cases involving dating violence or sexual harassment.)

NRCSS's accomplishments to date include developing a database and services to support crisis response referrals; holding 3 advisory committee meetings; publishing 8 newsletters, 12 fact sheets, and 1 case study; establishing a training and technical assistance calendar, a pool of providers, and a toll-free phone number; and developing a training curriculum protocol and a curriculum manual for the project.

In FY 2002, NRCSS will identify and focus on the 10 areas of concern that are most important to creating safer schools. NRCSS will take a consolidated approach to these 10 areas of concern and will support schools in their efforts to implement other effective OJJDP initiatives such as mentoring, youth courts, bullying, and conflict resolution.

This project will be implemented by the current grantee, the Northwest Regional Educational Laboratory. No additional applications will be solicited in FY 2002.

National Training and Technical Assistance Center

The National Juvenile Justice and Delinquency Prevention Training and Technical Assistance Center (NTTAC) was established in FY 1995 under a competitive 3-year project period award. In FY 2000, a competitive 1-year contract was awarded to Caliber Associates to continue implementation of the Center; a second contract was awarded to Caliber through a competitive process in FY 2001. Renewal of this contract for project implementation is anticipated annually over a 3-year period, based on availability of funds and satisfactory performance.

NTTAC serves as a national training and technical assistance repository, inventorying and coordinating the integrated delivery of juvenile justice training and technical assistance resources and establishing a database of these resources. Past NTTAC activities included convening the first in a series of annual OJJDP training and technical assistance grantee-contractor meetings, finalizing the jurisdictional team training and technical assistance packages on critical needs in the juvenile justice system, developing a bimonthly newsletter (NTTAC News), and responding to training and technical assistance requests from the field.

NTTAC also brokered more than 500 training and technical assistance requests in FY 2001 and revamped its marketing and outreach strategy to include a redesign of its marketing materials, indicating ''a family-of-products'' look. NTTAC expanded and enhanced its Web site, increasing its usership by approximately 40 percent. In addition, NTTAC developed the OJJDP Core Performance Standards, which serve as minimum expectations for training and technical assistance providers in the planning, delivery, and evaluation of their services.

During FY 2002, NTTAC will disseminate the Core Performance Standards and a toolkit series of fact sheets and bulletins to facilitate the implementation of the Standards. NTTAC will continue to develop an Information Resource Management System (IRMS). NTTAC will complete development of its training and technical assistance product and curriculum review process and will endeavor to complete the Office of Management and Budget clearance process for its User Feedback Form. The Center will also provide assistance to State juvenile corrections training academies in facilitating the reoccurring revisions and updates of basic job descriptions and will serve as a repository of training materials developed by juvenile corrections training academies.

This project will be implemented by the current grantee, Caliber Associates. No additional applications will be solicited in FY 2002.

OJJDP Management Evaluation Contract

This contract was competitively awarded in FY 1999 to Caliber Associates for a period of 4 years to provide OJJDP with an expert resource to perform independent program evaluations and assist in implementing evaluation activities. The contractor provides assistance to OJJDP staff in determining the evaluation needs of programs and develops evaluation designs that OJJDP can use in defining the requirements for a grant or contract to implement the evaluation. Caliber is currently conducting two full-scale program evaluations for OJJDP. One is a national evaluation to examine the viability and effectiveness of Title V Community Prevention Grants for Local Delinquency Prevention Programs. The contractor also is completing a process evaluation of the implementation of OJJDP's Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders. The contractor also may provide training to OJJDP program managers and other staff on evaluation-related topics.

This contract will be implemented by the current contractor, Caliber Associates. No additional applications will be solicited in FY 2002.

OJJDP Technical Assistance Support Contract—Juvenile Justice Resource Center

The Juvenile Justice Resource Center (JJRC) provides technical assistance and support to OJJDP, its grantees, and the Coordinating Council on Juvenile Justice and Delinquency Prevention in the areas of program development, evaluation, training, and research. With assistance from expert consultants, JJRC coordinates product reviews, conducts research and prepares reports on current juvenile justice issues, plans meetings and conferences, and provides administrative support to various Federal councils and boards. FY 2002 is the fourth year of a 4-year project period.

This project will be implemented by the current contractor, Aspen Systems Corporation. No additional applications will be solicited in FY 2002. Since this is the final year of funding, a new solicitation will be issued and a contract awarded through a competitive contract action so there will not be a break in services.

Program of Research on the Causes and Correlates of Delinquency

Since 1986, this longitudinal study has addressed a variety of issues related to juvenile violence and delinquency and has produced a massive amount of information on the causes and correlates of delinquent behavior. Three project sites participate: The Institute of Behavioral Science, University of Colorado at Boulder; the Western Psychiatric Institute and Clinic, University of Pittsburgh; and Hindelang Criminal Justice Research Center, University at Albany, State University of New York. These projects are designed to improve the understanding of serious juvenile delinquency, violence, and drug use by examining how youth develop within the context of family, school, peers, and community. The three sites engage in both collaborative and site-specific research. The three research teams worked together to ensure that certain core measures were identical across the sites. This approach strengthens the findings from these projects by allowing for replications of findings in individual sites and enabling cross-site analyses.

In the upcoming year, the Causes and Correlates projects will continue collaborative and site-specific analyses of the data. Future reports will address such topics as mental health problems and interventions, gangs, and the transition from school to work. In addition, researchers at the three sites will provide greater access to the study data. Confidentiality concerns prohibit the release of the data sets to the general public. However, OJJDP and the researchers have been exploring alternative methods of making the data more accessible to other researchers, the most promising being a remote access system. Plans for the next year include developing and testing a remote access system at one of the sites.

This program will be implemented by the current grantees, The Institute of Behavioral Science, University of Colorado at Boulder; The Western Psychiatric Institute and Clinic, University of Pittsburgh; and Hindelang Criminal Justice Research Center, University at Albany, State University of New York. No additional applications will be solicited in FY 2002.

Technical Assistance for State Legislatures

The Technical Assistance for State Legislatures project was established in FY 1995, when OJJDP awarded funds to the National Conference of State Legislators (NCSL) to provide juvenile justice information on recent research, legislation, reform options, and innovative program models and to provide customized technical assistance for State legislatures. NCSL also aids State legislators in the improvement of State juvenile justice systems by exploring causes and crafting comprehensive responses to youth crime and violence. The NCSL project provides State legislatures with extensive consultation and technical assistance on key juvenile justice reform issues.

The project's accomplishments since FY 1995 include provision of onsite assistance by NCSL on 25 occasions to 14 State legislatures, with 4 occurring in FY 2001. Technical assistance is being planned in Louisiana and is ongoing in Vermont and Wyoming. The project has produced a 38-minute audiotape based on *Comprehensive Juvenile Justice: A Legislator's Guide* and distributed 600 copies of the tape to new lawmakers. Eleven lawmakers from five States (Hawaii, Kansas, Michigan, Mississippi, and Texas) participated in two juvenile justice study tours to learn how communities planned and implemented OJJDP's Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders.

During FY 2001, NCSL information services responded to 1,500 information requests. The grant has improved capacity for delivery of information services to State legislatures. The project also supports increased communication between State legislators and other State and local leaders who make decisions about juvenile justice issues.

In FY 2002, the Technical Assistance for State Legislatures project will continue to provide technical assistance to State legislatures; hold an invitational ''Leadership Forum'' on comprehensive juvenile justice in January 2002; and develop, prepare, and distribute publications to highlight current trends, juvenile justice approaches, and issues in the States. Two topics will be researched, prepared, and distributed as part of the NCSL LegisBriefs (fact sheets) series. Research/information clearinghouse activities will continue to inform State legislatures on juvenile justice issues, enactments, and research.

This project will be implemented by the current grantee, the National Conference of State Legislators. No additional applications will be solicited in FY 2002.

Understanding and Monitoring the ''Whys'' Behind Juvenile Crime Trends

The purpose of this research project is to identify and understand the principal reasons behind the trends in juvenile crime and violence. As national rates of youth violence have dropped substantially in recent years, a number of theories have been advanced to explain this trend. However, the lack of empirical evidence to fully support various theories enables proponents of vastly different policy orientations to claim victory for the recent declines and continue to assert their policy objectives. Not all localities experienced the same trends in juvenile violent crime during either the increases in the late 1980s or the subsequent declines that began in the early 1990s, and there is considerable variation in local juvenile crime rates across the country. In FY 2001, under a competitive award, the University of Pennsylvania's Jerry Lee Center on Criminology began a 5-year study to address these issues. The Center recruited six ''developmental sites'' and produced a report addressing the trends, theories discarded and remaining, feasibility of testing these theories, and limitations of various designs. In FY 2002, the University of Pennsylvania will begin testing these theories and will issue additional reports on the onsite testing process, experience, and feasibility.

This program will be implemented by the current grantee, the University of Pennsylvania. No additional applications will be solicited in FY 2002.

Public Safety and Law Enforcement

Evaluation of the Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression Program

OJJDP will continue funding this evaluation in FY 2002. Under a competitive cooperative agreement awarded in FY 1995, the evaluation grantee helped the five program sites (Bloomington, IL; Mesa, AZ; Riverside, CA; San Antonio, TX; and Tucson, AZ) establish realistic and measurable objectives, document program implementation, and measure the impact of this comprehensive approach. The grantee has trained the local site interviewers and also provided interim feedback to the program implementors. The grantee will continue to analyze data required to evaluate the program, monitor and oversee the quality control of data, and prepare final reports for the full evaluation.

This project will be implemented by the current grantee, the University of Chicago, School of Social Service Administration. No additional applications will be solicited in FY 2002.

Evaluation of the Comprehensive Gang Model: An Enhanced School Approach

This initiative is a continuation of ongoing efforts to test OJJDP's Comprehensive Gang Model. In FY 2000, four sites were competitively selected to conduct comprehensive assessments of their local gang problem and develop programs to implement the Comprehensive Gang Model. Program designs will be communitywide but will emphasize school-based responses. The four sites are Dade County, FL; East Cleveland, OH; Houston, TX; and Pittsburgh, PA. The evaluation grantee, COSMOS Corporation, is conducting case studies to document and analyze the four sites' 1-year community assessment and program planning efforts. COSMOS is also developing an outcome evaluation design for the sites that will be funded to implement the model.

This program will be implemented by the current grantee, COSMOS Corporation. No additional applications will be solicited in FY 2002.

Gang-Free Schools and Communities Initiative

In FY 2000, OJJDP launched a multisite effort to continue to demonstrate, test, and replicate the implementation of the OJJDP Comprehensive Gang Model in as many as 16 sites around the country. In response to a competitive solicitation, 10 new sites were selected to participate in this initiative, which consists of the 2 separate programs described below.

The Comprehensive Gang Model: An Enhanced School/Community Approach to Reducing Youth Gang Crime is a program designed to demonstrate and test the Model's ability to assist communities in addressing youth gang problems in both the school setting and in the community, through a tightly coordinated approach, including antiviolence efforts. The four participating communities are East Cleveland, OH; Houston, TX; Pittsburgh, PA; and Miami-Dade, FL. In FY 2001, these sites received initial training in conducting an assessment of the youth gang problem and began collecting data. In FY 2002, these sites will be eligible for funding to begin implementing the OJJDP Comprehensive Gang Model to address the problems identified. The COSMOS Corporation is conducting an independent evaluation of this effort.

The Gang-Free Communities program is designed to offer ''seed'' support to communities selected to replicate the OJJDP Comprehensive Gang Model. The communities selected to participate are Broward County, FL; East Los Angeles, CA; Jefferson County, KY; Lakewood, WA; San Francisco, CA; and Washington, DC. The goal of this program is to reduce youth gang violence in the community. In FY 2001, these sites also received initial training in conducting an assessment of the youth gang problem and began collecting the necessary data. In FY 2002, these sites will be eligible for funding to begin implementing the OJJDP Comprehensive Gang Model to address the problems identified.

The National Youth Gang Center is providing training and technical assistance for communities participating in both programs.

These two programs will be implemented by the current grantees: East Cleveland, Houston, Miami-Dade, and Pittsburgh for the comprehensive Gang Model: An Enhanced School/Community Approach to Reducing Youth Gang Crime and Broward County, FL; East Los Angeles, CA; Jefferson County, KY; the City of Lakewood, WA; San Francisco, CA; and Washington, DC, for the Gang-Free Communities program. No new applications will be solicited in FY 2002 for these programs.

Gang Prevention Through Targeted Outreach (Boys & Girls Clubs)

The purpose of this program is to enable local Boys & Girls Clubs to prevent youth from entering gangs, intervene with gang members in the early stages of gang involvement, and divert youth from gang activities into more constructive programs. The Boys & Girls Clubs of America provides training and technical assistance to local gang prevention and intervention sites, including some at OJJDP's gang program demonstration sites, and to other clubs and organizations through regional trainings and national conferences. In FY 2000, the Boys & Girls Clubs added new gang prevention sites, gang intervention sites, and ''Targeted Reintegration'' sites where clubs work to provide services to youth returning to the community from juvenile correctional facilities to prevent them from returning to gangs and violence. A national evaluation of the Gang Prevention Through Targeted Outreach Program was completed in FY 2001. The evaluation, conducted by Public/Private Ventures, Inc., concluded in part that ''participants demonstrated positive change'' and that ''the clubs were successful in reaching an underserved, high-risk population through direct outreach and referral-network-building activities.'' In FY 2002, the Boys & Girls Clubs of America will identify and support up to 30 new gang prevention sites. Evaluation of the Targeted Reintegration program component may also begin in FY 2002. In addition, the Boys & Girls Clubs will jointly sponsor OJJDP's National Youth Gang Symposium in June 2002, in partnership with the National Youth Gang Center.

This program will be implemented by the current grantee, the Boys & Girls Clubs of America. No additional applications will be solicited in FY 2002.

Law Enforcement Training and Technical Assistance Program

The Law Enforcement Training and Technical Assistance Program was initially funded through a competitive award in 1999 to the International Association of Chiefs of Police (IACP) for a 3-year project period. The purpose of the program is to increase the capacity of law enforcement and allied professions to address juvenile crime, delinquency, and victimization through multiagency system responses to school violence; juvenile gang, gun, and drug activity; and serious, violent, and chronic juvenile crime. Training workshops and technical assistance strengthen existing multiagency collaboration and facilitate creation of new partnerships.

In FY 2001, program activities included 19 workshops for more than 1,000 participants from 600 jurisdictions in 12 States. In addition, a marketing database was developed that allows the program to promote each

individual product by State, via fax, directly to police, sheriffs, school administrators, school resource officers, juvenile probation and corrections agencies, juvenile mental health service officials, and other juvenile justice stakeholders. An OJJDP/IACP Training and Technical Assistance Web page was created for the IACP Web site. The page includes the training schedule and registration forms for specific training sessions and onsite technical assistance.

In FY 2002, the following deliverables will be provided under this program: 18 workshops, 12 onsite technical assistance projects, and 8 Chief Executive Officer Exchange Forums. Additionally, 1,500 CD–ROMs with relevant OJJDP literature and reference materials will be created and disseminated among training attendees; a Fact Sheet for OJJDP distribution and an article for a professional periodical will be written.

The program will be implemented by the current grantee, the International Association of Chiefs of Police. No additional applications will be solicited in FY 2002.

National Youth Gang Center

The proliferation of gang problems over the past two decades led OJJDP to develop a comprehensive, coordinated response that involved five program components, one of which was implementation and operation of the National Youth Gang Center (NYGC). Competitively funded in 1994 to expand and maintain the body of critical knowledge about youth gangs and effective responses to them, NYGC provides support services to the National Youth Gang Consortium, composed of Federal agencies with responsibilities in this area. NYGC also provides technical assistance for OJJDP's Gang-Free Communities Program, Gang-Free Schools Program, and Rural Gang Initiative. In FY 2001, NYGC (1) conducted indepth analyses of the National Youth Gang Survey results, which track changes in gang membership and activity; (2) developed and administered a survey of youth gangs in American Indian communities; (3) produced timely information on the nature and scope of the youth gang problem; (4) continued tracking gang-related legislation at both the State and Federal levels; and (5) continued to provide training and technical assistance for OJJDP's Gang-Free Communities Program, Gang-Free Schools Program, and Rural Gang Initiative.

With FY 2002 funds, the Center will continue to collect, analyze, and disseminate current and comprehensive national-level gang-related information. It will continue to assist State and local jurisdictions in the collection, analysis, and exchange of information on gang-related demographics, legislation, literature, research, and promising program strategies. The Center will also continue to provide indepth technical assistance to grantees of OJJDP gang programs.

This program will be implemented by the current grantee, the Institute for Intergovernmental Research. No additional applications will be solicited in FY 2002.

Technical Assistance to the Gang-Free Schools and Communities Initiative

In FY 2000, OJJDP launched a multisite replication of the OJJDP Comprehensive Gang Model and a four-site demonstration program to implement the Model and further enhance the Model's school component. In FY 2001, the National Youth Gang Center (NYGC) developed a manual to assist these communities in conducting the assessment, developed and provided these sites with tools and instruments for data collection, developed Web-based technical assistance resources for these communities, and provided initial gang problem assessment training to 10 participating sites and followup technical assistance and training to 5 of these sites. NYGC also developed a Web page to enable unsuccessful applicants to access technical assistance in conducting an assessment of the OJJDP Model. In FY 2002, OJJDP will fund NYGC to provide training and technical assistance during the implementation stages of this initiative in selected communities across the country. The National Youth Gang Center is currently providing technical assistance on OJJDP's Model to communities involved in OJJDP's Rural Gang Initiative and to other OJJDP grantees.

OJJDP will provide a supplemental award to the National Youth Gang Center to provide the technical assistance. No additional applications will be solicited in FY 2002.

Delinquency Prevention and Intervention

Assessing Alcohol, Drug, and Mental Disorders Among Juvenile Detainees

This project, which was funded competitively in 1999, is a major longitudinal study assessing alcohol, drug, and mental disorders among juveniles in the Cook County Detention Center in Chicago, IL. The project has three primary goals: (1) To determine how alcohol, drug, and mental disorders develop over time among juvenile detainees; (2) to investigate whether juvenile detainees receive needed psychiatric services after their cases reach disposition (whether they return to the community or are incarcerated); and (3) to study the development and interrelationship of dangerous and risky behaviors related to violence, substance use, and HIV/AIDS. This project is unique because the sample is so large: it includes 1,829 youth from Chicago who were arrested and originally interviewed between 1995 and 1998. The sample is stratified by gender, race (African American, Hispanic, non-Hispanic white), and age. Initial interviews have been completed, and extensive archival data (e.g., arrest and incarceration history, health and mental health treatment) have been collected on each subject. The investigators have been tracking the subjects, and they have completed several sets of followup interviews. A significant number of subject deaths, virtually all of them linked to violence (e.g., gunshot wounds), have already occurred. The large sample size has provided sufficient statistical power to study the prevalence of co-occurring disorders. Researchers are preparing an OJJDP Bulletin that compares subjects' self-reported substance use with the results of urine screens conducted shortly after arrest.

This project will be implemented by the current grantee, Northwestern University. No additional applications will be solicited in FY 2002.

Comprehensive Children and Families Mental Health Training and Technical Assistance

OJJDP has entered into an interagency agreement with the Center for Mental Health Services (CMHS) of the Substance Abuse and Mental Health Services Administration to support the CMHS-funded Comprehensive Mental Health sites. CMHS currently funds 45 sites, a technical assistance provider, and an evaluation. OJJDP funds are used to support the juvenile justice specialist member of the technical assistance team, which also includes child welfare, mental health, education, and parent specialists. This team oversees technical assistance to the sites and coordinates technical assistance to meet their needs. The juvenile justice specialist responsibilities include efforts to assist with the development of increased coordination between the juvenile justice and mental health systems in the 45 sites.

This initiative will be implemented through an interagency agreement with CMHS. No additional applications will be solicited in FY 2002.

Evaluation of the Truancy Reduction Demonstration Program

OJJDP currently funds seven sites that are implementing truancy reduction programs. Grantees include Contra Costa, CA; Honolulu, HI; Houston, TX; Jacksonville, FL; King County, WA; Suffolk County, NY; and Tacoma, WA. OJJDP also funds the Colorado Foundation for Families and Children (CFFC) to conduct the national evaluation of the Truancy Reduction Demonstration Program. As part of the evaluation, CFFC is working with the sites to (1) determine how community collaboration can reduce truancy and lead to systemic reform and (2) assist OJJDP in developing a community collaborative truancy reduction program model and identifying the essential elements of that model. To that end, CFFC continues to assist project sites to identify and document the nature of the truancy problem in their communities, enhance effective truancy reduction planning and collaboration, and incorporate that process into the implementation of the Truancy Reduction Demonstration Program at each site. In addition, CFFC is assisting sites in collecting information on truant youth and documenting services.

This project will be implemented by the current grantee, the Colorado Foundation for Families and Children. No additional applications will be solicited in FY 2002.

Integrated Information Sharing To Prevent Juvenile Delinquency: A Training and Technical Assistance Approach

The Integrated Information Sharing To Prevent Juvenile Delinquency: A Training and Technical Assistance Approach project was established in FY 2001 under a competitive 2-year cooperative agreement between OJJDP and the Center for Non-Profit Development/Center for Network Development (CND). The project is designed to launch OJJDP's integrated information-sharing (IIS) effort. CND works to increase the capacity of State and local collaboratives to establish and manage effective multidisciplinary, multiagency information-sharing systems; support proactive solutions to juvenile delinquency; and improve coordination, decisionmaking, and services to at-risk youth and their families.

Under this cooperative agreement, CND has completed several key tasks to accomplish the project's goals. The results of a national training needs assessment survey and focus group meeting influenced the content of instructional materials for regional training workshops scheduled for FY 2001 and FY 2002. Similarly, a curriculum design team has outlined particular training modules and engaged practitioners at various levels of experience with IIS systems to critique the designs and discuss the challenges, barriers, and solutions to building effective partnerships and planning and implementing IIS systems.

In FY 2001, CND collected lists of collaborative groups interested in enhancing IIS efforts from OJJDP program managers and added these lists to the IIS database. The national training needs assessment was developed and mailed to 953 youth-focused collaborative practitioners interested in developing and/or enhancing an IIS system.

In FY 2002, the final year of this 2-year project, CND will continue developing, marketing, and piloting level 1 and level 2 trainings, providing followup assistance, and evaluating the application of knowledge and skills gained in the trainings to improve IIS's collaborative performance.

This project will be implemented by the current grantee, the Center for Non-Profit Development/Center for Network Development. No additional applications will be solicited in FY 2002.

Intergenerational Transmission of Antisocial Behavior

The purpose of the Intergenerational Transmission of Antisocial Behavior study is to examine the development of childhood antisocial behavior in a three-generation prospective panel study by making the children of the current participants in the OJJDP-sponsored Rochester (NY) Youth Development Study the focal subjects of a new long-term study. Forty percent of the original Rochester participants were parents by age 21. The Youth Development Study began in 1986. The new study is being funded under an FY 1998 interagency agreement with the National Institute of Mental Health. The grantee will combine data on the original study's participants and their parents with new data on the children of the original participants. The combined data will enable researchers to examine and track the development of delinquent behavior across three generations in a particularly high-risk sample. The results of the study should provide useful findings that will have policy implications for prevention programs. In FY 2002, the program will continue data collection.

The project will be implemented by the current grantee, the University at Albany, State University of New York. No additional applications will be solicited in FY 2002.

Juvenile Defender Training, Technical Assistance, and Resource Center

The Juvenile Defender Training, Technical Assistance, and Resource Center (Juvenile Defender Center), now in its third year of funding under a 5-year project period grant, was competitively awarded to the American Bar Association (ABA) in FY 1999. The Juvenile Defender Center fills a major gap in resources and support for juvenile defenders in the United States by providing training and technical assistance services. Nationally focused training and technical assistance for juvenile defenders did not exist before OJJDP funded the original Due Process Advocacy project from 1993 to 1999. Building on that project, the Juvenile Defender Center project is designed to facilitate the development of a permanent training and technical assistance capability for juvenile defenders. Improving the capabilities and skills of juvenile defenders strengthens the juvenile justice system and provides greater assurance that juveniles charged with delinquency will receive the due process and adequate representation they are guaranteed under the U.S. Constitution.

The ABA has competitively selected eight regional centers to provide training and technical assistance in their regions. Each year, the ABA organizes and holds a National Juvenile Defender Summit that brings together juvenile defenders and related practitioners to address key issues in juvenile defense work. The ABA operates under a unique incentive funding scheme that enables it to receive additional funds over a base amount if it raises money in the private sector or obtains in-kind services. The ABA has been very successful in raising private funds and obtaining donated resources.

This project will be implemented by the current grantee, the American Bar Association. No additional applications will be solicited in FY 2002.

Multisite, Multimodal Treatment Study of Children With Attention Deficit/Hyperactivity Disorder

In 1992, the U.S. Department of Health and Human Services' National Institute of Mental Health (NIMH) began a study of the long-term efficacy of stimulant medication and intensive behavioral and educational treatment for children with attention deficit/hyperactivity disorder (ADHD). Although ADHD is classified as a childhood disorder, up to 70 percent of affected children continue to experience

symptoms in adolescence and adulthood. Researchers at six primary study sites and three subcontractor sites are following children in the three treatment groups (medication management only, behavioral treatment, and a combination of medication and behavioral treatment) and a control group (community care).

OJJDP's participation in the study, which began in FY 1998, supports continued investigation into the subjects' aggressive and delinquent behavior and contact with the legal system, including arrest, detention, and incarceration. In FY 2002, OJJDP will transfer funds to NIMH through an interagency agreement that will support the collection of data related to subjects' delinquent and criminal behavior and contact with the juvenile justice system.

This program will be implemented through an interagency agreement with the National Institute of Mental Health. No additional applications will be solicited in FY 2002.

National Youth Court Center

OJJDP established the National Youth Court Center (NYCC) in 1999 to provide intensive training, technical assistance, data collection, and considerable programmatic resources to strengthen statewide and local youth court initiatives. NYCC supports the establishment of youth courts consistent with effective design elements for the purposes of preventing delinquency and holding young people accountable for their delinquent and criminal behavior within the context of constructive peer group community sanctions. Youth courts are programs where juvenile offenders are adjudicated and sentenced by their peers. These programs are rapidly becoming an integral component of the juvenile justice system in communities across America.

OJJDP is the lead Federal agency responsible for supporting the national youth court movement, with the U.S. Department of Transportation providing a small amount of support through an annual interagency agreement. With more than 800 programs currently operating and hundreds of jurisdictions planning to develop programs, youth courts have experienced tremendous growth in the past few years.

Accomplishments of the project to date include publication of *National Youth Court Guidelines*, which provides programmatic blueprints for operating effective youth court programs; *National Youth Court Directory*, which provides the largest and most accurate listing of youth court programs in the United States; and *A Street Law Curriculum for Youth Courts*. NYCC also has (1) developed a comprehensive youth court Web site and a national youth court center newsletter that offer the most comprehensive and up-to-date information on youth courts, (2) provided onsite technical assistance to jurisdictions in support of local or statewide youth court development efforts, (3) launched a national lawyer/law student recruitment campaign (a nationwide initiative linking lawyers and law students with local youth court programs), and (4) published *Youth Court and Balanced and Restorative Justice*.

In FY 2002, NYCC will produce three instructional videos about youth court benefits, responsibilities, and training for volunteer jurors. NYCC will also develop a training Web site to aid youth volunteers in preparing for their cases online. New documents will include a manual for a 10-week training program for youth volunteers; instructor's guides for adult volunteers who train volunteer youth; a daily operations handbook that will serve as a resource guide for coordinators of youth court programs; a ''road map to youth court,'' designed to teach those in the legal community about youth court; and a community service workbook that will teach program coordinators to set up task- and service-oriented community service projects for youthful offenders. Educational community service modules for youthful offenders will be designed around the most common victim issues and alcohol and marijuana offenses handled in youth court.

Training events for FY 2002 include a national youth court conference and a ''train the trainers'' session that will prepare one person from each State as the key State trainer for both the community service education and student membership training programs. Public education campaigns also will be developed and launched in FY 2002.

This project will be implemented by the current grantee, the American Probation and Parole Association with a subgrant to the American Bar Association. No additional applications will be solicited in FY 2002.

Pathways to Desistance: A Prospective Study of Serious Adolescent Offenders

In FY 2001, OJJDP, along with the Centers for Disease Control and Prevention and several private foundations, provided funding for the first year of data collection for the Pathways to Desistance study. This multisite, longitudinal, collaborative research project follows approximately 1,200 serious juvenile offenders from adolescence to young adulthood. Interviews are conducted regularly with these youth and their family members and friends for several years following their involvement with the court for felony-level offenses. The aims of the investigation are to (1) identify initial patterns of desistance from antisocial activity in serious adolescent offenders, (2) describe the role of social context and developmental changes in promoting positive behavioral change, and (3) compare the effects of sanctions and interventions in promoting positive change and desistance from criminal behavior. The larger goals of the study are to improve decisionmaking by court and social services personnel and to clarify policy debate about dispositional alternatives for serious adolescent offenders. The project is anticipated to last at least 3 years. In FY 2002, OJJDP, in conjunction with the U.S. Department of Justice's National Institute of Justice, the William T. Grant Foundation, the Robert Wood Johnson Foundation, and the John D. and Catherine T. MacArthur Foundation, will support the project's second year of data collection.

This project will be implemented by the current grantee, the University of Pittsburgh. No additional applications will be solicited in FY 2002.

Technical Assistance for the Title V Community Prevention Programs

The purpose of this project is to provide OJJDP with the capacity to provide communities with training and technical assistance support for implementation of the Title V Community Prevention Grants program. The contract was awarded in FY 2000 through a competitive process. The contractor will continue to provide nationwide training and technical assistance for State and local jurisdictions on developing and implementing comprehensive communitywide, data-based delinquency prevention strategies. Through training and technical assistance, community leaders develop the knowledge and skills necessary to assess local risk factors for and protective factors against delinquency and to address risk factors using community resources. To build training capacity within States and national regions, instruction on data-based, risk- and protection-focused prevention will be provided for trainers.

This project will be implemented by the current contractor, Development Services Group, Inc. No additional applications will be solicited in FY 2002.

Truancy Reduction Demonstration Program

In FY 1998, OJJDP, the Executive Office for Weed and Seed, and the U.S. Department of Education supported a grant program to reduce truancy. The Truancy Reduction Demonstration Program is a comprehensive program designed to combine education, justice and law enforcement, social services, and community resources to identify and track truant youth and cooperatively design and implement comprehensive systemwide programs to meet the needs of these youth. The four components of the Truancy Reduction Program are (1) system reform and accountability, (2) a service continuum to address the needs of truant children and adolescents, (3) data collection and evaluation, and (4) a community prevention education and awareness program for kindergarten through grade 12. OJJDP has awarded grants to seven sites to implement the comprehensive truancy program. Three were non-Weed and Seed (Honolulu, HI; Jacksonville, FL; and King County, WA), and four were Weed and Seed sites (Houston, TX; Martinez, CA; Tacoma, WA; and Yaphank, NY). Operation Weed and Seed is a two-pronged strategy within the Office of Justice Programs (OJP) that seeks to prevent, control, and reduce violent crime, drug abuse, and gang activity in targeted high-crime neighborhoods.

All the truancy reduction sites are in the implementation phase of the program. Examples of the program strategies include the following: case managers conducting home visits, attendance monitoring, tutoring, and case management referral of youth and families to community agencies for needed services. In FY 2001, the Truancy Reduction Program served approximately 2,085 students and 1,180 families. The Colorado Foundation for Families and Children is conducting a process evaluation that will help to identify key elements of an effective truancy program.

The current grantees (Honolulu, HI; Houston, TX; Jacksonville, FL; King County, WA; Martinez, CA; Tacoma, WA; and Yaphank, NY) will continue to carry out the truancy activities. No additional applications will be solicited in FY 2002.

Strengthening the Juvenile Justice System

Accountability-Based Training for Staff in Juvenile Confinement Facilities

The Accountability-Based Training for Staff in Juvenile Confinement Facilities program, provided through the National Juvenile Detention Association's (NJDA's) Center for Research and Professional Development (CRPD), offers extensive training that enhances the ability of staff in juvenile confinement facilities around the country to handle and care for confined youth. OJJDP has funded this program for 6 years to enable staff working in secure facilities to avail themselves of state-of-the-art training. With OJJDP's support, CRPD has provided more than 101,600 training hours to line staff in juvenile justice facilities and programs in 33 States. In addition to training through CRPD, NJDA provides comprehensive technical assistance to State and local juvenile detention centers that are experiencing problems with their operations.

During FY 2002, CRPD will continue to provide onsite training and technical assistance to direct care staff in juvenile confinement and custody facilities with the existing materials and curriculums. CRPD also will develop and pilot a new 40-hour curriculum, ''BARJ-ing into Juvenile Confinement: Practical Application of BARJ [Balanced And Restorative Justice] Principles for Line Staff'; develop advanced training curriculums in the areas of suicide prevention and management of mentally ill residents; and revise the curriculum for juvenile detention careworkers.

This project will be implemented by the current grantee, the National Juvenile Detention Association, Center for Research and Professional Development. No additional applications will be solicited in FY 2002.

Balanced and Restorative Justice

OJJDP established the Balanced and Restorative Justice (BARJ) training and technical assistance project in FY 1992 by awarding funds to Florida Atlantic University to provide training, technical assistance, and guidelines on implementing the BARJ model, which encourages the juvenile justice system to address three goals equally: (1) Ensuring community safety, (2) holding offenders accountable to victims, and (3) promoting competency development for offenders in the juvenile justice system so they are equipped to pursue noncriminal lines of work after release. The project is national in scope. However, to use limited resources efficiently, BARJ technical assistance works with seven ''special emphasis'' States (California, Florida, Illinois, Michigan, New York, Pennsylvania, and Texas) and with several local jurisdictions across the Nation to help them plan and implement BARJ. The project also works with key justice system and community leaders to clarify BARJ concepts and to seek their help in advancing BARJ goals and activities.

In FY 2001, the BARJ project developed, helped organize, or participated in more than 40 major training and technical assistance events on restorative justice. BARJ roundtables provided training and technical assistance to teams of juvenile justice managers and practitioners from the seven special emphasis States. In addition, the project has updated its instructional materials for the BARJ courses and produced new reference publications on restorative justice. The project also publishes a quarterly BARJ newsletter, *Kaleidoscope of Justice.*

In FY 2002, the BARJ project will conduct the BARJ Academy workshops, the introduction to restorative justice and training for trainers courses, and a graduate BARJ trainers conference. The project will develop new training courses on restorative justice in schools, training of trainers for group conferencing, and strategic BARJ management. One or more specialized workshops on selected BARJ topics are also planned. The project plans to present workshops at national and regional conferences sponsored by groups representing judges, prosecutors, probation and corrections personnel, law enforcement, victims advocates, child welfare practitioners, and others. Resource documents will be developed, and the program's existing training materials and Web site will be updated.

This project will be implemented by the current grantee, the Florida Atlantic University. No additional applications will be solicited in FY 2002.

Census of Juveniles in Residential Placement

The Census of Juveniles in Residential Placement (CJRP) collects individual-level data on all juveniles in residential placement on a specific reference day (the fourth Wednesday in October). The data elements collected include each offender's age, sex, race, placing agency, legal status, and most serious offense. Because this project is a census, it allows for State-level reporting of juveniles in residential placement. The census is mailed to all facilities that can and do hold juvenile offenders for reasons of the offense. Personnel report on all offenders younger than 21 years old residing in their facilities on the reference day. The facilities also provide some basic information on any other persons who do not fit these criteria. CJRP was first conducted in October 1997 and again in October 1999. In 2002, the Census Bureau will continue to conduct the work of the 2001 CJRP,

including data collection, data editing, data inputting, and data file preparation.

This program will be implemented through an existing interagency agreement with the Bureau of the Census. No additional applications will be solicited in FY 2002.

Center for Students With Disabilities in the Juvenile Justice System

During FY 1999, OJJDP undertook a joint initiative with the Office of Special Education and Rehabilitative Services, U.S. Department of Education, to establish a Center for Students With Disabilities in the Juvenile Justice System. This project is expected to improve the juvenile justice system's services for students with disabilities in the areas of prevention, educational services, and reintegration based on a combination of research, training, and technical assistance. The Center guides and assists States, schools, juvenile justice programs, families, and communities in designing, implementing, and evaluating comprehensive educational programs, based on research-validated practices, for students with disabilities in the juvenile justice system.

This program will be implemented under an existing 5-year interagency agreement with the U.S. Department of Education by the current grantee, the University of Maryland. No additional applications will be solicited in FY 2002.

Improving Juvenile Sanctioning: An Intensive Training and Technical Assistance Delivery Program

The purpose of this program is to improve the capacity of the juvenile justice system by providing intensive training and technical assistance to at least 10 selected jurisdictions to strengthen and enhance existing juvenile accountability-based sanctioning programs and to support development of new ones, within the context of community-based programs that support competency development in youth. The primary target population for this program is youthful offenders who could be referred by law enforcement, schools, or juvenile courts to community-managed alternatives to detention and secure confinement. The program's goal is to create or improve juvenile accountability-based programs at the front end of the continuum, while enhancing the competencies and skills of youth and strengthening the juvenile justice system's capability to respond appropriately to delinquent behavior.

This project, initially funded in FY 2001 through a competitive solicitation, is designed as a 5-year project.

This program will be implemented by the current grantee, the National Council of Juvenile and Family Court Judges. No additional applications will be solicited in FY 2002.

Intensive Community-Based Juvenile Aftercare Dissemination and Technical Assistance Program

This initiative supports replication of, training and technical assistance for, and information dissemination about the Intensive Aftercare Program (IAP) model, which was implemented in three competitively selected demonstration sites. The overall goal of the IAP model is to identify and assist adjudicated juvenile offenders who are in secure confinement to make a successful transition to the community upon release. An independent evaluation of the IAP demonstration is currently underway, with a final report due in the winter of 2002.

As the demonstration period for the three pilot sites has ended, the focus of this initiative has shifted to six distinct areas: (1) Replication of the model with emphasis on specialized youth populations, (2) linkage with select Performance-Based Standards correctional sites, (3) provision of technical assistance to DOL's Youth Offender Demonstration sites, (4) provision of technical assistance to select Boys & Girls Clubs sites participating in OJJDP's Gang Prevention Through Targeted Outreach initiative, (5) creation of a national juvenile reintegration and aftercare center, and (6) creation of a new Web site.

This initiative will be implemented by the current grantee, the Johns Hopkins University. No additional applications will be solicited in FY 2002.

James E. Gould Memorial Program for Training and Technical Assistance for Juvenile Corrections and Detention

OJJDP established the Training and Technical Assistance Program for Juvenile Corrections and Detention staff 16 years ago by funding the American Correctional Association (ACA) to provide leadership to the juvenile justice field through training and technical assistance to staff working in juvenile corrections, detention, community residential, and nonresidential facilities. ACA conducts an annual National Juvenile Corrections and Detention Forum on behalf of OJJDP. In addition to the forums, ACA developed a curriculum addressing increased privatization in the field of juvenile justice and conducted three regional privatization workshops on writing requests for proposals, writing good contracts, and monitoring contracts. ACA publishes articles on juvenile justice topics in each issue of its *Corrections Today* magazine and recently published a monograph and a curriculum on privatization. ACA also provides technical assistance to juvenile justice professionals concerning detention and corrections issues.

In FY 2002, the project will continue to coordinate with other national juvenile justice organizations to provide technical assistance to juvenile justice agencies and will hold the 17th annual National Juvenile Corrections and Detention Forum. ACA will update mailing lists of both public and private juvenile facilities and develop a listserv and Internet service to enhance knowledge and facilitate sharing of information among juvenile justice detention and corrections professionals. Texts, papers, monographs, and related juvenile corrections and detention resource materials will be developed and disseminated to the juvenile justice community. Three 3-day regional workshops on issues related to privatization and two 1-day national workshops that address needs and trends in juvenile corrections and detention will be held.

This project will be implemented by the current grantee, the American Correctional Association. No additional applications will be solicited in FY 2002.

Juvenile Justice Prosecution Unit

OJJDP supports the Juvenile Justice Prosecution Unit's (JJPU's) training and technical assistance program for prosecutors under a grant to the American Prosecutors Research Institute (APRI), which was first awarded in FY 1995. JJPU develops and presents training workshops to chief prosecutors, juvenile unit chiefs, and deputy district attorneys assigned to juvenile courts. The training deals with leadership roles of prosecutors in the juvenile justice system, handling of juvenile delinquency cases, and significant juvenile justice issues that are of concern to prosecutors. Approximately six training workshops are held annually, and curriculums and appropriate reference materials are developed for each training event.

In FY 2001, APRI developed and presented two workshops on disproportionate minority confinement (DMC); conducted five JUMPSTART courses for newly assigned juvenile prosecutors, several short workshops at the National Juvenile Justice Conference, a course on juvenile justice prosecution for prosecutor coordinators,

and a serious and violent offender workshop; and created two new workshops for prosecutors on balanced and restorative justice and interdisciplinary issues. The training and technical assistance materials developed by APRI include curriculums and topical resource guides for the courses offered. In addition, APRI developed a Web page, continued updating the *Compendium of Juvenile Programs for Prosecutors,* and produced four *In Re* newsletters.

In FY 2002, APRI will provide training (including two new courses) and technical assistance to new groups of prosecutors. APRI will provide a Webcast for prosecutors, conduct five JUMPSTART courses, and present a juvenile justice prosecution track at the National Juvenile Justice Conference. The project will continue updating its training curriculums and materials, including its Web page, and preparing new training and resource documents. The project also will keep prosecutors informed on developments in restorative justice and expand the *Compendium of Juvenile Programs for Prosecutors* as new programs are reported from the field.

This project will be implemented by the current grantee, the American Prosecutors Research Institute. No additional applications will be solicited in FY 2002.

Juvenile Residential Facility Census

OJJDP designed the Juvenile Residential Facility Census (JRFC) to collect important information on facility characteristics, services provided to residents in the facility, and the conditions within the facility. Similar to the Census of Juveniles in Residential Placement, JRFC is a biennial census of residential facilities used by the juvenile justice system to hold youth accused of or adjudicated for an offense. The data collection forms are mailed to each facility for personnel to complete. The JRFC collects information on the availability of health care services, mental health counseling or treatment, substance abuse treatment, and education and on youth's access to the particular services they need. The JRFC also asks specific questions about the nature of the facility itself, specifically about the conditions of confinement, the number of beds used (including makeshift beds), and the use of isolation or restraints. Finally, the JRFC collects information on any deaths in custody, a subject on which OJJDP must report annually. The first full JRFC was conducted in October 2000. In FY 2002, the Census Bureau will prepare for the second full implementation of the JRFC, mail out the necessary forms, and begin full data collection.

This project will be conducted through an interagency agreement with the Bureau of the Census, Governments Division and Statistical Research Division. No additional applications will be solicited in FY 2002.

Longitudinal Study To Examine the Development of Conduct Disorder in Girls

The purpose of this project, which is being funded under an FY 1999 interagency agreement between OJJDP and the National Institute of Mental Health, is to examine the development of conduct disorder in a sample of 2,500 inner-city girls who are ages 6–8 at the beginning of the study. The study will follow the girls annually for 5 years and will provide information that is critical to the understanding of the etiology, comorbidity, and prognosis of conduct disorder in girls. Delinquency in girls has been steadily increasing over the past decade, and a better understanding of developmental processes in girls will help identify effective means of prevention and provide direction for juvenile justice responses to delinquent girls. In FY 2002, the program will continue data collection.

The project will be implemented by the current grantee, the University of Pittsburgh. No additional applications will be solicited in FY 2002.

Meta-Analysis Project

In FY 2001, Vanderbilt University began a program to update a significant existing database of juvenile justice program evaluations and to provide various meta-analyses of the data for OJJDP. Meta-analysis is defined as ''a statistical analysis that combines or integrates the results of several independent clinical trials considered by the analyst to be combinable.''[1] This technique creates a larger research framework to make broad generalizations about, for example, the impact of specific types of interventions on different types of outcomes. Meta-analysis allows for the results of small, weak, and/or methodologically flawed studies to be combined and reanalyzed. Vanderbilt University has created a database that contains data from more than 500 published and unpublished studies of programs involving a wide range of treatments and services. Each study is codified using 156 variables, including characteristics of the study, types of interventions, and measures of outcomes.

In FY 2001, the project was updated to include approximately 100 new studies that were completed in the past several years. In FY 2002, the study will expand the analysis to include different measures of outcomes and recidivism. The resulting series of reports will be made available to juvenile justice practitioners and policymakers.

This program will be implemented by the current grantee, Vanderbilt University. No additional applications will be solicited in FY 2002.

National Census and Survey of Juvenile Probation

In FY 2001, OJJDP entered into an interagency agreement with George Mason University (GMU) to develop and test a new survey and census of juvenile probation. OJJDP worked with the U.S. Bureau of the Census's Center for Survey Methods Research to develop this project; the GMU team will complete the work. The project consists of developing questionnaires for both a census and a survey of juvenile probation. GMU will also fully test the questionnaires in cooperation with the data collection agency, the U.S. Bureau of the Census.

This project will be conducted through an interagency agreement with George Mason University. No additional applications will be solicited in FY 2002.

National Evaluation of the Performance-based Standards Project

OJJDP funded the National Academy of Public Administration (NAPA) to conduct an independent evaluation of OJJDP's Performance-based Standards (PbS) Project. This formative evaluation provides feedback to the PbS project development team on how to improve the program design and implementation supports to the sites. The evaluation is collecting both quantitative and qualitative data describing the processes used to implement the PbS model in 80 juvenile detention and correctional facilities across the country. To date, the evaluator has completed a chronicle that tracks major program decisions and improvements. In addition to conducting two all-site surveys, the evaluator also has contributed to the conceptualization and design of key program elements, including the Program Monitoring System, the expansion of the program to reintegration outcomes, and the migration of the project to integrate with agencies' management information systems (MISs), and has developed materials for meeting privacy and

[1] Huque, M.F. 1988. Experiences with meta-analysis in NDA submissions. *Proceedings of the Biopharmaceutical Section of the American Statistical Association* 2:28–33.

human subjects issues. A new focus of the evaluation is to develop six case studies to capture in depth the process of a facility's journey from initiation to institutionalization of PbS in its day-to-day operations.

As the PbS project expands in FY 2002 to include community-based correctional functions and deals with the launching of an MIS integrated system, it will be necessary to continue to independently review the work, both to chronicle its development and to capture, through the case studies and surveys, how the innovations are being carried out in the field.

This project will be implemented by the current grantee, the National Academy of Public Administration. No additional applications will be solicited in FY 2002.

National Juvenile Justice Data Analysis Project

First funded in FY 1999 under a competitive process, the National Juvenile Justice Data Analysis Project (NJJDAP) provides research into and analysis of a wide variety of juvenile justice issues, including juvenile placement, custody, arrests, victimization, and juvenile offending. However, the topics of interest to juvenile professionals are not limited to these issues. As research expands, the field learns more about the intersections of delinquency and other problems, such as mental health disorders, education needs, and physical injury. Attention to these problems can help the field design effective prevention or intervention measures and identify what problems the juvenile justice system will face in dealing with delinquent youth. NJJDAP will examine such issues of concern through cooperation with experts in the fields of interest and with data collected in those fields. This project produces quick, unique analyses of these issues for publication by OJJDP.

In FY 2002, NJJDAP will expand its roster of available consultants who can provide either expertise in data analysis or knowledge of particular aspects of adolescent development, juvenile delinquency, or the juvenile justice system. NJJDAP will also investigate innovative data sets at the State and local levels.

This project will be implemented by the current grantee, the National Center for Juvenile Justice. No additional applications will be solicited in FY 2002.

National Juvenile Justice Program Directory

To conduct statistical projects, OJJDP and the Census Bureau require a support infrastructure that enables both to perform the necessary survey tasks efficiently and effectively. This infrastructure includes as a basic component the maintenance of a list or frame of all survey or sampling units. For example, the surveying of residential facilities could not take place without a list of such facilities. Indeed, as OJJDP moves toward surveying these facilities once a year, this list must be maintained continuously. Also, as the Office moves toward surveying juvenile probation offices, OJJDP and the Census Bureau will need a current list of all such offices in the United States. Other areas of interest might include juvenile courts, police departments, and State agencies. Maintenance of the lists includes contacting various key State and local officials or practitioners, who can provide the names of agencies or facilities associated with their respective agencies. It also requires maintaining current contact information for these agencies or facilities. Finally, it requires developing and updating a database of these facilities that contains information necessary for sampling or stratification purposes. This project fills the needs for lists of juvenile agencies, programs, and facilities.

This project will be conducted through an interagency agreement with the Bureau of the Census, Governments Division. No additional applications will be solicited in FY 2002.

National Juvenile Sex Offenders Training Project

The purpose of this program is to develop and deliver training to police, intake workers, school counselors, detention line staff, judges, prosecutors, and other juvenile justice personnel to increase the accuracy of information in the field about juvenile sex offending. The availability of accurate information will lead to improved prevention, intervention, and treatment services for the youth population. The dissemination of knowledge that specifically deals with juvenile sex offender issues will help ensure that the drafting and implementation of any policy or legislation on this issue are based on accurate and timely information, focus on juvenile offenders, and use juvenile-based research rather than adult research, which is often erroneously applied to young people.

Project staff and other subject matter experts within the Office of Justice Programs will collaborate to develop a matrix that identifies and categorizes the major portals of entry (e.g., youth-serving agencies and organizations, schools) for children with sexual behavior problems and juvenile sex offenders. In the first year of this project, training goals and objectives will be developed and curriculums will be written in collaboration with juvenile justice personnel. The next step will establish the priority for testing and delivering training to the range of personnel working with sex offending youth. In the final year of the project, it is anticipated that curriculums will have been developed for all identified portals of entry that work with juvenile sex offenders and current knowledge will have been disseminated that impacts the ongoing treatment and handling of these youth.

This program will be implemented by the current grantee, the University of Oklahoma. No additional applications will be solicited in FY 2002.

National Longitudinal Survey of Youth

Since 1997, OJJDP has supported the U.S. Department of Labor's Bureau of Labor Statistics (BLS) as it conducts the National Longitudinal Survey of Youth (NLSY). Using a nationally representative sample, the survey questions youth who were in the eighth grade in 1997 about their school experiences, family background, and employment. NLSY will provide critical information on these young people's transition from school to work. With OJJDP support, BLS includes a wide battery of questions on delinquency (such as theft and assault) and problem behaviors (such as alcohol and tobacco use). Because the NLSY follows the same youth each year, the data from this effort will provide important national information on the onset of delinquency, trends in offending, and correlation with other factors such as family, school, and health. So far, the NLSY project has collected four waves of data (one each year). The fourth wave will be released in 2002. OJJDP expects to continue contributing to this effort until the sampled youth have reached young adulthood.

This project will be conducted through an interagency agreement with the Bureau of Labor Statistics. No additional applications will be solicited in FY 2002.

National Training and Technical Assistance for Effective Juvenile Detention and Corrections Practices

Since FY 1996, OJJDP has funded the National Juvenile Detention Association's (NJDA's) National Training and Technical Assistance for Effective Juvenile Detention and Corrections Practices project (Overcrowding Project) to combat overcrowding in the Nation's juvenile

detention facilities. The Overcrowding Project is an intensive, onsite training and technical assistance program that assists selected jurisdictions in reducing overcrowding in their juvenile detention facilities. NJDA and the Youth Law Center, a partner in the project, have considerable experience with juvenile facility overcrowding. The original Overcrowding Project is being broadened significantly to include a greater emphasis on capacity building to achieve meaningful systemic reform and to incorporate nationally recognized operational ''best practices'' within juvenile confinement facilities.

Accomplishments during previous grant years included (1) providing intensive technical assistance to Camden County, NJ; Oklahoma County, OK; Santa Cruz County, CA; and the States of Rhode Island and South Carolina and (2) providing technical assistance to juvenile detention or corrections systems in Arkansas, Illinois, Louisiana, Michigan, Nebraska, Nevada, and Ohio. In addition, the project developed and delivered a jurisdictional team training curriculum on overcrowding to five jurisdictions. It also helped develop and produce OJJDP's national videoconference on overcrowding in juvenile detention facilities and eight major training and technical assistance documents.

During FY 2002, the Overcrowding Project will expand its focus to address broader systemic issues through delivery of intensive technical assistance to six to eight new jurisdictions. This effort will be supported by a partnership with OJJDP and the Annie E. Casey Foundation, which will focus on development of a strategy for initiating a national juvenile detention reform movement. The project also will coordinate with and complete intensive technical assistance to the West Virginia Division of Juvenile Justice.

This project will be implemented by the current grantee, the National Juvenile Detention Association. No additional applications will be solicited in FY 2002.

Performance-based Standards Project

To date, the Performance-based Standards (PbS) project has developed an integrated set of goals, performance standards, outcome measures, and implementation tools to help facilities improve in six key areas of operations: safety, order, security, programming, health/mental health, and justice. Participating sites submit data on 96 outcome measures at 6-month intervals via a secure Internet Web site (www.performance-standards.org), and the results are fed back to the PbS sites within a month of data closeout. The Council of Juvenile Correctional Administrators (CJCA) has worked very closely with the juvenile corrections field in developing and testing a program that focuses on accountability, performance, and attainment of measurable goals. Currently, more than 80 juvenile detention and correctional facilities from 23 States are participating in the PbS project. Five State youth corrections agencies are implementing PbS agencywide.

FY 2002 funding will support implementation of significant innovations in the program that have been under design, development, and testing during the past 2 years. Full implementation will include revisions of the data collection instruments for youth and staff, specifically the incorporation of survey items that track the national Survey of Youth in Residential Placement; implementation of the reintegration standards and outcome measures currently being tested in three States; and testing and implementation of an MIS-integrated system that will allow facilities to track performance on a daily basis, rather than at 6-month intervals, as is currently the case. In addition, the scope of the project will expand to include community-based correctional functions as an extension of the work on reintegration standards and also will enable the project to increase the number of participating sites.

This project will be implemented by the current grantee, the Council of Juvenile Correctional Administrators. No additional applications will be solicited in FY 2002.

Survey of Youth in Residential Placement

The first national Survey of Youth in Residential Placement (SYRP) will interview a sample of 10,000 youth in residential placement. It will be conducted in March and April 2003 and will use audio-assisted computerized interviews. The survey will collect critical research information on youth history with the justice system, family life, education, and current treatment needs.

SYRP will follow up on the FY 1998 Planning for the Survey of Youth in Residential Placement cooperative agreement with Westat, Inc. That project developed the data collection instrument, the sampling scheme, and an analysis plan. The planning project also extensively tested the questions used in the instrument, the computer-assisted interviewing method, and the complete instrument and survey methodology in a sample of 40 facilities in a specific geographic region of the country. The new project will implement the finalized Audio-Computer Assisted Survey Instrument (A–CASI) and produce a report based on the data collected.

This project will be implemented by the current grantee, Westat, Inc. No additional applications will be solicited in FY 2002.

Systems Improvement Training and Technical Assistance

In FY 2000, OJJDP continued funding to the Institute for Educational Leadership (IEL) for training and technical assistance programs that strengthen and sustain the capacity of SafeFutures and Safe Kids/Safe Streets demonstration sites and selected other communities to assist them with changing their systems. The project seeks to help sites (1) address their system goals and effectively address challenges, (2) educate and inform other communities and the juvenile justice field about how they can more effectively pursue community-based systems reform, (3) enhance the skills of community and staff leadership so they can better sort through the complexities of systems reform, and (4) build the overall capacity of the selected sites to engage in strategic planning, develop policies and programs, and build community collaboratives to address specific substantive challenges and achieve measurable results.

Since the project was awarded, IEL has established a pool of consultants with expertise in systems improvement; developed useful resources for communities addressing issues critical to systems improvement, including using data effectively, achieving sustainability, and building consumer capacity and cultural competence; and provided assistance to several OJJDP comprehensive initiatives.

In FY 2002, OJJDP will continue to fund the project to further assist selected OJJDP grantee communities interested in systems reform and change and to continue disseminating ''lessons learned'' to other communities.

This project will be implemented by the current grantee, the Institute for Educational Leadership. No additional applications will be solicited in FY 2002.

Training Programs for Juvenile Justice Professionals in Corrections and Detention

The Training Programs for Juvenile Justice Professionals in Corrections and Detention, provided by the National Institute of Corrections (NIC) through an

interagency agreement funded by OJJDP, was established in 1990. NIC provides a variety of training and technical assistance, primarily geared toward supervisors and administrators who work in the juvenile justice system. NIC offers comprehensive training courses at its academy in Longmont, CO, and at various sites around the country. The training program is designed to enhance professional development and leadership skills of juvenile justice corrections and detention administrators and supervisors. Through this interagency agreement, training is also offered on critical elements of aftercare, services and programs for juvenile female offenders, restorative justice, curriculum design and development, and training for juvenile justice agency training coordinators and directors. NIC also provides training for newly appointed chief executive officers of juvenile justice corrections agencies and new facility directors.

In FY 2002, NIC will continue to support standards for training juvenile justice professionals through its Juvenile Justice Training Academy project. This project will also provide technical assistance to enhance existing academies and training programs. NIC will conduct several regional training sessions and will provide national training and workshops at its academy during FY 2002.

This project will be implemented through an interagency agreement between OJJDP and the National Institute of Corrections. No additional applications will be solicited in FY 2002.

Training and Technical Assistance for National Innovations To Reduce Disproportionate Minority Confinement

States participating in the Formula Grants Program are required to determine whether the proportion of minorities in confinement exceeds their proportion in the population and, if so, demonstrate efforts to reduce it. Research and Evaluation Associates (REA) is one of several Office of Juvenile Justice and Delinquency Prevention (OJJDP) grantees with responsibility for support of the Disproportionate Minority Confinement (DMC) requirement. This project, funded in FY 2001, follows a 3-year grant that supported development of a curriculum for policymakers and practitioners on DMC issues.

In FY 2001, REA developed a set of strategic tools and materials to assist jurisdictions to address this issue and managed delivery of intensive technical assistance to five selected States (Delaware, Kentucky, Massachusetts, New Mexico, and South Carolina). In working with the five States, project staff established a protocol for the delivery of technical assistance in response to DMC issues, which will help States identify and prioritize interventions that provide both an immediate and a long-term impact on DMC.

In FY 2002, the grantee's activities will include identifying and training consultants to support the expansion of the intensive technical assistance, evaluating the use of the protocol in technical assistance delivery, conducting a DMC training of trainers, updating the DMC Web site, and continuing to develop strategies and approaches that will aid in implementing and monitoring the DMC effort.

This project will be implemented by the current grantee, Research and Evaluation Associates. No additional applications will be solicited in FY 2002.

Tribal Youth Training and Technical Assistance Program

The Tribal Youth Training and Technical Assistance Program was established in FY 1997 to provide tribal governments with the information and tools necessary to enhance or develop comprehensive, system-wide approaches to reduce juvenile delinquency, violence, and child victimization and to increase the safety of Indian communities. To date, the program has provided training and technical assistance to over 700 individuals involved with the improvement, well-being, community development, and program design and implementation of juvenile justice systems.

In FY 2002, the Tribal Youth Training and Technical Assistance Program will provide the following services: (1) Plan and provide support for a national meeting of 40 Tribal Youth Program (TYP) grants; (2) plan and provide support for 1 cluster training of 40 TYP grants and develop a TYP closeout technical assistance plan; (3) provide on-site technical assistance for up to 25 TYP grantees; (4) provide monthly mailings of all TYP-related updates, announcements, and publications; (5) provide national distribution of the technical Bulletin and develop the TYP Web site; (6) print and distribute 1,200 copies of *TYP Promising Practices;* (7) develop a national database for all Alaskan and Native American tribes; (8) and conduct 1 focus group meeting on a special topic.

A new solicitation will be issued and a grant awarded through a competitive process in FY 2002.

Child Abuse and Neglect and Dependency Courts

Evaluation of the Parents Anonymous® Program

In FY 2001, OJJDP began this project through a competitive process to evaluate the Parents Anonymous® program. Parents Anonymous, Inc., is a national child abuse prevention program dedicated to family strengthening in partnership with local communities. The purpose of the evaluation is to assess the implementation and effectiveness of the Parents Anonymous® program in preventing and treating child abuse and neglect. The National Council on Crime and Delinquency is conducting this evaluation in two phases. Phase I is an ongoing process evaluation that is investigating how the theoretical premises, principles, best practices, and model of Parents Anonymous® are operationalized in a sample of programs selected by the evaluator. Phase II will present a preliminary approach to conducting the outcome evaluation of the selected programs. This phase will include a detailed discussion of the overall design of the outcome evaluation and methods for selecting programs and comparison groups, designing and testing data collection instruments, and collecting and analyzing data.

This project will be implemented by the current grantee, the National Council on Crime and Delinquency. No additional applications will be solicited in FY 2002.

National Evaluation of the Safe Kids/Safe Streets Program

OJJDP will continue funding the grant competitively awarded in FY 1997 to Westat, Inc., Rockville, MD, for the National Evaluation of the Safe Kids/Safe Streets Program. The evaluation has three main goals: (1) To document and explicate the process of community mobilization, planning, and collaboration taking place before and during the Safe Kids/Safe Streets award; (2) to inform program staff of performance levels on an ongoing basis; and (3) to determine the effectiveness of the implemented programs in achieving the goals of the Safe Kids/Safe Streets Program. The initial 18-month grant began a process evaluation and a feasibility study for a future impact evaluation. With FY 2001 funding, Westat continued the process evaluation, which focuses on tracking the implementation efforts at each of the

sites, and continued working with local evaluators to develop their skills and capacity for program evaluation. With funding in FY 2002, Westat will continue the impact evaluation, which includes a pilot study of its proposed case tracking procedure.

This evaluation will be implemented by the current grantee, Westat, Inc. No additional applications will be solicited in FY 2002.

Research on Child Neglect

This project is a collaborative effort of several Federal agencies concerned with research in the area of child abuse and neglect. The National Institutes of Health Child Abuse and Neglect Working Group (CANWG) is a consortium of Federal agencies that was formed in 1997. CANWG's goals are to assess the state of the science in child abuse and neglect, make recommendations for a research agenda, and develop plans for future coordination efforts across Federal agencies and institutes. In 1998, OJJDP joined CANWG to participate in funding a research program focused specifically on child neglect. OJJDP funds are supporting two research projects within the overall CANWG research program.

This project will be implemented through the current interagency agreement with the National Institutes of Health Child Abuse and Neglect Working Group. No additional applications will be solicited in FY 2002.

Safe Kids/Safe Streets: Community Approaches to Reducing Abuse and Neglect and Preventing Delinquency

This five and a half-year demonstration is designed to break the cycle of early childhood victimization and later delinquency and criminality by reducing child and adolescent maltreatment. Several components of the Office of Justice Programs joined in FY 1996 to develop this coordinated community response program. These components provide fiscal and technical support for local efforts to restructure and strengthen the justice system and the child welfare, family services, education, health, and related systems to be more comprehensive and proactive in helping children, adolescents, and their families. Safe Kids requires the five funded sites to develop, implement, and/or expand cross-agency strategies and to partner with natural networks in their communities. OJJDP awarded competitive cooperative agreements in FY 1997 to Chittenden County, VT; Huntsville, AL; Kansas City, MO; the Sault Ste. Marie Tribe of Chippewa Indians, MI; and Toledo, OH. Funds were provided by OJJDP, the Executive Office for Weed and Seed, and the Violence Against Women Office. FY 2002 is the fifth year of the demonstration project period.

This demonstration will continue to be implemented in FY 2002 by the current grantees: Chittenden County, VT; Huntsville, AL; Kansas City, MO; the Sault Ste. Marie Tribe of Chippewa Indians, MI; and Toledo, OH. No additional applications will be solicited in FY 2002.

Dated: May 30, 2002.

J. Robert Flores,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 02–14003 Filed 6–4–02; 8:45 am]

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To extend eligibility for refugee status of unmarried sons and daughters of certain Vietnamese refugees. (May 30, 2002; 116 Stat. 587)

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